

Electoral Count

HB 4019

THE PROBLEM

Federal law prescribes general processes that states must follow to designate members of the Electoral College, who select a president and vice president every four years. In 2022, the federal government passed the [Electoral Count Reform and Presidential Transition Improvement Act](#), or ECRA, to clarify the processes for counting electoral votes and to strengthen security features. This bipartisan legislation updated the [Electoral Count Act of 1887](#), which had not been substantially changed since its enactment.

PROPOSED SOLUTION

Several states have updated their statutes to align with federal law. We are proposing three changes to align Oregon state practice with federal requirements.

<i>ECRA Requirements</i>	<i>Our Proposed Solution</i>
<p>Requires an executive from each state to sign the certificates of ascertainment that identify duly elected electors from that state. The default state executive is the governor, but ECRA allows states to designate another executive in state laws enacted before the election.</p>	<p>Oregon has three statewide elected officials in its executive branch: the Governor, the Secretary of State, and the Treasurer. This proposal would follow existing practice by designating the Governor and the Secretary of State as the executive officials to sign certificates of ascertainment.</p>
<p>Requires each state to create a “security feature” to ensure the genuineness of certificates of ascertainment (the official documents that identify duly elected electors from that state).</p>	<p>This proposal would allow the Secretary of State to administer the creation and management of the newly required security feature by rule.</p>
<p>Requires each state’s electors to meet the first Tuesday after the second Wednesday in December. This requirement existed in the original Electoral Count Act and was not altered by ECRA.</p>	<p>Oregon law states that electors shall gather to vote “on the Monday after the second Wednesday in December.” Oregon law is out of alignment with federal requirements and should be revised to mirror federal law.</p>

List of states enacting ECRA reforms

Within the general requirements of the U.S. Constitution and the Electoral Count Act, states have the power to specify their own processes for selecting electors. We reviewed the regular practices that have been used for electors in Oregon and found many of them do not appear in rule or statute. Broadly, we are proposing these two longstanding practices be clarified in law:

- Recognize the Secretary serves as the administrator of the electoral college process, convening and facilitating the meeting, keeping a faithful record of the votes, and transmitting them accurately to the required federal authorities.
- Recognize that in addition to the statutorily prescribed pledge, electors receive a certificate of election and take an oath of office, like other elected officials.

The attached chart describes the changes necessary to ensure that existing practice is dictated by law rather than tradition.

<i>Federal Law</i>	<i>What Change is required?</i>
<p>3 U.S.C. § 5</p> <p>(a) In general.—</p> <p>(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.</p> <p>(2) Form of certificate.—Each certificate of ascertainment of appointment of electors shall—</p> <p>(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;</p> <p>(B) bear the seal of the State; and</p> <p>(C) contain at least one security feature, as determined by the State, for purposes of verifying the authenticity of such certificate.</p> <p>(b) Transmission.—It shall be the duty of the executive of each State—[to transmit the certificates of ascertainment to the Archivist of the United States and the electors.]</p>	<p>Specify who in Oregon is the “executive” who shall issue the certificate of ascertainment. The Governor and Secretary of State have traditionally signed certificates of ascertainment and we propose that a statute codify that practice.</p> <p>Authorize administration of oath of office to electors per traditional practice.</p> <p>Require a “security feature” for the certificate of ascertainment, as required by federal law. Because security needs change over time, we propose the Secretary administer the security feature by rule.</p>

Federal Law	Oregon Law	What Change is required?
<p>3 U.S.C. § 7</p> <p>(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.</p> <p>[See also the Twelfth Amendment and 3 U.S.C. 9-11, describing the way the electors' vote must be taken and transmitted.]</p>	<p>ORS 248.370</p> <p>The electors of President and Vice President shall convene at the State Capitol on the Monday after the second Wednesday in December following their election.</p>	<p>The ORS date does not match the date required by federal law. ORS should be amended to state the meeting shall occur on the first Tuesday after the second Wednesday in December.</p> <p>Authorize the Secretary of State to set the time to convene meeting of electors and administer the taking of the vote, per traditional practice.</p> <p>Designate the Secretary of State as official authorized to perform administrative duties necessary to take and transmit the electors' vote, as has been Oregon's traditional practice.</p>
<p>3 U.S.C. § 4</p> <p>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.</p>	<p>ORS 248.370</p> <p>If there is any vacancy in the office of an elector caused by death, refusal to act, neglect to attend or otherwise, the electors present immediately shall fill it by plurality of voice votes. When all the electors have appeared or the vacancies have been filled, the electors shall perform the duties required of them by the Constitution and laws of the United States.</p>	<p>Require elector who fills vacancy to take oath and sign pledge.</p> <p>Specify the voice vote to fill vacancies will occur when the electors meet.</p> <p>Require an amended certificate of ascertainment to document any new appointment to fill a vacancy.</p>



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