

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 202 (Delegate Stein)
Ways and Means

Election Law - Presidential Electors - Selection and Voting

This bill modifies provisions governing the nomination and election of presidential electors in the State and the casting of electors' votes, primarily by (1) requiring electors to pledge to cast their votes for President and Vice President in a manner consistent with the party or unaffiliated presidential candidate which nominated them for elector and (2) establishing procedures for the appointment of substitute electors in the event of a vacancy in the office of elector and establishing that an elector vacates the office if the elector refuses to present a ballot, presents an unmarked ballot, or presents a ballot marked in violation of their pledge.

Fiscal Summary

State Effect: The bill can be implemented with existing resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Nomination and Election of Presidential Electors

“Presidential elector” means an elector for President and Vice President of the United States.

For each presidential elector, a political party or an unaffiliated presidential candidate must submit to the State Board of Elections (SBE) the names of two qualified individuals, with one individual designated “presidential elector nominee” and the other “alternate presidential elector nominee.” The submissions must be accompanied by pledges from the individuals that they agree to serve, if selected, and to mark their ballots for the nominees for President and Vice President of the party that nominated the individual or, if nominated by an unaffiliated presidential candidate, for the unaffiliated presidential candidate and the candidate’s vice-presidential running mate.

The bill adds to existing law which indicates that 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 (the bill also substitutes the word “submitted” for “nominated”) by the party. The bill adds to that existing law by indicating that a vote for unaffiliated candidates for President and Vice President is considered to be and counted as a vote for each of the presidential electors submitted by the unaffiliated presidential candidate to SBE.

Meeting of Presidential Electors

State Administrator of Elections Presides at the Meeting

The bill requires the State Administrator of Elections to preside at the meeting of presidential electors that is held in the State House after the presidential general election on the date established in federal law (the first Monday after the second Wednesday in December) to cast the electors’ votes.

Filling of Any Vacancies

The bill establishes procedures for the State Administrator to fill any vacancies in the office of presidential elector, which includes the position of any presidential elector not present to vote. The procedures generally result in the appointment of an alternate presidential elector or, if there is an insufficient number of alternates present to fill a vacancy, the appointment of any immediately available individual who is qualified to serve and chosen through nomination by and plurality vote of the remaining presidential electors (or simply appointed if all presidential elector positions are vacant). To qualify as a substitute presidential elector, an individual who has not executed the pledge required of presidential elector nominees and alternate presidential elector nominees must pledge to serve and mark their ballots for President and Vice President consistent with the pledge of the individual to whose presidential elector position they have succeeded.

Casting of Ballots

The bill also establishes procedures for the casting of ballots by the electors, which includes an examination, by the State Administrator, of the completed ballots presented by each presidential elector. The State Administrator must accept as cast all ballots of presidential electors whose votes are consistent with their pledges and may not count a presidential elector's presidential or vice-presidential ballot if the elector has not marked both ballots or has marked a ballot in violation of the elector's pledge.

A presidential elector who refuses to present a ballot, presents an unmarked ballot, or presents a ballot marked in violation of their pledge vacates the office of elector, creating a vacant position to be filled according to the procedures mentioned above. The State Administrator then distributes ballots to and collects ballots from the substitute presidential elector. The State Administrator follows these procedures until all of the State's electoral votes have been cast and recorded.

Submission of Certificate of Ascertainment and Transmittal of Certificate of the Vote

In submitting the State's certificate of ascertainment of appointed electors (after the general election and before the meeting of electors) to the Archivist of the United States, in accordance with federal law, the Governor must certify the State's presidential electors and state in the certificate that the presidential electors will serve as presidential electors unless a vacancy occurs before the end of the meeting at which the electors' votes are cast and a substitute presidential elector is appointed, in which case the Governor will submit an amended certificate of ascertainment.

After the vote of the State's presidential electors, if the final list of presidential electors differs from any list the Governor previously included on a certificate of ascertainment, the bill specifies procedures for an amended certificate of ascertainment to be prepared and substituted for the previously submitted certificate of ascertainment. The bill also specifies procedures for a certificate of the vote of the electors to be prepared and transmitted in accordance with federal law.

Current Law:

Presidential Electors

Nomination

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 SBE. 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).

Election

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 Requirements

Under federal law, the governor of each state must, as soon as practicable after the conclusion of the appointment of the electors in the State (their appointment via the State's presidential general election), submit to the Archivist of the United States a certificate of ascertainment of the appointed electors, identifying the appointed electors, copies of which the Archivist transmits to the two Houses of Congress at the next meeting of Congress. The presidential electors of each state must meet and give their votes on the first Monday after the second Wednesday in December following their appointment. Each state may, by law, provide for the filling of vacancies which may occur in its college of electors when such college meets to give its electoral vote. Federal law specifies procedures for making certificates of the votes of electors and transmitting them, including sending certificates to the President of the Senate and the Archivist of the United States.

Meeting of Electors at the State House

Under State law, the presidential electors meet in the State House on the day established by federal law. If there is any vacancy in the office of elector, the electors present must fill the vacancy, whether it is caused by absence or other reason. The electors 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 (President and Vice President) 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 bill accounts

for the possibility of the National Popular Vote Agreement taking effect in the future and its provisions would equally apply to that circumstance, where the State's presidential electors cast votes for the national popular vote winner instead of the candidates for President and Vice President who win a plurality of votes in the State.)

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Governor's Office; State Board of Elections; Department of Legislative Services

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