

5723 of Title 5, Government Organization and Employees, and enacting and amending provisions set out as notes under section 102 of this title] may be cited as the ‘Presidential Transitions Effectiveness Act’.”

CONSTITUTIONAL PROVISIONS

Time of choosing electors, see Const. Art. 2, §1, cl. 3.

[§ 2. Repealed. Pub. L. 117–328, div. P, title I, § 102(a), Dec. 29, 2022, 136 Stat. 5233]

Section, act June 25, 1948, ch. 644, 62 Stat. 672, related to failure to make choice on prescribed day.

§ 3. Number of electors

The number of electors shall be equal to the number of Senators and Representatives to which the several States are by law entitled at the time when the President and Vice President to be chosen come into office; except, that where no apportionment of Representatives has been made after any enumeration, at the time of choosing electors, the number of electors shall be according to the then existing apportionment of Senators and Representatives.

(June 25, 1948, ch. 644, 62 Stat. 672.)

§ 4. Vacancies in electoral college

Each State may, by law enacted prior to election day, provide for the filling of any vacancies which may occur in its college of electors when such college meets to give its electoral vote.

(June 25, 1948, ch. 644, 62 Stat. 673; Pub. L. 117–328, div. P, title I, §103, Dec. 29, 2022, 136 Stat. 5234.)

Editorial Notes

AMENDMENTS

2022—Pub. L. 117–328 inserted “enacted prior to election day” after “by law”.

§ 5. Certificate of ascertainment of appointment of electors

(a) IN GENERAL.—

(1) CERTIFICATION.—Not later than the date that is 6 days before the time fixed for the meeting of the electors, the executive of each State shall issue a certificate of ascertainment of appointment of electors, under and in pursuance of the laws of such State providing for such appointment and ascertainment enacted prior to election day.

(2) FORM OF CERTIFICATE.—Each certificate of ascertainment of appointment of electors shall—

(A) set forth the names of the electors appointed and the canvass or other determination under the laws of such State of the number of votes given or cast for each person for whose appointment any and all votes have been given or cast;

(B) bear the seal of the State; and

(C) contain at least one security feature, as determined by the State, for purposes of verifying the authenticity of such certificate.

(b) TRANSMISSION.—It shall be the duty of the executive of each State—

(1) to transmit to the Archivist of the United States, immediately after the issuance of a

certificate of ascertainment of appointment of electors and by the most expeditious method available, such certificate of ascertainment of appointment of electors; and

(2) to transmit to the electors of such State, on or before the day on which the electors are required to meet under section 7, six duplicate-originals of the same certificate.

(c) TREATMENT OF CERTIFICATE AS CONCLUSIVE.—For purposes of section 15:

(1) IN GENERAL.—

(A) CERTIFICATE ISSUED BY EXECUTIVE.—Except as provided in subparagraph (B), a certificate of ascertainment of appointment of electors issued pursuant to subsection (a)(1) shall be treated as conclusive in Congress with respect to the determination of electors appointed by the State.

(B) CERTIFICATES ISSUED PURSUANT TO COURT ORDERS.—Any certificate of ascertainment of appointment of electors required to be issued or revised by any State or Federal judicial relief granted prior to the date of the meeting of electors shall replace and supersede any other certificates submitted pursuant to this section.

(2) DETERMINATION OF FEDERAL QUESTIONS.—The determination of Federal courts on questions arising under the Constitution or laws of the United States with respect to a certificate of ascertainment of appointment of electors shall be conclusive in Congress.

(d) VENUE AND EXPEDITED PROCEDURE.—

(1) IN GENERAL.—Any action brought by an aggrieved candidate for President or Vice President that arises under the Constitution or laws of the United States with respect to the issuance of the certification required under section (a)(1), or the transmission of such certification as required under subsection (b), shall be subject to the following rules:

(A) VENUE.—The venue for such action shall be the Federal district court of the Federal district in which the State capital is located.

(B) 3-JUDGE PANEL.—Such action shall be heard by a district court of three judges, convened pursuant to section 2284 of title 28, United States Code, except that—

(i) the court shall be comprised of two judges of the circuit court of appeals in which the district court lies and one judge of the district court in which the action is brought; and

(ii) section 2284(b)(2) of such title shall not apply.

(C) EXPEDITED PROCEDURE.—It shall be the duty of the court to advance on the docket and to expedite to the greatest possible extent the disposition of the action, consistent with all other relevant deadlines established by this chapter and the laws of the United States.

(D) APPEALS.—Notwithstanding section 1253 of title 28, United States Code, the final judgment of the panel convened under subparagraph (B) may be reviewed directly by the Supreme Court, by writ of certiorari granted upon petition of any party to the

case, on an expedited basis, so that a final order of the court on remand of the Supreme Court may occur on or before the day before the time fixed for the meeting of electors.

(2) **RULE OF CONSTRUCTION.**—This subsection—

(A) shall be construed solely to establish venue and expedited procedures in any action brought by an aggrieved candidate for President or Vice President as specified in this subsection that arises under the Constitution or laws of the United States; and

(B) shall not be construed to preempt or displace any existing State or Federal cause of action.

(June 25, 1948, ch. 644, 62 Stat. 673; Pub. L. 117-328, div. P, title I, §104(a), Dec. 29, 2022, 136 Stat. 5234.)

Editorial Notes

AMENDMENTS

2022—Pub. L. 117-328 amended section generally. Prior to amendment, text read as follows: “If any State shall have provided, by laws enacted prior to the day fixed for the appointment of the electors, for its final determination of any controversy or contest concerning the appointment of all or any of the electors of such State, by judicial or other methods or procedures, and such determination shall have been made at least six days before the time fixed for the meeting of the electors, such determination made pursuant to such law so existing on said day, and made at least six days prior to said time of meeting of the electors, shall be conclusive, and shall govern in the counting of the electoral votes as provided in the Constitution, and as hereinafter regulated, so far as the ascertainment of the electors appointed by such State is concerned.”

§ 6. Duties of Archivist

The certificates of ascertainment of appointment of electors received by the Archivist of the United States under section 5 shall—

- (1) be preserved for one year;
- (2) be a part of the public records of such office; and
- (3) be open to public inspection.

(June 25, 1948, ch. 644, 62 Stat. 673; Oct. 31, 1951, ch. 655, §6, 65 Stat. 711; Pub. L. 98-497, title I, §107(e)(1), (2)(A), Oct. 19, 1984, 98 Stat. 2291; Pub. L. 117-328, div. P, title I, §105(a), Dec. 29, 2022, 136 Stat. 5236.)

Editorial Notes

AMENDMENTS

2022—Pub. L. 117-328 amended section generally. Prior to amendment, section related to credentials of electors, transmission to Archivist of the United States and to Congress, and public inspection.

1984—Pub. L. 98-497 substituted “Archivist of the United States” for “Administrator of General Services” in section catchline and wherever appearing in text and “National Archives and Records Administration” for “General Services Administration”.

1951—Act Oct. 31, 1951, substituted “Administrator of General Services” for “Secretary of State” in section catchline and several places in text, and for “Secretary of State of the United States” in one place, and “General Services Administration” for “State Department”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-497 effective Apr. 1, 1985, see section 301 of Pub. L. 98-497, set out as a note under section 2102 of Title 44, Public Printing and Documents.

§ 7. Meeting and vote of electors

The electors of President and Vice President of each State shall meet and give their votes on the first Tuesday after the second Wednesday in December next following their appointment at such place in each State in accordance with the laws of the State enacted prior to election day.

(June 25, 1948, ch. 644, 62 Stat. 673; Pub. L. 117-328, div. P, title I, §106(a), Dec. 29, 2022, 136 Stat. 5236.)

Editorial Notes

AMENDMENTS

2022—Pub. L. 117-328 substituted “Tuesday” for “Monday” and “in accordance with the laws of the State enacted prior to election day” for “as the legislature of such State shall direct”.

CONSTITUTIONAL PROVISIONS

Day of voting by electors, see Const. Art. II, §1, cl. 3.
Voting by electors, see Const. Amend. XII.

§ 8. Manner of voting

The electors shall vote for President and Vice President, respectively, in the manner directed by the Constitution.

(June 25, 1948, ch. 644, 62 Stat. 674.)

§ 9. Certificates of votes for President and Vice President

The electors shall make and sign six certificates of all the votes given by them, each of which certificates shall contain two distinct lists, one of the votes for President and the other of the votes for Vice President, and shall annex to each of the certificates of votes one of the certificates of ascertainment of appointment of electors which shall have been furnished to them by direction of the executive of the State.

(June 25, 1948, ch. 644, 62 Stat. 674; Pub. L. 117-328, div. P, title I, §104(c)(1), Dec. 29, 2022, 136 Stat. 5236.)

Editorial Notes

AMENDMENTS

2022—Pub. L. 117-328 substituted “annex to each of the certificates of votes one of the certificates of ascertainment of appointment of electors” for “annex to each of the certificates one of the lists of the electors”.

§ 10. Sealing and endorsing certificates

The electors shall seal up the certificates of votes so made by them, together with the annexed certificates of ascertainment of appointment of electors, and certify upon each that the lists of all the votes of such State given for President, and of all the votes given for Vice President, are contained therein.

(June 25, 1948, ch. 644, 62 Stat. 674; Pub. L. 117-328, div. P, title I, §106(b), Dec. 29, 2022, 136 Stat. 5236.)