

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Ethics and Elections

BILL: SR 1458

INTRODUCER: Senator Baxley

SUBJECT: Supporting the Preservation of the Electoral College

DATE: January 17, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Mitchell	Roberts	EE	Favorable
2.			JU	
3.			RC	

I. Summary:

SR 1458 proposes that the Senate of the State of Florida reaffirm the oath of office made by each member of the Senate to support, protect, and defend the United States Constitution, including the 12th Amendment, and support the preservation of the Electoral College.

II. Present Situation:

Creation of the Electoral College

The Electoral College is not a place; it is a process. The Founding Fathers established it in the Constitution, in part, as a compromise between the election of the President of the United States by a popular vote of qualified citizens and the election of the President by a vote in Congress.¹ The Electoral College was established by Article 2, section 1, clause 2 of the United States Constitution as an indirect method of electing the President. Clause 2 states:

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the Congress: but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.²

Modifications by Amendment

Constitutional provisions related to the Electoral College were modified by the 12th and 23rd Amendments³ to the Constitution. The 12th Amendment to the United States Constitution states:

¹ National Archives, *Electoral College – What Is the Electoral College?* (December 23, 2019), <https://www.archives.gov/electoral-college/about> (last visited January 17, 2020).

² U.S. CONST. art. 2, s. 1, cl. 2.

³ The 23rd Amendment provided for electors for the District of Columbia.

The electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;--The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;--the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. *And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.*⁴ The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.⁵

Electoral College Membership

The Electoral College consists of a total of 538 members, one for each U.S. senator and representative, and three additional electors representing the District of Columbia. Each state's number of electoral votes is equal to the combined total of its congressional delegation, and each state legislature is free to determine the method it will use to select its own electors. At present, all states select electors through a popular vote, but historically, in many states, the state legislature selected electors, a practice common until the mid-1800s.⁶

Operation of the Electoral College

Nomination of Electors

In the spring and summer of an election year, the political parties in each state nominate their electors. The U.S. Constitution does not specify procedures for the nomination of candidates for

⁴ The italicized sentence in the 12th Amendment language was modified by the 20th Amendment to the U.S. Constitution.

⁵ U.S. CONST. amend. XII.

⁶ National Conference of State Legislatures, *The Electoral College* (January 6, 2020), <https://www.ncsl.org/research/elections-and-campaigns/the-electoral-college.aspx> (last visited January 17, 2020).

presidential elector. The two most common methods states have adopted are nomination by state party convention and by state party committee. Generally, the parties select members known for their loyalty and service to the party, such as party leaders, state and local elected officials and party activists, to help ensure that they will cast their votes for the party's nominee for president.

Election Day

Voters in each state select their presidential electors. The names of electors are not on the ballot in most states. Instead, a vote for a presidential candidate is actually a vote for the electors already selected by the party of that candidate. If a majority of voters in a state vote for the Republican candidate for president, the Republican slate of electors is elected. If a majority vote for the Democratic candidate, the Democratic slate of electors is chosen.⁷

Meeting of the Electors

The electors meet in each state and cast their ballots for president and vice president. The meeting of the electors takes place on the first Monday after the second Wednesday in December after the general election.⁸ Each elector votes on his or her own ballot and signs it. The ballots are immediately transmitted to various people: one copy goes to the president of the U.S. Senate (who is also the vice president of the United States); this is the copy that will be officially counted later. Other copies go to the state's secretary of state, the National Archives and Records Administration, and the presiding judge in the district where the electors meet (this serves as a backup copy that would replace the official copy sent to the president of the Senate if it is lost or destroyed).⁹

Counting of the Electoral Ballots

Each State's electoral votes are counted in a joint session of Congress on the 6th of January in the year following the meeting of the electors. Members of the House and Senate meet in the House Chamber to conduct the official count of electoral votes. The Vice President, as President of the Senate, presides over the count and announces the results of the vote. The President of the Senate then declares which persons, if any, have been elected President and Vice President of the United States.

Inauguration Day

The President-elect takes the oath of office and is sworn in as President of the United States on January 20th in the year following the general election.¹⁰

⁷ *Id.*

⁸ National Archives, *Electoral College – What Is the Electoral College?* (December 23, 2019), <https://www.archives.gov/electoral-college/about> (last visited January 17, 2020).

⁹ National Conference of State Legislatures, *The Electoral College* (January 6, 2020), <https://www.ncsl.org/research/elections-and-campaigns/the-electoral-college.aspx> (last visited January 17, 2020).

¹⁰ National Archives, *Electoral College – What Is the Electoral College?* (December 23, 2019), <https://www.archives.gov/electoral-college/about> (last visited January 17, 2020).

Awarding Electoral Votes

The Winner-Take-All System

In 48 states and the District of Columbia, when a candidate for president wins a state's popular vote, that party's slate of electors will be the ones to cast the vote for president of the United States in December. For example, Florida has 29 electoral votes. The 29 electors nominated by the party whose candidate wins the popular vote in Florida in November will be selected. These 29 people will gather in December to cast their votes for president.

The District System

Maine and Nebraska are the only states that do not use a winner-take-all system. Instead, in these two states, one electoral vote is awarded to the presidential candidate who wins the popular vote in each congressional district, and the remaining two electoral votes are awarded to the candidates receiving the most votes statewide. This is known as the district system. It is possible under the district system to split the electoral vote for the state.¹¹

Reforming the Electoral College

In the years since the 2000 presidential election, bills have been introduced in every state in the country to change the process for selecting electors. During the period of 2001-2006, most Electoral College reform bills proposed switching to the district system. None of these bills passed.

In the years since, attention has largely shifted to the National Popular Vote (NPV). This is an idea that would allow states to bypass the Electoral College without amending the U.S. Constitution. When a state joins the NPV Compact, it promises that it will give all of its electoral votes to the party that wins the *national* popular vote, rather than the party that wins the *state* popular vote. For instance, if the Democratic candidate won the popular vote in California, but the Republican candidate won the popular vote nationwide, California would be required to send the Republican slate of electors to the meeting of the electors. The NPV has not yet taken effect; states with a total of at least 270 electoral votes must join before it can function.¹²

Abolishing the Electoral College

The idea of abolishing the Electoral College and instead electing the president by direct popular vote comes about every few years. Abolishing the Electoral College requires an amendment to the U.S. Constitution. There are two ways to do that:

- Congress can propose an amendment by a two-thirds vote of both chambers. The amendment then has to be ratified by the legislatures of three-fourths of the states. All existing amendments to the Constitution were made in this manner.

¹¹ National Conference of State Legislatures, *The Electoral College* (January 6, 2020), <https://www.ncsl.org/research/elections-and-campaigns/the-electoral-college.aspx> (last visited January 17, 2020).

¹² *Id.*

- The legislatures of two-thirds of the states can petition Congress to convene a Constitutional Convention. At a Constitutional Convention, any part of the Constitution could be amended; action is not restricted to the sections governing the Electoral College or any other part of the Constitution. Again, any proposed amendment would have to be ratified by three-fourths of the states. This method has never been invoked.¹³

III. Effect of Proposed Changes:

SR 1458 proposes that the Senate of the State of Florida reaffirm the oath of office made by each member of the Senate to support, protect, and defend the United States Constitution, including the 12th Amendment, and support the preservation of the Electoral College.

In support of the reaffirmation of the oath of office, the resolution provides whereas clauses which assert that:

- The 12th Amendment to the United States Constitution provides the only constitutional procedure for electing the President and Vice President of the United States; and
- Article V of the United States Constitution provides the only constitutional procedure for amending the United States Constitution; and
- Florida legislators swear an oath to support, protect, and defend the United States Constitution, and thereby the integrity of the voting process enacted in the great State of Florida by our founding fathers; and
- To consider the abolishment of the Electoral College, in which Florida has 29 electors, would further enable the destruction of the remaining balance of power between the 50 states and the Federal Government and effectively dissolve the United States constitutional republic; and
- Abolishment of the Electoral College would conceivably provide the impetus to force this state to pass a bill implementing the National Popular Vote Interstate Compact (NPVIC); and
- The NPVIC requires the electors of participating states to vote for the candidates for President and Vice President who receive the overall popular vote in the United States instead of allowing individual states to determine how to allocate their electoral votes on the basis of statewide voting results; and
- The enactment of a bill implementing the NPVIC opens the door to an ever-increasing problem of votes being cast by illegal voters, thereby creating a vastly inaccurate representation of bona fide United States citizens; and
- Proposing and passing a resolution to support, protect, and defend the United States Constitution and preserve the Electoral College will properly and accurately be a true representation to Florida citizens that gives voters the confidence of knowing their duly elected legislators will honor their oath of office.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹³ *Id.*

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This Senate resolution resolves that the Senate of the State of Florida reaffirms the oath of office made by each member of the Senate to support, protect, and defend the United States Constitution, including the 12th Amendment, and supports the preservation of the Electoral College.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
