

Date of Hearing: March 15, 2023

ASSEMBLY COMMITTEE ON ELECTIONS
Isaac G. Bryan, Chair
AB 507 (Bryan) – As Introduced February 7, 2023

SUBJECT: Presidential electors.

SUMMARY: Allows 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. Changes the date that electors meet to conform to a recent change in federal law. Specifically, **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 California Emergency Services Act (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.

EXISTING STATE 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). (Elections Code §6902)
- 2) 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. (Elections Code §6904)
- 3) 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. (Elections Code §6903)
- 4) Provides that each presidential elector shall receive \$10 and mileage compensation for the elector’s services, as specified. (Elections Code §6909)
- 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. (Elections Code §6915)
- 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. (Elections Code §16003)

- 7) Permits the Governor, pursuant to CESA, to proclaim a state of emergency in an area affected or likely to be affected by that state of emergency when conditions of disaster or of extreme peril to the safety of persons and property within the state exist, as specified. (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code)

EXISTING FEDERAL LAW:

- 1) Establishes the Electoral College, which consists of presidential electors from each state who meet in their respective states every four years to elect the President and Vice President of the US. (US Constitution Article II, §1; US Constitution, 12th Amendment)
- 2) Requires presidential electors to meet by state and to vote by separate ballot for President and Vice President on the first Tuesday after the second Wednesday in December following their appointment and to then submit those votes to the President of the Senate (i.e., the Vice President of the US) to be counted at a joint session of Congress, as specified. (3 USC §§7, 8, 11, 15; US Constitution Article II, §1; US Constitution, 12th Amendment)
- 3) Requires the executive of each state, not later than six days before the time fixed for the meeting of electors, to issue a certificate of ascertainment of appointment of electors, as specified. Requires the executive 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. (3 USC §5) Provides that the term “executive,” for these purposes, means, with respect to any State, the Governor of the State, except when the laws or constitution of a State in effect as of election day expressly require a different State executive to perform those duties. (3 USC §21)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Purpose of the Bill:** 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) **The Electoral College and the Popular Election of Presidential Electors:** When Californians mark their ballots for President and Vice President, they actually are casting their votes for a slate of presidential elector candidates selected by the political party that nominated that presidential ticket (or, in the case of an independent presidential ticket not affiliated with a political party, for a slate of elector candidates that has pledged to vote for that ticket). This is because the voters do not directly elect the President and Vice President; instead, the US Constitution requires each state to appoint electors who have the responsibility of choosing the President and Vice President. Each state is allocated a number of electors equal to the number of Senators and Representatives that the state is entitled to in Congress. As a body, the electors chosen by each state are referred to as the “Electoral College.”

Electors convene by state, vote for President and Vice President on separate ballots, then submit their votes to Congress, where the votes 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.

In accordance with that authority granted to the state legislatures, California and 47 other states (along with the District of Columbia) have chosen to award all electoral votes to the Presidential ticket that receives the greatest number of votes in the state (or in the District). Two states, Maine and Nebraska, have chosen to award one electoral vote to the Presidential ticket that receives the greatest number of votes in each Congressional district in the state, and two electoral votes to the Presidential ticket that receives the greatest number of votes in the state.

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.

- 3) **Electoral Count Reform and Presidential Transition Improvement Act of 2022:** 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 modernized federal laws governing the selection and meeting of presidential electors, the transmission of electoral votes to Congress, and the counting of those votes by Congress.

Many of the changes made to federal law by the Act relate to actions taken by Congress after presidential electors have met in the states and transmitted their votes to Congress for counting. Notably, the Act increases the number of US Representatives and Senators needed to lodge an objection to the votes of electors and states that the role of the Vice President in presiding over the joint session of Congress to count the electoral votes is “solely ministerial.” 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 key 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.

- 4) **California Emergency Services Act and States of Emergency:** The CESA was enacted in 1970 through the passage of AB 560 (Britschgi), Chapter 1454, Statutes of 1970, which repealed and reenacted provisions of the California Disaster Act with various revisions and substantive changes. The CESA gives the Governor authority to proclaim a state of emergency in an area affected or likely to be affected by that state of emergency when conditions of disaster or of extreme peril to the safety of persons and property within the state exist.

As detailed above, existing law requires California’s presidential electors to meet at the State Capitol to cast their votes for President and Vice President. To the extent that conditions related to a declared state of emergency made it unsafe for the electors to meet at the State Capitol, this bill requires the Governor to designate an alternative location for the electors to assemble and cast their ballots.

- 5) **Previous 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.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

Analysis Prepared by: Ethan Jones / ELECTIONS / (916) 319-2094