

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 582 (Senator Ferguson, *et al.*)
Education, Health, and Environmental Affairs

Election Law - Presidential Elections - Voting by Electors

This bill modifies the manner in which the State's presidential electors are chosen, and how the electors must cast their votes for President and Vice President of the United States. Instead of the electors being chosen, and casting their votes, based on the candidates for President and Vice President who receive the most votes in the State, the electors are chosen, and must cast their votes, based on the candidates for President and Vice President who receive the most votes nationally. **The bill takes effect upon specified action of one or more other states, as discussed below, and terminates, or is null and void, if the Agreement Among the States to Elect the President by National Popular Vote (National Popular Vote Agreement) takes effect.**

Fiscal Summary

State Effect: None. The bill can be implemented with existing resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Electors Chosen, and Must Vote, in Accordance with National Results

The bill repeals requirements that (1) the presidential electors be elected at large by the voters of the entire State; (2) a vote for the candidates for President and Vice President of

a political party are considered to be and counted as a vote for each of the presidential electors nominated by the political party; and (3) the presidential electors must cast their votes for the candidates for President and Vice President who received a plurality of the votes (more votes than any other candidates) cast in the State. Instead, the bill requires the Secretary of State to certify the election of each of the presidential electors of the political party of the candidates for President and Vice President who received the highest aggregate number of votes cast by voters in all of the United States. The presidential electors must cast their votes for the candidates for President and Vice President who received the highest aggregate number of votes cast by voters in all of the United States.

Regulations to Determine National Results

The Secretary of State must adopt by regulation a reasonable method for ascertaining the candidates for President and Vice President who received the highest aggregate number of votes cast by voters in all of the United States, including this State and the District of Columbia. The regulation must (1) be adopted before the date established by federal law for appointing electors in the presidential election to be held in 2020 and (2) allow for the ascertainment of the highest aggregate number of votes cast before the latest date by which presidential electors of the State may cast their votes for President and Vice President of the United States.

Bill Contingent on Action of One or More Other States

The bill takes effect on the date on which a similar law (allocating electors in accordance with national results) is enacted by one or more states (1) that are, in the aggregate, entitled to a number of presidential electors that is equal to or greater than the number of electors allotted to this State and (2) which in the most recent presidential election before the enactment of the bill allocated their electors to the candidates of a political party other than the party to which this State allocated its electors.

Preempted by Taking Effect of National Popular Vote Agreement

If the National Popular Vote Agreement under Chapters 43 and 44 of 2007 takes effect after the bill has taken effect, the bill terminates. If the agreement takes effect before the bill takes effect, the bill is null and void.

Current Law/Background:

Presidential Electors

Prior to a presidential general election, each political party and candidate nominated by petition must nominate candidates for presidential elector of the party or candidate and

certify the names of the presidential elector candidates to the State Board of Elections. The number of presidential elector candidates nominated must be the number Maryland is entitled to elect (equal to the combined number of U.S. Senators and Representatives).

At the general election for President and Vice President of the United States, the number of presidential electors to which the State is entitled must be elected at large by the voters of the entire State. The names of the candidates for presidential elector may not be printed on the ballot, though a vote for the candidates for President and Vice President of a political party is considered to be and counted as a vote for each of the presidential electors nominated by the party.

Federal law requires the presidential electors of each state to meet and give their votes on the first Monday after the second Wednesday in December following their appointment. Under State law, the presidential electors meet in the State House and must cast their votes for the candidates for President and Vice President who received a plurality of the votes cast in the State.

National Popular Vote Agreement

Chapters 43 and 44 of 2007 established Maryland as a member of the National Popular Vote Agreement, under which Maryland will commit its presidential electors to the national popular vote winner in a presidential election upon the agreement taking effect. The agreement takes effect when it is enacted in substantially the same form by states cumulatively possessing a majority of the electoral votes and the enactments of the agreement have taken effect in each of those states.

The effort to enact the agreement nationwide was begun in 2006, aimed at changing aspects of the current system of electing the president, including the concentration of campaigning in a minority of closely divided states and the ability of a candidate to win the presidency without winning the national popular vote. According to National Popular Vote Inc., a nonprofit organization that began the nationwide popular vote agreement proposal, the agreement has been enacted so far in 11 states (California, Connecticut, Hawaii, Illinois, Maryland, Massachusetts, New Jersey, New York, Rhode Island, Vermont, and Washington) and the District of Columbia. The 11 states in which the agreement has been enacted and the District of Columbia possess 172 electoral votes, which is 64% of the 270 necessary to bring the agreement into effect. The Colorado General Assembly also recently passed the agreement. If signed by the Governor of Colorado, the total of the electoral votes of the states which have enacted the agreement will reach 181.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Secretary of State; State Board of Elections; Department of Legislative Services

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