
**SENATE COMMITTEE ON
ELECTIONS AND CONSTITUTIONAL AMENDMENTS**
Senator Steven Glazer, Chair
2023 - 2024 Regular

Bill No: AB 507 **Hearing Date:** 6/6/23
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Version: 2/7/23
Urgency: No **Fiscal:** Yes
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Subject: Presidential electors

DIGEST

This bill requires the Governor to designate an alternative location for California's presidential electors to meet if it is unsafe for the electors to meet at the State Capitol due to a state of emergency. AB 507 also changes the date that electors meet to conform to a recent change in federal law.

ANALYSIS

Existing law:

- 1) Provides that the voters choose the state's presidential electors at the general election in each leap year, or at any other time as may be prescribed by the laws of the United States (US).
- 2) Requires the Governor, on or before the day of meeting of the electors, to deliver to the electors a list of the names of electors and to perform any other duties relating to presidential electors which are required of the Governor by the laws of the US.
- 3) Requires the elected presidential electors to assemble at the State Capitol at 2:00 PM on the first Monday after the second Wednesday in December following their election to vote, by separate ballot, for President and Vice President.
- 4) Provides that each presidential elector shall receive \$10 and mileage compensation for the elector's services, as specified.
- 5) Requires the Governor, in submitting the state's certificate of ascertainment of appointment of electors as required by federal law, to certify the state's electors and to state specified information in the certificate.
- 6) Requires a final determination and judgment in any contest of the election of presidential electors to be rendered at least six days before the first Monday after the second Wednesday in December.
- 7) Defines a "state of emergency" to mean the duly proclaimed existence of conditions of disaster or extreme peril to the safety of persons and property within the state cause by conditions such as air pollution, fire, flood, storm, epidemic, riot, drought,

and earthquake, among others.

- 8) Permits the Governor, pursuant to the California Emergency Services Act (CESA), to duly proclaim a state of emergency as specified.

This bill:

- 1) Requires the Governor to designate an alternative location for presidential electors to assemble if it is unsafe to meet in the State Capitol due to a state of emergency proclaimed by the Governor pursuant to the CESA, including a fire, flood, earthquake, or other emergency. Requires the Governor to designate the alternative location by written proclamation that is filed with the Secretary of State (SOS).
- 2) Changes the date that presidential electors are required to assemble from the first Monday to the first Tuesday after the second Wednesday in December following their election to conform to a recent similar change in federal law.
- 3) Makes other conforming and technical changes.

BACKGROUND

The Electoral College and the Electoral Process. Article II, Section 1 of the US Constitution created the Electoral College as a compromise between election of the President by a vote in Congress and election by a popular vote of the whole citizenry. It was designed to safeguard against undue influence by small groups and to ensure that states with larger populations did not overpower or overshadow states with smaller populations.

The Constitution requires each state to appoint electors who have the responsibility of choosing the President and Vice President. Each state is assigned a number of electors equal to its two Senate seats plus the number of seats in the House of Representatives. Per the 23rd Amendment, the District of Columbia is allotted three electoral votes. The total number of electors is 538. This group of presidential electors from each state is known as the Electoral College.

The votes cast at the Presidential election are not a direct vote for President and Vice President, but rather a vote for a slate of electors selected by the political party that nominated that particular Presidential ticket.

The executive of each state (usually the Governor unless otherwise specified in state law), not later than six days before the time fixed for the meeting of electors, is required to issue a certificate of ascertainment of appointment of electors and to transmit that certificate to the Archivist of the United States immediately after the issuance of the certificate, by the most expeditious method available, and to transmit six duplicate-originals of the certificate to the electors of the State.

These electors, are required to convene by state every four years on the first Tuesday after the second Wednesday in December following their appointment, for the sole purpose of electing, by separate ballot, the President and Vice President and to then submit those votes to the Congress. The votes of the electors are counted in a joint

session of Congress. If a candidate for President or Vice President receives a majority of the Electoral College vote, that person is elected. Currently, there are 538 electors, so a minimum of 270 votes is required to elect a President and Vice President.

The Winner Takes It All. Each state legislature determines how the electors are allocated to candidates. As of the last election, the District of Columbia and 48 States had a winner-takes-all rule for the Electoral College. In these states, whichever candidate received a majority of the popular vote, or a plurality of the popular vote (less than 50 percent but more than any other candidate), took all of the state's electoral votes. Only two States, Nebraska and Maine, did not follow the winner-takes-all rule. In those States, there could have been a split of electoral votes among candidates through the state's system for proportional allocation of votes (and, in fact, there was a split in Maine's allocation of votes in 2016 and Nebraska's in 2008).

With most states following the winner-take-all approach, it is possible for a candidate to win the electoral vote, but lose the nation-wide popular vote. There have been four elections in which the person elected president won the electoral vote, but lost the popular vote (1876, 1888, 2000, and 2016).

Are the electors bound to vote the way they pledged? There is no Constitutional provision or federal law that requires electors to vote according to the results of the popular votes in their respective states. However, there are twenty-nine states, including California, which do have laws binding their electors to vote according to the popular vote results.

National Popular Vote Interstate Compact. In 2011, the Legislature approved and Governor Brown signed AB 459 (Hill), Chapter 188, Statutes of 2011, pursuant to which the state ratified the Agreement Among the States to Elect the President by National Popular Vote, popularly known as the National Popular Vote Interstate Compact (compact). Under the compact, each signatory state agrees to award all its Electoral College votes to the presidential ticket that wins the national popular vote, regardless of whether that ticket also won the popular vote in that state. The compact only goes into effect once states cumulatively possessing a majority of the Electoral College vote have signed on. In this way, the compact ensures that the winner of the national popular vote will also win the Electoral College vote that decides the presidency. According to National Popular Vote, a nonprofit organization that advocates for the approval of the compact, 15 states and the District of Columbia have ratified the compact, possessing 195 out of the 270 necessary electoral votes.

COMMENTS

- 1) According to the author: In preparation for the meeting of California's presidential electors on December 14, 2020, California State Assembly staff ensured that the electors could maintain adequate social distancing when they met on the Assembly Floor amid a spike in COVID-19 infections. While the COVID-19 pandemic did not prevent the electors from meeting at the State Capitol as required by state law, those preparations drew attention to the fact that state law does not explicitly permit the electors to meet at a different location if it is unsafe or impossible to meet in the State Capitol due to a state of emergency such as a fire or flood.

AB 507 allows the Governor to designate an alternate meeting location for California’s presidential electors when a state of emergency prevents the electors from meeting at the State Capitol. AB 507 also updates state laws governing the meeting of presidential electors to conform to recent changes in federal law that were made as part of the Electoral Count Reform and Presidential Transition Improvement Act of 2022.

- 2) Federal Conformity. In December 2022, Congress approved and President Joe Biden signed the Electoral Count Reform and Presidential Transition Improvement Act of 2022 (Act) as part of the Consolidated Appropriations Act, 2023 (H.R. 2617). The Act made many changes to the federal law relating actions taken by Congress after presidential electors have met in the states and transmitted their votes to Congress for counting. The Act additionally specifies that each state’s Governor is responsible for submitting the state’s slate of electors except where a state’s law expressly assigns that responsibility to a different state executive. Most of existing California law relating to presidential electors is consistent with the changes made by the Act. There are two areas, however, in which state law must be amended to conform to changes made by the Act. First, the Act changed the day on which presidential electors meet from the first *Monday* after the second Wednesday in December to the first *Tuesday* after the second Wednesday in December following the presidential general election, necessitating corresponding amendments to Sections 6904 and 16003 of the Elections Code. Second, the Act moved federal rules governing the preparation and transmission of a certificate of ascertainment of appointment of electors from one section of federal law to a different section of law, necessitating a corresponding amendment to Section 6918 of the Elections Code to update the federal code referenced. AB 507 makes these necessary changes

RELATED/PRIOR LEGISLATION

SB 103 (Dodd), Chapter 216, Statutes of 2022, enacted the Uniform Faithful Presidential Electors Act, which provides for the automatic replacement of any presidential elector who does not cast their electoral vote for the candidates for President and Vice President that the elector is pledged to support.

AB 459 (Hill), Chapter 188, Statutes of 2011, ratified the Agreement Among the States to Elect the President by National Popular Vote, an interstate compact whereby the state agrees to award its electoral votes to the Presidential ticket that received the most popular votes nationwide, if certain conditions are met.

PRIOR ACTION

Assembly Floor:	79 - 0
Assembly Appropriations Committee:	14 - 0
Assembly Elections Committee:	8 - 0

POSITIONS

Sponsor: Author

Support: None received

Oppose: None received

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