FAITHFUL PRESIDENTIAL ELECTORS ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

Without Prefatory Note and with Comments

For December 4 – 5

MEETING IN ITS ONE-HUNDRED-AND-EIGHTEENTH YEAR

SANTA FE, NEW MEXICO

JULY 9 – JULY 16, 2009 Committee Meeting
FAITHFUL PRESIDENTIAL ELECTORS ACT

WITHOUT PREFATORY NOTE AND WITH COMMENTS

Copyright ©2009
By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter’s notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.

November 17

June 1, 2009
DRAFTING COMMITTEE ON FAITHFUL PRESIDENTIAL ELECTORS ACT

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in drafting this Act consists of the following individuals:

SUSAN KELLY NICHOLS, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC 27602-0629, Chair

JAMES BOPP, JR., 1 South 6th St., Terre Haute, IN 47807

JAMES M. BUSH, 3003 N. Central Ave., Suite 2600, Phoenix, AZ 85012

RICHARD A. CHAMPAGNE, Legislative Reference Bureau, One East Main St., Suite 200, Madison, WI 53701-2037

JESS O. HALE, JR., Office of Legal Services, G-16 War Memorial Bldg., Nashville, TN 37243-0059

GENE N. LEBRUN, P.O. Box 8250, 909 St. Joseph St., Suite 900, Rapid City, SD 57709

LANE SHETTERLY, 189 SW Academy St., P.O. Box 105, Dallas, OR 97338

LARRY L. RUTH, 530 S. 13th St., Suite 110, Lincoln, NE 68508-2820

J. SAMUEL TENENBAUM, Northwestern University School of Law, 357 E. Chicago Ave., Chicago, IL 60611

TERESA ANN TILLER, House Legislative Services Office, P.O. Box 1018, Jackson, MS 39215-1018

CAM WARD, 124 Newgate Rd., Alabaster, AL 35007

MICHAEL J. WILKINS, 450 S. State St., 5th Floor, P.O. Box 140210, Salt Lake City, UT 84114-0210

ROBERT BENNETT, Northwestern University School of Law, 357 E. Chicago Ave., Chicago, IL 60611, Reporter

EX OFFICIO

ROBERT A. STEIN, University Of Minnesota Law School, 229 19th Avenue South, Minneapolis, MN 55455, President

MARTHA LEE WALTERS, Oregon Supreme Court, 1163 State St., Salem, OR 97301-2563, President

JACK DAVIES, 1201 Yale Place, Unit #2004, Minneapolis, MN 55403-1961, Division Chair

AMERICAN BAR ASSOCIATION ADVISOR

JOHN HARDIN YOUNG, 300 M St. SE, Suite 1102, Washington, DC 20006, ABA Advisor

EXECUTIVE DIRECTOR

JOHN A. SEBERT, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, Executive Director
# TABLE OF CONTENTS

SECTION 1. SHORT TITLE. ........................................................................................................... 1
SECTION 2. DEFINITIONS. ......................................................................................................... 1
SECTION 3. DESIGNATION OF STATE’S ELECTORS. ............................................................... 2
SECTION 4. IDENTIFICATION OF ELECTORS. .......................................................................... 3
SECTION 5. PRESIDING OFFICER; ELECTOR VACANCIES. ..................................................... 4
SECTION 6. ELECTOR VOTING. .............................................................................................. 5
SECTION 7. NOTIFICATION OF ELECTOR REPLACEMENTS AND HANDLING OF ASSOCIATED CERTIFICATES. ........................................................................................................... 6
SECTION 8. DEATH UNIFORMITY OF PRESIDENTIAL OR VICE-PRESIDENTIAL CANDIDATE, APPLICATION AND CONSTRUCTION ................................................................. 7
SECTION 9. UNIFORMITY OF APPLICATION AND CONSTRUCTION, REPEALS ...................... 8
SECTION 10. REPEALS, EFFECTIVE DATE ............................................................................. 8
SECTION 11. EFFECTIVE DATE .............................................................................................. 8
SECTION 1. SHORT TITLE. This [act] may be cited as the Faithful Presidential Electors Act.

SECTION 2. DEFINITIONS. In this [act]:

(1) “Elector” means an individual identified under [applicable state statute] and the procedures of this [act] as a presidential elector.

(2) “Faithful” elector means an elector who designates on the presidential and vice-presidential ballots provided to electors under Section 6 the presidential and vice-presidential candidates of the political party that nominated that elector or that nominated the elector whose position was filled by the designating elector. {Our Style Liaison has suggested that this definition be removed because it “is used only in the title of the act, the short title, and the definition itself. In addition, the definition is substantively redundant because the act imposes no obligation on an elector to vote faithfully; instead, the act imposes an obligation on the Secretary of State to reject the ballot of any elector who does not vote faithfully.”}

The question of whether to keep it may be moot if the Committee chooses another of the suggested titles for the Act.}

(3) “President” means the President of the United States.

(4) “Winning presidential candidate” means the candidate for President qualified under the laws of this state who receives the greatest number of qualified popular votes in this state for the office of President.
(5) “Winning vice-presidential candidate” means the candidate for Vice-President qualified under the laws of this state who is the vice-presidential running mate of the winning presidential candidate.

Legislative Note: As of 2009, there are two states—Maine and Nebraska—where some electors are chosen in congressional district-wide, rather than state-wide, elections. In addition, there seems to be one state—Mississippi—where a slate of unpledged electors may qualify for the general election ballot. These definitions would have to be adapted to make room for these possibilities.

SECTION 3. DESIGNATION OF STATE’S ELECTORS. For each elector position in this state, a political party contesting the position shall submit to the [Secretary/Two lists of State] the names of two qualified individuals qualified to be electors in this state, each list containing a number of names equal to the number of electors allocated to this state under the United States Constitution, shall be submitted to the [Secretary of State] for each slate of candidates for President and Vice-President under [applicable state statute]. One of those individuals list must be designated “elector nominee,” and the other second list must be designated “alternate elector nominee.” Each individual on the two lists shall execute and sign the following pledge: “If selected for the position of elector, I agree to serve and to cast my ballots for the winning presidential candidate for President and for the winning vice-presidential candidate for Vice-President for the nominees for those offices of the party that nominated me for the position of elector or alternate elector.” The executed pledges must accompany the corresponding names shall be attached to the respective lists when submitted to the [Secretary of State]. Except as otherwise provided in Section 4, the persons on the list of elector nominees submitted for the winning presidential and vice-presidential candidates are this state’s electors are the winning elector nominees under the laws of this state.
**Legislative Note:** Most states do not at the present time provide for the initial selection of alternate electors. Two states that do are Minnesota and Hawaii, although even they do not designate an alternate for each elector position. This section uses the device of elected alternates as a convenient vehicle for facilitating the filling of elector vacancies, which is dealt with under Section 5. But alternates are not essential for the filling of vacancies, nor does the designation of alternates for each elector position absolutely guarantee that the alternates will suffice for the filling of all vacancies that conceivably might arise. For these reasons, a state might not employ the device of an elected slate of alternates, in which case adjustment of this section and of Sections 4 and 5 would be necessary.

Adaptation of this section may also be required in Mississippi or other states where unpledged some electors might be chosen in districts, currently Maine and Nebraska, or where unpledged slates of electors, currently Mississippi, are permissible.

---

**Comment**

{New Section 8 addresses the possibility of the death of a candidate for president or vice president before the electors vote. It is included for discussion in light of comments received at the 2009 Annual Meeting. This comment will be modified if necessary after the Committee decides whether to include a Section in the Act on the death of a candidate.}

The possible death or disability of presidential and vice-presidential candidates raises questions which the Act does not address. The candidates presumably become president and vice-president “elect” after the elector voting, assuming they receive the required majorities. The United States Constitution provides a mechanism for dealing with vacancies that arise after the president and vice-president elect have been chosen. See U.S. CONST amend. XX, §§ 3 & 4. But aside from some state laws that deal with the subject, there is no clear guidance in the Constitution, federal statutes or case law about the effect of death or disability between election day and elector voting.

Questions that might arise with respect to electors include whether an elector is impliedly released from a pledge taken under Section 3 on account of the death or disability of a candidate. If that were the appropriate interpretation, then further questions would be raised about whether elector discretion would then be appropriate or some mechanism would be supplied for providing substitute candidates. The Committee at its initial meeting thought that difficult enactability problems could be presented by attempting to address the effect on electors of such death or disability of candidates between the general election and elector voting. However, the Committee welcomes suggestions on these matters from the Conference.

---

**SECTION 4. IDENTIFICATION OF ELECTORS.** In submitting this state’s certificate of ascertainment as required by 3 U.S.C. Section 6, the [Governor] shall certify both
this state’s electors and this state’s alternate electors, and—The Governor shall explicitly recite in the certificate that:

- certification that: (1) the electors will serve as electors unless a vacancy occurs in the office of elector before the end of the meeting at which elector votes are cast, in which case, pursuant to state law, substitute replacement electors will be chosen to fill those vacancies, from among the alternate electors if possible; and

(2) if substitution of electors is required, the Governor will submit an amended certificate of ascertainment specifying the names of a complete set of the state’s electors, including the replacement electors, who are entitled to cast this state’s electoral votes.

Legislative Note: The federal statute assigns duties to a state’s “executive,” and most state statutes that identify the officer specify the Governor to carry out those duties. States could presumably opt for a different executive officer, both in this Section and in Section 7.

SECTION 5. PRESIDING OFFICER; ELECTOR VACANCIES

(a) The Secretary of State shall preside at the meeting of electors. If any elected elector is unable to be present, the position of the absent elector is deemed to be vacant. A vacancy that occurs for any other reason shall be filled with the assistance of the Secretary of State in the following manner:

(1) by the alternate elector associated with the absent elector, if the alternate elector is present at the meeting;

(2) if the associated alternate elector is not present at the meeting, by lot from among the alternate electors nominated by the political party of the absent elector who are present at the meeting.
(3) if alternate electors present at the meeting are insufficient to fill any the vacancies pursuant to paragraphs (1) and (2), by any immediately available individuals who are qualified to serve as electors, through a process of nomination by and a plurality vote of the remaining electors, including choice by a single elector if only one remains.

(4) If no substitute elector receives a plurality vote pursuant to paragraph (3), but there is a tie among two or more candidates each with the same plurality vote, by lot from among the candidates having the same plurality vote; and

(5) If all elector and alternate elector positions are vacant and cannot be filled pursuant to paragraphs (1) through (4), the [Secretary of State] shall designate a single presidential elector, with remaining vacancies filled under paragraph (3) and, if necessary, paragraph (4).

(b) To qualify as a substitute elector under subsection (a), an individual who has not previously executed and signed the pledge required under Section 3 must execute and sign the following pledge: “I agree to cast my ballots for presidential and vice-presidential candidates for the nominees for those offices of the party that nominated for the position of elector the individual to whose elector position I have succeeded.”

Legislative Note: Adjustments would be required for the districting approach of Maine and Nebraska and the unpledged elector possibility in Mississippi.

SECTION 6. ELECTOR VOTING. At the time designated for elector voting, and after any vacancies have been filled under Section 5, the [Secretary of State] shall provide each elector with a presidential ballot and a vice-presidential ballot. The elector shall mark the elector’s presidential ballot and vice-presidential ballot with the elector’s votes designated for
the office of President and Vice-President, those offices respectively, along with the elector’s signature and the elector’s legibly printed name. Each elector shall present both completed ballots to [the Secretary of State], who shall examine them and record as cast all ballots of electors who voted consistently with their pledges under Section 3 or 5. The [Secretary of State] shall not cast for the winning presidential and shall not count winning vice-presidential candidates respectively. Neither an elector’s presidential or vice-presidential ballot is to be cast, and neither shall be counted, if the elector has left either ballot blank or has marked either ballot as failing to vote for the winning presidential or winning vice-presidential candidate in violation of the elector’s pledge required under Section 3 or 5. An elector who presents a blank ballot or a ballot in violation of the pledge required under Section 3 or 5 is deemed to have resigned from the office of elector, creating a vacancy to be filled as provided in Section 5. The [Secretary of State] shall then distribute to and collect ballots from properly substituted electors and repeat the process of examining ballots, declaring and filling vacancies as required, and casting and recording appropriately completed ballots from the substituted electors, until all of the state’s electoral votes have been cast by electors who vote consistently with their pledges record as cast votes for the winning presidential and winning vice-presidential candidates until a full slate of elector votes has been recorded as cast.

SECTION 7. NOTIFICATION OF ELECTOR REPLACEMENTS AND HANDLING OF ASSOCIATED CERTIFICATES. After the vote of this state’s electors is completed, if the final list of electors differs from any list that [the Governor] has previously included on a certificate of ascertainment prepared and transmitted pursuant to 3 U.S.C. Section 6, the [Secretary of State] shall immediately prepare an amended certificate of ascertainment containing the final list and transmit...
The Governor shall expeditiously deliver the signed, amended certificate of ascertainment to the Secretary of State and to all federal, state, and local officials entitled to receive this state’s certificate of ascertainment, including the President of the United States Senate and each of this state’s electors on the final list, indicating that the amended certificate of ascertainment is to be substituted for the certificate of ascertainment previously submitted. The Secretary of State shall prepare a certificate of vote for the electors on the final list to sign, process, and transmit along with the substituted certificate of ascertainment as provided in 3 U.S.C. Sections 9, 10, and 11.

Comment

The Constitution imposes no impediment to a state’s Secretary of State serving as an elector, and state statutes do not appear to preclude that possibility. If a state wanted to guard against that remote possibility, it could presumably do so explicitly. In addition, it is possible that the Secretary of State might call on other state officials to help in carrying out duties assigned under the Uniform Act. The power to do so can probably be presumed, but there would be no harm in a state making such a possibility explicit. In addition, those states which prohibit the holding of two elective offices may wish to provide explicitly that no elected official may be elected to serve as an elector.

SECTION 8. DEATH OF PRESIDENTIAL OR VICE-PRESIDENTIAL CANDIDATE.

(a) If the presidential candidate for whom an elector pledges to vote pursuant to Section 3 or 5 dies before the elector votes pursuant to Section 6, the elector fulfills the pledge only if the elector marks the elector’s presidential and vice-presidential ballots as follows:

(1) the presidential ballot for the vice-presidential candidate of the political party that nominated that elector or that nominated the elector to whose position the voting elector succeeded; and
(2) the vice-presidential ballot for the substitute vice-presidential candidate designated by that political party.

(b) If the vice-presidential candidate for whom an elector pledges to vote pursuant to Section 3 or 5 dies before the elector votes pursuant to Section 6, the elector fulfills the pledge only if the elector marks the elector’s presidential and vice-presidential ballots as follows:

(1) the presidential ballot for the presidential candidate described in the elector’s pledge pursuant to Section 3 or 5; and

(2) the substitute vice-presidential candidate designated by the political party that nominated that elector or, if the elector filled a vacancy under Section 5, the political party that nominated the elector to whose position the voting elector succeeded.

(c) If both the presidential and vice-presidential candidates for whom an elector pledges to vote pursuant to Section 3 or 5 die before the elector votes pursuant to Section 6, the elector fulfills the pledge only if the elector marks the elector’s presidential and vice-presidential ballots respectively for the substitute presidential and vice-presidential candidates designated by the political party that nominated that elector or, if the elector filled a vacancy under Section 5, the political party that nominated the elector to whose position the voting elector succeeded.

SECTION 9. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 10. REPEALS. The following are repealed:______________.

SECTION 11. EFFECTIVE DATE. This [act] takes effect________.