

budgetary effects of this division and each succeeding division shall not be estimated—

- (1) for purposes of section 251 of such Act;
- (2) for purposes of an allocation to the Committee on Appropriations pursuant to section 302(a) of the Congressional Budget Act of 1974; and
- (3) for purposes of paragraph (4)(C) of section 3 of the Statutory Pay-As-You-Go Act of 2010 as being included in an appropriation Act.

(d) BALANCES ON THE PAYGO SCORECARDS.—

(1) FISCAL YEAR 2023.—For the purposes of the annual report issued pursuant to section 5 of the Statutory Pay-As-You-Go Act of 2010 (2 U.S.C. 934) after adjournment of the second session of the 117th Congress, and for determining whether a sequestration order is necessary under such section, the debit for the budget year on the 5-year scorecard, if any, and the 10-year scorecard, if any, shall be deducted from such scorecards in 2023 and added to such scorecards in 2025.

(2) FISCAL YEAR 2024.—For the purposes of the annual report issued pursuant to section 5 of the Statutory Pay-As-You-Go Act of 2010 (2 U.S.C. 934) after adjournment of the first session of the 118th Congress, and for determining whether a sequestration order is necessary under such section, the debit for the budget year on the 5-year scorecard, if any, and the 10-year scorecard, if any, shall be deducted from such scorecards in 2024 and added to such scorecards in 2025.

DIVISION P—ELECTORAL COUNT REFORM AND PRESIDENTIAL TRANSITION IMPROVEMENT

SEC. 1. SHORT TITLE, ETC.

This division may be cited as the “Electoral Count Reform and Presidential Transition Improvement Act of 2022”.

TITLE I—ELECTORAL COUNT REFORM ACT

SEC. 101. SHORT TITLE.

This title may be cited as the “Electoral Count Reform Act of 2022”.

SEC. 102. TIME FOR APPOINTING ELECTORS.

(a) IN GENERAL.—Title 3, United States Code, is amended by striking sections 1 and 2 and inserting the following:

“§ 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.”

(b) ELECTION DAY.—Section 21 of title 3, United States Code, is amended by redesignating subsections (a) and (b) as paragraphs (2) and (3), respectively, and by inserting before paragraph (2) (as so redesignated) the following:

“(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.”

(c) CONFORMING AMENDMENT.—The table of contents for chapter 1 of title 3, United States Code, is amended by striking the item relating to section 1 and inserting the following:

“1. Time of appointing electors.”

SEC. 103. CLARIFICATION WITH RESPECT TO VACANCIES IN ELECTORAL COLLEGE.

Section 4 of title 3, United States Code, is amended by inserting “enacted prior to election day” after “by law”.

SEC. 104. CERTIFICATE OF ASCERTAINMENT OF APPOINTMENT OF ELECTORS.

(a) DETERMINATION.—Section 5 of title 3, United States Code, is amended to read as follows:

“§ 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.”

(b) EXECUTIVE OF A STATE.—Section 21 of title 3, United States Code, as amended by section 102(b), is amended by striking paragraph (3) and inserting the following:

“(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.”

(c) CONFORMING AMENDMENTS.—

(1) Section 9 of title 3, United States Code, is amended by striking “annex to each of the certificates one of the lists of the electors” and inserting “annex to each of the certificates of votes one of the certificates of ascertainment of appointment of electors”.

(2) The table of contents for chapter 1 of title 3, United States Code, is amended by striking the items relating to sections 5 inserting the following:

“5. Certificate of ascertainment of appointment of electors.”

SEC. 105. DUTIES OF THE ARCHIVIST.

(a) IN GENERAL.—Section 6 of title 3, United States Code, is amended to read as follows:

“§ 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.”

(b) CONFORMING AMENDMENT.—The table of contents for chapter 1 of title 3, United States Code, is amended by striking the items relating to section 6 and inserting the following:

“6. Duties of Archivist.”

SEC. 106. MEETING OF ELECTORS.

(a) TIME FOR MEETING.—Section 7 of title 3, United States Code, is amended—

(1) by striking “Monday” and inserting “Tuesday”; and

(2) by striking “as the legislature of such State shall direct” and inserting “in accordance with the laws of the State enacted prior to election day”.

(b) CLARIFICATION ON SEALING OF CERTIFICATES OF VOTES.—Section 10 of such title is amended by striking “the certificates so made by them” and inserting “the certificates of votes so made by them, together with the annexed certificates of ascertainment of appointment of electors”.

SEC. 107. TRANSMISSION OF CERTIFICATES OF VOTES.

(a) IN GENERAL.—Section 11 of title 3, United States Code, is amended to read as follows:

“§ 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.”.

(b) CONFORMING AMENDMENT.—The table of contents for chapter 1 of title 3, United States Code, is amended by striking the item relating to section 11 and inserting the following:

“11. Transmission of certificates by electors.”.

SEC. 108. FAILURE OF CERTIFICATE OF VOTES TO REACH RECIPIENTS.

(a) IN GENERAL.—Section 12 of title 3, United States Code, is amended—

(1) by inserting “, after the meeting of the electors shall have been held,” after “When”;

(2) by striking “and list” each place it appears;

(3) by striking “in December, after the meeting of the electors shall have been held,” and inserting “in December,”;

(4) by striking “or, if he be absent” and inserting “or, if the President of the Senate be absent”;

(5) by striking “secretary of State” and insert “chief election officer”;

(6) by striking “lodged with him” and inserting “lodged with such officer”;

(7) by striking “his duty” and inserting “the duty of such chief election officer of the State”; and

(8) by striking “by registered mail” and inserting “by the most expeditious method available”.

(b) CONTINUED FAILURE.—Section 13 of title 3, United States Code, is amended—

(1) by inserting “, after the meeting of the electors shall have been held,” after “When”;

(2) by striking “in December, after the meeting of the electors shall have been held,” and inserting “in December,”;

(3) by striking “or, if he be absent” and inserting “or, if the President of the Senate be absent”; and

(4) by striking “that list” and inserting “that certificate”.

(c) ELIMINATION OF MESSENGER’S PENALTY.—

(1) IN GENERAL.—Title 3, United States Code, is amended by striking section 14.

(2) CONFORMING AMENDMENT.—The table of contents for chapter 1 of title 3, United States Code, is amended by striking the item relating to section 14.

SEC. 109. CLARIFICATIONS RELATING TO COUNTING ELECTORAL VOTES.

(a) IN GENERAL.—Section 15 of title 3, United States Code, is amended to read as follows:

“§ 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.”

(b) CONFORMING AMENDMENT.—The table of contents for chapter 1 of title 3, United States Code, is amended by striking the item relating to section 15 and inserting the following:

“15. Counting electoral votes in Congress.”

SEC. 110. RULES RELATING TO JOINT SESSION.

(a) LIMIT OF DEBATE IN EACH HOUSE.—Section 17 of title 3, United States Code, is amended to read as follows:

“§ 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.”

(b) PARLIAMENTARY PROCEDURE.—Section 18 of title 3, United States Code, is amended by inserting “under section 15(d)(2)(C)(i)” after “motion to withdraw”.

(c) CONFORMING AMENDMENTS.—

(1) Sections 16 of title 3, United States Code, is amended by striking “meeting” each place it appears in the text and in the heading and inserting “session”.

(2) Sections 18 of title 3, United States Code, is amended by striking “meeting” each place it appears in the text and in the heading and inserting “session”.

(3) The table of contents for chapter 1 of title 3, United States Code, is amended—

(A) by striking “meeting” in the item relating to section 16 and inserting “session”; and

(B) by striking “meeting” in the item relating to section 18 and inserting “session”.

SEC. 111. SEVERABILITY.

(a) IN GENERAL.—Title 3, United States Code, is amended by inserting after section 21 the following new section:

“§ 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.”.

(b) CONFORMING AMENDMENT.—The table of contents for chapter 1 of title 3, United States Code, is amended by adding at the end the following:

“22. Severability.”.

TITLE II—PRESIDENTIAL TRANSITION IMPROVEMENT ACT

SEC. 201. SHORT TITLE.

This title may be cited as the “Presidential Transition Improvement Act”.

SEC. 202. MODIFICATIONS TO PRESIDENTIAL TRANSITION ACT OF 1963.

(a) IN GENERAL.—Section 3 of the Presidential Transition Act of 1963 (3 U.S.C. 102 note) is amended by striking subsection (c) and inserting the following:

“(c)(1) APPARENT SUCCESSFUL CANDIDATES.—

“(A) IN GENERAL.—For purposes of this Act, the ‘apparent successful candidate’ for the office of President and Vice President, respectively, shall be determined as follows:

“(i) If all but one eligible candidate for the office of President and one eligible candidate for the office of Vice President, respectively, concede the election, then the candidate for each such office who has not conceded shall be the apparent successful candidate for each such office.

“(ii) If, on the date that is 5 days after the date of the election, more than one eligible candidate for the office of President has not conceded the election, then each of the remaining eligible candidates for such office and the office of Vice President who have not conceded shall be treated as the apparent successful candidates until such time as a single candidate for the office of President is treated as the apparent successful candidate pursuant to clause (iii) or clause (iv).

“(iii) If a single candidate for the office of President or Vice President is determined by the Administrator to meet the qualifications under subparagraph (B), the Administrator may determine that such candidate shall solely be treated as the apparent successful candidate for that office until such time as a single candidate for the office of President is treated as the apparent successful candidate pursuant to clause (iv).

“(iv) If a single candidate for the office of President or Vice President is the apparent successful candidate for such office under subparagraph (C), that candidate shall solely be treated as the apparent successful candidate for that office.

“(B) INTERIM DISCRETIONARY QUALIFICATIONS.—On or after the date that is 5 days after the date of the election, the Administrator may determine that a single candidate for the office of President or Vice President shall be treated as the sole apparent successful candidate for that office pursuant to subparagraph (A)(iii) if it is substantially certain the candidate