

SUMMARY—Proposes to amend the Nevada Constitution to adopt the National Popular Vote Compact. (BDR C-389)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State: No.

ASSEMBLY JOINT RESOLUTION—Proposing to amend the Nevada Constitution to adopt the National Popular Vote Compact.

Legislative Counsel’s Digest:

The United States Constitution requires the election of President and Vice President by presidential electors from each state who are appointed in the manner directed by each state legislature under the federal constitutional power granted to states by the Presidential Electors Clause. (U.S. Const. Art. II, § 1, cl. 2, U.S. Const. Amend. XII) The United States Supreme Court has stated that the Presidential Electors Clause “concede[s] plenary power to the state legislatures in the matter of the appointment of electors” and “recognizes that the people act through their representatives in the legislature, and leaves it to the legislature exclusively to define the method of effecting the object.” (*McPherson v. Blacker*, 146 U.S. 1, 27, 35 (1892)) The Supreme Court has also stated that the Presidential Electors Clause was “so framed that congressional and federal influence might be excluded” and, as a result, “the appointment and mode of appointment of



electors belong exclusively to the states under the [C]onstitution of the United States.”
(*McPherson*, 146 U.S. at 35)

Under existing law in Nevada, the Legislature has exercised its power to define the method of appointing this State’s presidential electors by enacting the Uniform Faithful Presidential Electors Act. (NRS 298.005-298.089) Existing law requires each nominee for presidential elector and alternate to sign a pledge to vote only for the candidates for President and Vice President who receive the highest number of votes in this State at the general election. (NRS 298.045) The nominees for presidential elector whose candidates for President and Vice President receive the highest number of votes in this State at the general election are the presidential electors, and the presidential electors may vote only for the candidates for President and Vice President who receive the highest number of votes in this State at the general election. (NRS 298.065, 298.075)

The amendment to the Nevada Constitution proposed by this resolution enacts the National Popular Vote Compact. If the Compact is effective and applies to a presidential election: (1) the chief election official of each member state will determine which slate of candidates for President and Vice President wins the national popular vote and will designate that presidential slate as the national popular vote winner; and (2) except in the case of a tie in the national popular vote, the nominees for presidential elector whose slate of candidates for President and Vice President is the national popular vote winner become the presidential electors. The amendment to the Nevada Constitution proposed by this resolution also provides that if the Compact is effective and applies to a presidential election, the presidential electors shall, with limited exception, mark their presidential elector ballots for the national popular vote winner. The amendment to the Nevada



Constitution proposed by this resolution also provides that Nevada may withdraw from and rejoin the Compact via statute.

If this resolution is passed by the 2023 Legislature, it must also be passed by the next Legislature and then approved and ratified by the voters in an election before the proposed amendments become part of the Nevada Constitution. However, for the Compact to take effect, states cumulatively possessing a majority of the electoral votes must enact the Compact in substantially the same form and the enactments by such states must have taken effect in each state.

WHEREAS, The candidate for the Presidency of the United States receiving the most popular votes across the country should become President; and

WHEREAS, The United States Constitution empowers each state to choose the manner of selecting its members of the Electoral College; now, therefore, be it

RESOLVED BY THE ASSEMBLY AND SENATE OF THE STATE OF NEVADA, JOINTLY, That a new section, designated Section 14A, be added to Article 15 of the Nevada Constitution to read as follows:

Sec. 14A. The National Popular Vote Compact is hereby enacted into law and entered into with all jurisdictions legally joining the Compact, in substantially the form set forth in this section:

1. Membership



Any State of the United States and the District of Columbia may become a member of this compact by enacting this compact.

2. Right of the People in Member States to Vote for President and Vice President

Each member state shall conduct a statewide popular election for President and Vice President of the United States.

3. Manner of Appointing Presidential Electors in Member States

Prior to the time set by law for the meeting and voting by the presidential electors, the chief election official of each member state shall determine the number of votes for each presidential slate in each State of the United States and in the District of Columbia in which votes have been cast in a statewide popular election and shall add such votes together to produce a “national popular vote total” for each presidential slate.

The chief election official of each member state shall designate the presidential slate with the largest national popular vote total as the “national popular vote winner.”



The presidential elector certifying official of each member state shall certify the appointment in that official's own state of the elector slate nominated in that state in association with the national popular vote winner.

At least six days before the day fixed by law for the meeting and voting by the presidential electors, each member state shall make a final determination of the number of popular votes cast in the state for each presidential slate and shall communicate an official statement of such determination within 24 hours to the chief election official of each other member state.

The chief election official of each member state shall treat as conclusive an official statement containing the number of popular votes in a state for each presidential slate made by the day established by federal law for making a state's final determination conclusive as to the counting of electoral votes by Congress.

In event of a tie for the national popular vote winner, the presidential elector certifying official of each member state shall certify the appointment of the elector slate nominated in association with the presidential slate receiving the largest number of popular votes within that official's own state.



If, for any reason, the number of presidential electors nominated in a member state in association with the national popular vote winner is less than or greater than that state's number of electoral votes, the presidential candidate on the presidential slate that has been designated as the national popular vote winner shall have the power to nominate the presidential electors for that state and that state's presidential elector certifying official shall certify the appointment of such nominees.

The chief election official of each member state shall immediately release to the public all vote counts or statements of votes as they are determined or obtained.

This article shall govern the appointment of presidential electors in each member state in any year in which this compact is, on July 20, in effect in states cumulatively possessing a majority of the electoral votes.

4. Other Provisions

This compact shall take effect when states cumulatively possessing a majority of the electoral votes have enacted this compact in substantially the same form and the enactments by such states have taken effect in each state.



Any member state may withdraw from this compact, except that a withdrawal occurring six months or less before the end of a President's term shall not become effective until a President or Vice President shall have been qualified to serve the next term.

The chief executive of each member state shall promptly notify the chief executive of all other states of when this compact has been enacted and has taken effect in that official's state, when the state has withdrawn from this compact, and when this compact takes effect generally.

This compact shall terminate if the electoral college is abolished.

If any provision of this compact is held invalid, the remaining provisions shall not be affected.

5. Definitions

For purposes of this compact,

“chief executive” shall mean the Governor of a State of the United States or the Mayor of the District of Columbia;



“elector slate” shall mean a slate of candidates who have been nominated in a state for the position of presidential elector in association with a presidential slate;

“chief election official” shall mean the state official or body that is authorized to certify the total number of popular votes for each presidential slate;

“presidential elector” shall mean an elector for President and Vice President of the United States;

“presidential elector certifying official” shall mean the state official or body that is authorized to certify the appointment of the state’s presidential electors;

“presidential slate” shall mean a slate of two persons, the first of whom has been nominated as a candidate for President of the United States and the second of whom has been nominated as a candidate for Vice President of the United States, or any legal successors to such persons, regardless of whether both names appear on the ballot presented to the voter in a particular state;

“state” shall mean a State of the United States and the District of Columbia; and



“statewide popular election” shall mean a general election in which votes are cast for presidential slates by individual voters and counted on a statewide basis.

And be it further

RESOLVED, That a new section, designated Section 14B, be added to Article 15 of the Nevada Constitution to read as follows:

Sec. 14B. 1. When the National Popular Vote Compact governs a presidential election, each presidential elector in Nevada shall cast his or her vote in the Electoral College for the presidential slate nominated by the political party or organization that nominated the elector.

2. The State of Nevada may withdraw from the National Popular Vote Compact by statute, and may rejoin by subsequent statute, subject to the provisions of subsection 5 of Section 14A of this Article.

And be it further

RESOLVED, That this resolution becomes effective upon passage.

