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CHAPTER 1—PRESIDENTIAL ELECTIONS AND VACANCIES

Sec.	
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Editorial Notes

AMENDMENTS

2022—Pub. L. 117-328, div. P, title I, §§ 102(c), 104(c)(2), 105(b), 107(b), 108(c)(2), 109(b), 110(c)(3), 111(b), Dec. 29, 2022, 136 Stat. 5234, 5236, 5237, 5240, 5241, added items 1, 5, 6, 11, 15, and 22, substituted “session” for “meeting” in items 16 and 18, and struck out former items 1 “Time of appointing electors”, 5 “Determination of controversy as to appointment of electors”, 6 “Credentials of electors; transmission to Archivist of the United States and to Congress; public inspection”, 11 “Disposition of certificates”, 14 “Forfeiture for messenger’s neglect of duty”, and 15 “Counting electoral votes in Congress” repealed by Pub. L. 117-328 without corresponding amendment. Pub. L. 117-328, div. P, title I, § 107(e)(3), Oct. 19, 1984, 98 Stat. 12292, added item 1. Archivist of the United States”

for “Administrator of General Services” in items 6 and 12.

1961—Pub. L. 87-389, §2(b), Oct. 4, 1961, 75 Stat. 820, added item 21.

1951—Act Oct. 31, 1951, ch. 655, §5, 65 Stat. 711, substituted “Administrator of General Services” for “Secretary of State” in items 6 and 12.

§ 1. Time of appointing electors

The electors of President and Vice President shall be appointed, in each State, on election day, in accordance with the laws of the State enacted prior to election day.

(Added Pub. L. 117-328, div. P, title I, §102(a), Dec. 29, 2022, 136 Stat. 5233.)

Editorial Notes

PRIOR PROVISIONS

A prior section 1, act June 25, 1948, ch. 644, 62 Stat. 672, related to time of appointing electors, prior to repeal by Pub. L. 117-328, div. P, title I, §102(a), Dec. 29, 2022, 136 Stat. 5233.

Statutory Notes and Related Subsidiaries

SHORT TITLE OF 2022 AMENDMENT

Pub. L. 117-328, div. P, §1, Dec. 29, 2022, 136 Stat. 5233, provided that: “This division [enacting this section and section 22 of this title, amending sections 6, 7, 9 to 13, 15 to 18, and 21 of this title, repealing this section and sections 2 and 14 of this title, enacting provisions set out as notes under this section, and amending provisions set out as a note under section 102 of this title] may be cited as the ‘Electoral Count Reform and Presidential Transition Improvement Act of 2022’.”

Pub. L. 117-328, div. P, title I, §101, Dec. 29, 2022, 136 Stat. 5233, provided that: “This title [enacting this section and section 22 of this title, amending sections 6, 7, 9 to 13, 15 to 18, and 21 of this title, and repealing this section and sections 2 and 14 of this title] may be cited as the ‘Electoral Count Reform Act of 2022’.”

Pub. L. 117-328, div. P, title II, §201, Dec. 29, 2022, 136 Stat. 5241, provided that: “This title [amending provisions set out as a note under section 102 of this title] may be cited as the ‘Presidential Transition Improvement Act’.”

SHORT TITLE OF 2020 AMENDMENT

Pub. L. 116-121, §1, Mar. 3, 2020, 134 Stat. 138, provided that: “This Act [amending provisions set out as a note under section 102 of this title] may be cited as the ‘Presidential Transition Enhancement Act of 2019’.”

SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111-283, §1, Oct. 15, 2010, 124 Stat. 3045, provided that: “This Act [enacting provisions set out as a note under section 102 of this title and amending provisions set out as notes under section 102 of this title, section 1101 of Title 5, Government Organization and Employees, and section 435b of Title 50, War and National Defense] may be cited as the ‘Pre-Election Presidential Transition Act of 2010’.”

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104-331, §1(a), Oct. 26, 1996, 110 Stat. 4053, provided that: “This Act [enacting sections 401, 402, 411 to 417, 421, 425, 431, 435, 451 to 456, and 471 of this title and sections 1296, 1413, and 3901 to 3908 of Title 28, Judiciary and Judicial Procedure, amending sections 1346 and 2402 of Title 28, repealing section 1219 of Title 2, The Congress, and enacting provisions set out as notes under section 401 of this title, section 1219 of Title 2, and section 1296 of Title 28] may be cited as the ‘Presidential and Executive Office Accountability Act’.”

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-398, §1, Aug. 17, 1988, 102 Stat. 985, provided that: “This Act [amending sections 3345, 3348, and

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.)

Editorial Notes

AMENDMENTS

2022—Pub. L. 117-328 substituted “the certificates of votes so made by them, together with the annexed certificates of ascertainment of appointment of electors” for “the certificates so made by them”.

§ 11. Transmission of certificates by electors

The electors shall immediately transmit at the same time and by the most expeditious method available the certificates of votes so made by them, together with the annexed certificates of ascertainment of appointment of electors, as follows:

(1) One set shall be sent to the President of the Senate at the seat of government.

(2) Two sets shall be sent to the chief election officer of the State, one of which shall be held subject to the order of the President of the Senate, the other to be preserved by such official for one year and shall be a part of the public records of such office and shall be open to public inspection.

(3) Two sets shall be sent to the Archivist of the United States at the seat of government, one of which shall be held subject to the order of the President of the Senate and the other of which shall be preserved by the Archivist of the United States for one year and shall be a part of the public records of such office and shall be open to public inspection.

(4) One set shall be sent to the judge of the district in which the electors shall have assembled.

(June 25, 1948, ch. 644, 62 Stat. 674; Oct. 31, 1951, ch. 655, § 7, 65 Stat. 712; Pub. L. 98-497, title I, § 107(e)(1), Oct. 19, 1984, 98 Stat. 2291; Pub. L. 117-328, div. P, title I, § 107(a), Dec. 29, 2022, 136 Stat. 5236.)

Editorial Notes

AMENDMENTS

2022—Pub. L. 117-328 amended section generally. Prior to amendment, section related to disposition of certificates.

1984—Pub. L. 98-497 substituted “Archivist of the United States” for “Administrator of General Services” two places in par. “Third”.

1951—Act Oct. 31, 1951, substituted “Administrator of General Services” for “Secretary of State” two places in par. “Third”.

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.

§ 12. Failure of certificates of electors to reach President of the Senate or Archivist of the United States; demand on State for certificate

When, after the meeting of the electors shall have been held, no certificate of vote mentioned in sections 9 and 11 of this title from any State shall have been received by the President of the Senate or by the Archivist of the United States by the fourth Wednesday in December, the President of the Senate or, if the President of

the Senate be absent from the seat of government, the Archivist of the United States shall request, by the most expeditious method available, the chief election officer of the State to send up the certificate lodged with such officer by the electors of such State; and it shall be the duty of such chief election officer of the State upon receipt of such request immediately to transmit same by the most expeditious method available to the President of the Senate at the seat of government.

(June 25, 1948, ch. 644, 62 Stat. 674; Oct. 31, 1951, ch. 655, § 8, 65 Stat. 712; Pub. L. 98-497, title I, § 107(e)(1), (2)(B), Oct. 19, 1984, 98 Stat. 2291; Pub. L. 117-328, div. P, title I, § 108(a), Dec. 29, 2022, 136 Stat. 5237.)

Editorial Notes

AMENDMENTS

2022—Pub. L. 117-328, § 108(a)(1)–(4), (6)–(8), inserted “, after the meeting of the electors shall have been held,” after “When”, struck out “and list” after “certificate of vote” and after “send up the certificate”, and substituted “in December,” for “in December, after the meeting of the electors shall have been held,” “or, if the President of the Senate be absent” for “or, if he be absent”, “lodged with such officer” for “lodged with him”, “the duty of such chief election officer of the State” for “his duty”, and “by the most expeditious method available” for “by registered mail”.

Pub. L. 117-328, § 108(a)(5), which directed substitution of “chief election officer” for “secretary of State”, was executed by making the substitution for “secretary of state” to reflect the probable intent of Congress.

1984—Pub. L. 98-497 substituted “Archivist of the United States” for “Administrator of General Services” in section catchline and two places in text.

1951—Act Oct. 31, 1951, substituted “Administrator of General Services” for “Secretary of State” in section catchline and two places in text.

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.

§ 13. Same; demand on district judge for certificate

When, after the meeting of the electors shall have been held, no certificates of votes from any State shall have been received at the seat of government on the fourth Wednesday in December, the President of the Senate or, if the President of the Senate be absent from the seat of government, the Archivist of the United States shall send a special messenger to the district judge in whose custody one certificate of votes from that State has been lodged, and such judge shall forthwith transmit that certificate by the hand of such messenger to the seat of government.

(June 25, 1948, ch. 644, 62 Stat. 674; Oct. 31, 1951, ch. 655, § 9, 65 Stat. 712; Pub. L. 98-497, title I, § 107(e)(1), Oct. 19, 1984, 98 Stat. 2291; Pub. L. 117-328, div. P, title I, § 108(b), Dec. 29, 2022, 136 Stat. 5237.)

Editorial Notes

AMENDMENTS

2022—Pub. L. 117-328 inserted “, after the meeting of the electors shall have been held,” after “When” and

substituted “in December,” for “in December, after the meeting of the electors shall have been held.”, “or, if the President of the Senate be absent” for “or, if he be absent”, and “that certificate” for “that list”.

1984—Pub. L. 98-497 substituted “Archivist of the United States” for “Administrator of General Services”.

1951—Act Oct. 31, 1951, substituted “Administrator of General Services” for “Secretary of State”.

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.

§ 14. Repealed. Pub. L. 117-328, div. P, title I, § 108(c)(1), Dec. 29, 2022, 136 Stat. 5237]

Section, act June 25, 1948, ch. 644, 62 Stat. 675, related to forfeiture for messenger’s neglect of duty.

§ 15. Counting electoral votes in Congress

(a) IN GENERAL.—Congress shall be in session on the sixth day of January succeeding every meeting of the electors. The Senate and House of Representatives shall meet in the Hall of the House of Representatives at the hour of 1 o’clock in the afternoon on that day, and the President of the Senate shall be their presiding officer.

(b) POWERS OF THE PRESIDENT OF SENATE.—

(1) MINISTERIAL IN NATURE.—Except as otherwise provided in this chapter, the role of the President of the Senate while presiding over the joint session shall be limited to performing solely ministerial duties.

(2) POWERS EXPLICITLY DENIED.—The President of the Senate shall have no power to solely determine, accept, reject, or otherwise adjudicate or resolve disputes over the proper certificate of ascertainment of appointment of electors, the validity of electors, or the votes of electors.

(c) APPOINTMENT OF TELLERS.—At the joint session of the Senate and House of Representatives described in subsection (a), there shall be present two tellers previously appointed on the part of the Senate and two tellers previously appointed on the part of the House of Representatives by the presiding officers of the respective chambers.

(d) PROCEDURE AT JOINT SESSION GENERALLY.—

(1) IN GENERAL.—The President of the Senate shall—

(A) open the certificates and papers purporting to be certificates of the votes of electors appointed pursuant to a certificate of ascertainment of appointment of electors issued pursuant to section 5, in the alphabetical order of the States, beginning with the letter A; and

(B) upon opening any certificate, hand the certificate and any accompanying papers to the tellers, who shall read the same in the presence and hearing of the two Houses.

(2) ACTION ON CERTIFICATE.—

(A) IN GENERAL.—Upon the reading of each certificate or paper, the President of the Senate shall call for objections, if any.

(B) REQUIREMENTS FOR OBJECTIONS OR QUESTIONS.—

(i) OBJECTIONS.—No objection or other question arising in the matter shall be in order unless the objection or question—

(I) is made in writing;

(II) is signed by at least one-fifth of the Senators duly chosen and sworn and one-fifth of the Members of the House of Representatives duly chosen and sworn; and

(III) in the case of an objection, states clearly and concisely, without argument, one of the grounds listed under clause (ii).

(ii) GROUNDS FOR OBJECTIONS.—The only grounds for objections shall be as follows:

(I) The electors of the State were not lawfully certified under a certificate of ascertainment of appointment of electors according to section 5(a)(1).

(II) The vote of one or more electors has not been regularly given.

(C) CONSIDERATION OF OBJECTIONS AND QUESTIONS.—

(i) IN GENERAL.—When all objections so made to any vote or paper from a State, or other question arising in the matter, shall have been received and read, the Senate shall thereupon withdraw, and such objections and questions shall be submitted to the Senate for its decision; and the Speaker of the House of Representatives shall, in like manner, submit such objections and questions to the House of Representatives for its decision.

(ii) DETERMINATION.—No objection or any other question arising in the matter may be sustained unless such objection or question is sustained by separate concurring votes of each House.

(D) RECONVENING.—When the two Houses have voted, they shall immediately again meet, and the presiding officer shall then announce the decision of the questions submitted. No vote or paper from any other State shall be acted upon until the objections previously made to any vote or paper from any State, and other questions arising in the matter, shall have been finally disposed of.

(e) RULES FOR TABULATING VOTES.—

(1) COUNTING OF VOTES.—

(A) IN GENERAL.—Except as provided in subparagraph (B)—

(i) only the votes of electors who have been appointed under a certificate of ascertainment of appointment of electors issued pursuant to section 5, or who have legally been appointed to fill a vacancy of any such elector pursuant to section 4, may be counted; and

(ii) no vote of an elector described in clause (i) which has been regularly given shall be rejected.

(B) EXCEPTION.—The vote of an elector who has been appointed under a certificate of ascertainment of appointment of electors issued pursuant to section 5 shall not be counted if—

(i) there is an objection which meets the requirements of subsection (d)(2)(B)(i); and

(ii) each House affirmatively sustains the objection as valid.

(2) DETERMINATION OF MAJORITY.—If the number of electors lawfully appointed by any State pursuant to a certificate of ascertainment of appointment of electors that is issued under section 5 is fewer than the number of electors to which the State is entitled under section 3, or if an objection the grounds for which are described in subsection (d)(2)(B)(ii)(I) has been sustained, the total number of electors appointed for the purpose of determining a majority of the whole number of electors appointed as required by the Twelfth Amendment to the Constitution shall be reduced by the number of electors whom the State has failed to appoint or as to whom the objection was sustained.

(3) LIST OF VOTES BY TELLERS; DECLARATION OF WINNER.—The tellers shall make a list of the votes as they shall appear from the said certificates; and the votes having been ascertained and counted according to the rules in this subchapter provided, the result of the same shall be delivered to the President of the Senate, who shall thereupon announce the state of the vote, which announcement shall be deemed a sufficient declaration of the persons, if any, elected President and Vice President of the United States, and, together with a list of the votes, be entered on the Journals of the two Houses.

(June 25, 1948, ch. 644, 62 Stat. 675; Pub. L. 117–328, div. P, title I, §109(a), Dec. 29, 2022, 136 Stat. 5237.)

Editorial Notes

AMENDMENTS

2022—Pub. L. 117–328 amended section generally. Prior to amendment, section related to counting electoral votes in Congress.

Statutory Notes and Related Subsidiaries

COUNTING OF ELECTORAL VOTES

2013—Pub. L. 112–228, §1, Dec. 28, 2012, 126 Stat. 1610, provided that: “The meeting of the Senate and House of Representatives to be held in January 2013 pursuant to section 15 of title 3, United States Code, to count the electoral votes for President and Vice President cast by the electors in December 2012 shall be held on January 4, 2013 (rather than on the date specified in the first sentence of that section).”

2009—Pub. L. 110–430, §2, Oct. 15, 2008, 122 Stat. 4846, provided that: “The meeting of the Senate and House of Representatives to be held in January 2009 pursuant to section 15 of title 3, United States Code, to count the electoral votes for President and Vice President cast by the electors in December 2008 shall be held on January 8, 2009 (rather than on the date specified in the first sentence of that section).”

1997—Pub. L. 104–296, §2, Oct. 11, 1996, 110 Stat. 3558, provided that: “The meeting of the Senate and House of Representatives to be held in January 1997 pursuant to section 15 of title 3, United States Code, to count the electoral votes for President and Vice President cast by the electors in December 1996 shall be held on January 9, 1997 (rather than on the date specified in the first sentence of that section).”

1989—Pub. L. 100–646, Nov. 9, 1988, 102 Stat. 3341, provided: “That in carrying out the procedure set forth in section 15 of title, 3, United States Code, for 1989, ‘the

fourth day of January’ shall be substituted for ‘the sixth day of January’ in the first sentence of such section.”

1985—Pub. L. 98–456, Oct. 9, 1984, 98 Stat. 1748, provided: “That, in carrying out the procedure set forth in section 15 of title 3, United States Code, for 1985, ‘the seventh day of January’ shall be substituted for ‘the sixth day of January’ in the first sentence of such section.”

§ 16. Same; seats for officers and Members of two Houses in joint session

At such joint session of the two Houses seats shall be provided as follows: For the President of the Senate, the Speaker’s chair; for the Speaker, immediately upon his left; the Senators, in the body of the Hall upon the right of the presiding officer; for the Representatives, in the body of the Hall not provided for the Senators; for the tellers, Secretary of the Senate, and Clerk of the House of Representatives, at the Clerk’s desk; for the other officers of the two Houses, in front of the Clerk’s desk and upon each side of the Speaker’s platform. Such joint session shall not be dissolved until the count of electoral votes shall be completed and the result declared; and no recess shall be taken unless a question shall have arisen in regard to counting any such votes, or otherwise under this subchapter, in which case it shall be competent for either House, acting separately, in the manner hereinbefore provided, to direct a recess of such House not beyond the next calendar day, Sunday excepted, at the hour of 10 o’clock in the forenoon. But if the counting of the electoral votes and the declaration of the result shall not have been completed before the fifth calendar day next after such first session of the two Houses, no further or other recess shall be taken by either House.

(June 25, 1948, ch. 644, 62 Stat. 676; Pub. L. 117–328, div. P, title I, §110(c)(1), Dec. 29, 2022, 136 Stat. 5240.)

Editorial Notes

AMENDMENTS

2022—Pub. L. 117–328 substituted “session” for “meeting” in section catchline and wherever appearing in text.

§ 17. Same; limit of debate in each House

When the two Houses separate to decide upon an objection pursuant to section 15(d)(2)(C)(i) that may have been made to the counting of any electoral vote or votes from any State, or other question arising in the matter—

(1) all such objections and questions permitted with respect to such State shall be considered at such time;

(2) each Senator and Representative may speak to such objections or questions for up to five minutes, and not more than once;

(3) the total time for debate for all such objections and questions with respect to such State shall not exceed two hours in each House, equally divided and controlled by the Majority Leader and Minority Leader, or their respective designees; and

(4) at the close of such debate, it shall be the duty of the presiding officer of each House to

put each of the objections and questions to a vote without further debate.

(June 25, 1948, ch. 644, 62 Stat. 676; Pub. L. 117-328, div. P, title I, §110(a), Dec. 29, 2022, 136 Stat. 5240.)

Editorial Notes

AMENDMENTS

2022—Pub. L. 117-328 amended section generally. Prior to amendment, text read as follows: “When the two Houses separate to decide upon an objection that may have been made to the counting of any electoral vote or votes from any State, or other question arising in the matter, each Senator and Representative may speak to such objection or question five minutes, and not more than once; but after such debate shall have lasted two hours it shall be the duty of the presiding officer of each House to put the main question without further debate.”

§ 18. Same; parliamentary procedure at joint session

While the two Houses shall be in session as provided in this chapter, the President of the Senate shall have power to preserve order; and no debate shall be allowed and no question shall be put by the presiding officer except to either House on a motion to withdraw under section 15(d)(2)(C)(i).

(June 25, 1948, ch. 644, 62 Stat. 676; Sept. 3, 1954, ch. 1263, §3, 68 Stat. 1227; Pub. L. 117-328, div. P, title I, §110(b), (c)(2), Dec. 29, 2022, 136 Stat. 5240.)

Editorial Notes

AMENDMENTS

2022—Pub. L. 117-328, §110(c)(2), substituted “session” for “meeting” in section catchline and text.

Pub. L. 117-328, §110(b), inserted “under section 15(d)(2)(C)(i)” after “motion to withdraw”.

1954—Act Sept. 3, 1954, substituted “chapter” for “subchapter”.

§ 19. Vacancy in offices of both President and Vice President; officers eligible to act

(a)(1) If, by reason of death, resignation, removal from office, inability, or failure to qualify, there is neither a President nor Vice President to discharge the powers and duties of the office of President, then the Speaker of the House of Representatives shall, upon his resignation as Speaker and as Representative in Congress, act as President.

(2) The same rule shall apply in the case of the death, resignation, removal from office, or inability of an individual acting as President under this subsection.

(b) If, at the time when under subsection (a) of this section a Speaker is to begin the discharge of the powers and duties of the office of President, there is no Speaker, or the Speaker fails to qualify as Acting President, then the President pro tempore of the Senate shall, upon his resignation as President pro tempore and as Senator, act as President.

(c) An individual acting as President under subsection (a) or subsection (b) of this section shall continue to act until the expiration of the then current Presidential term, except that—

(1) if his discharge of the powers and duties of the office is founded in whole or in part on

the failure of both the President-elect and the Vice-President-elect to qualify, then he shall act only until a President or Vice President qualifies; and

(2) if his discharge of the powers and duties of the office is founded in whole or in part on the inability of the President or Vice President, then he shall act only until the removal of the disability of one of such individuals.

(d)(1) If, by reason of death, resignation, removal from office, inability, or failure to qualify, there is no President pro tempore to act as President under subsection (b) of this section, then the officer of the United States who is highest on the following list, and who is not under disability to discharge the powers and duties of the office of President shall act as President: Secretary of State, Secretary of the Treasury, Secretary of Defense, Attorney General, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, Secretary of Labor, Secretary of Health and Human Services, Secretary of Housing and Urban Development, Secretary of Transportation, Secretary of Energy, Secretary of Education, Secretary of Veterans Affairs, Secretary of Homeland Security.

(2) An individual acting as President under this subsection shall continue so to do until the expiration of the then current Presidential term, but not after a qualified and prior-entitled individual is able to act, except that the removal of the disability of an individual higher on the list contained in paragraph (1) of this subsection or the ability to qualify on the part of an individual higher on such list shall not terminate his service.

(3) The taking of the oath of office by an individual specified in the list in paragraph (1) of this subsection shall be held to constitute his resignation from the office by virtue of the holding of which he qualifies to act as President.

(e) Subsections (a), (b), and (d) of this section shall apply only to such officers as are eligible to the office of President under the Constitution. Subsection (d) of this section shall apply only to officers appointed, by and with the advice and consent of the Senate, prior to the time of the death, resignation, removal from office, inability, or failure to qualify, of the President pro tempore, and only to officers not under impeachment by the House of Representatives at the time the powers and duties of the office of President devolve upon them.

(f) During the period that any individual acts as President under this section, his compensation shall be at the rate then provided by law in the case of the President.

(June 25, 1948, ch. 644, 62 Stat. 677; Pub. L. 89-174, §6(a), Sept. 9, 1965, 79 Stat. 669; Pub. L. 89-670, §10(a), Oct. 15, 1966, 80 Stat. 948; Pub. L. 91-375, §6(b), Aug. 12, 1970, 84 Stat. 775; Pub. L. 95-91, title VII, §709(g), Aug. 4, 1977, 91 Stat. 609; Pub. L. 96-88, title V, §508(a), Oct. 17, 1979, 93 Stat. 692; Pub. L. 100-527, §13(a), Oct. 25, 1988, 102 Stat. 2643; Pub. L. 109-177, title V, §503, Mar. 9, 2006, 120 Stat. 247.)

Editorial Notes

AMENDMENTS

2006—Subsec. (d)(1). Pub. L. 109-177 inserted “, Secretary of Homeland Security” after “Secretary of Veterans Affairs”.

1988—Subsec. (d)(1). Pub. L. 100-527 inserted reference to Secretary of Veterans Affairs.

1979—Subsec. (d)(1). Pub. L. 96-88 substituted “Secretary of Health and Human Services” for “Secretary of Health, Education, and Welfare” and inserted reference to Secretary of Education.

1977—Subsec. (d)(1). Pub. L. 95-91 inserted reference to Secretary of Energy.

1970—Subsec. (d)(1). Pub. L. 91-375 struck out “Postmaster General,” after “Attorney General.”

1966—Subsec. (d)(1). Pub. L. 89-670 inserted reference to Secretary of Transportation.

1965—Subsec. (d)(1). Pub. L. 89-174 inserted reference to Secretary of Health, Education, and Welfare and Secretary of Housing and Urban Development.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-527 effective Mar. 15, 1989, see section 18(a) of Pub. L. 100-527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans’ Benefits.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-88 effective May 4, 1980, with specified exceptions, see section 601 of Pub. L. 96-88, set out as an Effective Date note under section 3401 of Title 20, Education.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 16(a), formerly section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-670 effective Apr. 1, 1967, as prescribed by President and published in Federal Register, see section 16(a), formerly §15(a), of Pub. L. 89-670, and Ex. Ord. No. 11340, Mar. 30, 1967, 32 F.R. 5453.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-174 effective upon expiration of first period of sixty calendar days following Sept. 9, 1965 or on earlier date specified by Executive order, see section 11(a) of Pub. L. 89-174 set out as an Effective Date note under section 3531 of Title 42, The Public Health and Welfare.

§ 20. Resignation or refusal of office

The only evidence of a refusal to accept, or of a resignation of the office of President or Vice President, shall be an instrument in writing, declaring the same, and subscribed by the person refusing to accept or resigning, as the case may be, and delivered into the office of the Secretary of State.

(June 25, 1948, ch. 644, 62 Stat. 678.)

Statutory Notes and Related SubsidiariesPRESIDENTIAL RECORDINGS AND MATERIALS
PRESERVATION ACT

For protection and preservation of tape recordings of conversations involving former President Richard M.

Nixon, see sections 101 to 106 of Pub. L. 93-526, set out as a note under section 2107 of Title 44, Public Printing and Documents.

§ 21. Definitions

As used in this chapter the term—

(1) “election day” means the Tuesday next after the first Monday in November, in every fourth year succeeding every election of a President and Vice President held in each State, except, in the case of a State that appoints electors by popular vote, if the State modifies the period of voting, as necessitated by force majeure events that are extraordinary and catastrophic, as provided under laws of the State enacted prior to such day, “election day” shall include the modified period of voting.

(2) “State” includes the District of Columbia.

(3) “executive” means, with respect to any State, the Governor of the State (or, in the case of the District of Columbia, the Mayor of the District of Columbia), except when the laws or constitution of a State in effect as of election day expressly require a different State executive to perform the duties identified under this chapter.

(Added Pub. L. 87-389, §2(a), Oct. 4, 1961, 75 Stat. 820; amended Pub. L. 117-328, div. P, title I, §§102(b), 104(b), Dec. 29, 2022, 136 Stat. 5233, 5235.)

Editorial Notes

AMENDMENTS

2022—Pub. L. 117-328, §102(b), added par. (1) and redesignated former subssecs. (a) and (b) as pars. (2) and (3), respectively.

Par. (3). Pub. L. 117-328, §104(b), added par. (3) and struck out former par. (3), as redesignated from subsec. (b), which read as follows: “‘executives of each State’ includes the Board of Commissioners of the District of Columbia.”

Executive Documents

TRANSFER OF FUNCTIONS

Except as otherwise provided in Reorg. Plan No. 3 of 1967, eff. Aug. 11, 1967 (in part), 32 F.R. 11669, 81 Stat. 948, functions of Board of Commissioners of District of Columbia transferred to Commissioner of District of Columbia by section 401 of Reorg. Plan No. 3 of 1967. Office of Commissioner of District of Columbia, as established by Reorg. Plan No. 3 of 1967, abolished as of noon Jan. 2, 1975, by Pub. L. 93-198, title VII, §711, Dec. 24, 1973, 87 Stat. 818, and replaced by office of Mayor of District of Columbia by section 421 of Pub. L. 93-198.

§ 22. Severability

If any provision of this chapter, or the application of a provision to any person or circumstance, is held to be unconstitutional, the remainder of this chapter, and the application of the provisions to any person or circumstance, shall not be affected by the holding.

(Added Pub. L. 117-328, div. P, title I, §111(a), Dec. 29, 2022, 136 Stat. 5240.)

**CHAPTER 2—OFFICE AND COMPENSATION
OF PRESIDENT**

Sec.

101. Commencement of term of office.