

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 638
Committee Substitute Favorable 5/18/11

Short Title: Uniform Faithful Presidential Electors Act. (Public)

Sponsors:

Referred to:

April 6, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO ADOPT THE UNIFORM FAITHFUL PRESIDENTIAL ELECTORS ACT.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** Article 18 of Chapter 163 of the General Statutes is repealed.

5 **SECTION 2.** Chapter 163 of the General Statutes is amended by adding a new
6 Article to read:

7 "Article 18B.

8 "Faithful Presidential Electors Act.

9 **"§ 163-216.1. Designation of State's electors.**

10 (a) For each elector position in this State, a political party contesting the position, or an
11 unaffiliated presidential candidate, shall submit to the Secretary of State the names of two
12 qualified individuals. One of the individuals must be designated "elector nominee" and the
13 other "alternate elector nominee." Except as otherwise provided in this Article, this State's
14 electors are the winning elector nominees under the laws of this State.

15 (b) The names of candidates for electors of President and Vice President nominated by
16 any political party recognized in this State under G.S. 163-96, or nominated under
17 G.S. 163-1(c) by a candidate for President of the United States who has qualified to have his or
18 her name printed on the general election ballot as an unaffiliated candidate under G.S. 163-122,
19 shall be filed with the Secretary of State but shall not be printed on the ballot. In the case of the
20 unaffiliated candidate, the names of candidates for electors must be filed with the Secretary of
21 State no later than 12:00 noon on the first Friday in August. In place of their names, there shall
22 be printed on the ballot the names of the candidates for President and Vice President of each
23 political party recognized in this State and the name of any candidate for President who has
24 qualified to have his or her name printed on the general election ballot under G.S. 163-122. A
25 candidate for President who has qualified for the general election ballot as an unaffiliated
26 candidate under G.S. 163-122 shall, no later than 12:00 noon on the first Friday in August, file
27 with the State Board of Elections the name of a candidate for Vice President, whose name shall
28 also be printed on the ballot. A vote for the candidates named on the ballot shall be a vote for
29 the electors of the party or unaffiliated candidate by which those candidates were nominated
30 and whose names have been filed with the Secretary of State.

31 **"§ 163-216.2. Pledge.**

32 Each elector nominee and alternate elector nominee of a political party shall execute the
33 following pledge: "If selected for the position of elector, I agree to serve and to mark my ballots
34 for President and Vice President for the nominees for those offices of the party that nominated
35 me." Each elector nominee and alternate elector nominee of an unaffiliated presidential
36 candidate shall execute the following pledge: "If selected for the position of elector as a



1 nominee of an unaffiliated presidential candidate, I agree to serve and to mark my ballots for
2 that candidate and for that candidate's vice presidential running mate." The executed pledges
3 must accompany the submission of the corresponding names to the Secretary of State.

4 **"§ 163-216.3. Governor to proclaim results; casting State's vote for President and Vice**
5 **President.**

6 Upon receipt of the certifications prepared by the State Board of Elections and delivered in
7 accordance with G.S. 163-182.15, the Secretary of State, under seal of the office, shall notify
8 the Governor of the names of the persons elected to the office of elector for President and Vice
9 President of the United States as stated in the abstracts of the State Board of Elections.
10 Thereupon, the Governor shall immediately issue a proclamation setting forth the names of the
11 electors and instructing them to be present in the old Hall of the House of Representatives in
12 the State Capitol in the City of Raleigh at 12:00 noon on the first Monday after the second
13 Wednesday in December next after their election, at which time the electors shall meet and vote
14 on behalf of the State for President and Vice President of the United States. If the old Hall of
15 the House of Representatives in the State Capitol is unavailable, the Governor may specify
16 another location within the City of Raleigh. The Governor shall cause this proclamation to be
17 published on the Internet and in any daily newspaper published in the City of Raleigh and shall
18 cause the proclamation to be distributed to representatives of the news media. Notice may
19 additionally be made on a radio or television station or both, but such notice shall be in addition
20 to the newspaper and other required notice. The Secretary of State is responsible for making the
21 actual arrangements for the meeting, preparing the agenda, and inviting guests.

22 **"§ 163-216.4. Certification of electors.**

23 (a) Before the date fixed for the meeting of the electors, the Governor shall send by
24 registered mail to the Archivist of the United States either three duplicate original certificates or
25 one original certificate and two authenticated copies of the Certificates of Ascertainment under
26 the great seal of the State setting forth the names of the persons chosen as presidential electors
27 for this State and the number of votes cast for each. These Certificates of Ascertainment should
28 be sent as soon as possible after the election, but must be received before the Electoral College
29 meeting. At the same time the Governor shall deliver to the electors six duplicate originals of
30 the same certificate, each bearing the great seal of the State.

31 (b) In submitting this State's Certificate of Ascertainment as required by 3 U.S.C. § 6,
32 the Governor shall certify this State's electors and state in the certificate all of the following:

33 (1) The electors will serve as electors unless a vacancy occurs in the office of
34 elector before the end of the meeting at which elector votes are cast, in
35 which case a substitute elector will fill the vacancy.

36 (2) If a substitute elector is appointed to fill a vacancy, the Governor will submit
37 an amended Certificate of Ascertainment stating the names on the final list
38 of this State's electors.

39 **"§ 163-216.5. Presiding officer; elector vacancy.**

40 (a) The Secretary of State shall preside at the meeting of electors described in this
41 Article.

42 (b) The position of an elector not present to vote is vacant. The Secretary of State shall
43 appoint an individual as a substitute elector to fill a vacancy as follows:

44 (1) If the alternate elector is present to vote, by appointing the alternate elector
45 for the vacant position.

46 (2) If the alternate elector for the vacant position is not present to vote, by
47 appointing an elector chosen by lot from among the alternate electors present
48 to vote who were nominated by the same political party.

49 (3) If the number of alternate electors present to vote is insufficient to fill any
50 vacant position under subdivisions (1) and (2) of this subsection, by
51 appointing any immediately available individual who is qualified to serve as

1 an elector and chosen through nomination by and plurality vote of the
2 remaining electors, including nomination and vote by a single elector if only
3 one remains.

4 (4) If there is a tie between at least two nominees for substitute elector in a vote
5 conducted under subdivision (3) of this subsection, by appointing an elector
6 chosen by lot from among those nominees.

7 (5) If all elector positions are vacant and cannot be filled pursuant to
8 subdivisions (1) through (4) of this subsection, by appointing a single
9 presidential elector, with remaining vacant positions to be filled under
10 subdivision (3) of this subsection and, if necessary, subdivision (4) of this
11 subsection.

12 (c) To qualify as a substitute elector under subsection (b) of this section, an individual
13 who has not executed the pledge required under G.S. 163-216.2 shall execute the following
14 pledge: "I agree to serve and to mark my ballots for President and Vice President consistent
15 with the pledge of the individual to whose elector position I have succeeded."

16 **"§ 163-216.6. Elector voting.**

17 (a) At the time designated for elector voting and after all vacant positions have been
18 filled under G.S. 163-216.5, the Secretary of State shall provide each elector with a presidential
19 and a vice presidential ballot. The elector shall mark the elector's presidential and vice
20 presidential ballots with the elector's votes for the offices of President and Vice President,
21 respectively, along with the elector's signature and the elector's legibly printed name.

22 (b) Each elector shall present both completed ballots to the Secretary of State, who shall
23 examine the ballots and accept as cast all ballots of electors whose votes are consistent with
24 their pledges executed under this Article. The Secretary of State may not accept and may not
25 count either an elector's presidential or vice presidential ballot if the elector has not marked
26 both ballots or has marked a ballot in violation of the elector's pledge.

27 (c) An elector who refuses to present a ballot, presents an unmarked ballot, or presents
28 a ballot marked in violation of the elector's pledge executed under this Article vacates the office
29 of elector, creating a vacant position to be filled under G.S. 163-216.5.

30 (d) The Secretary of State shall distribute ballots to and collect ballots from a substitute
31 elector and repeat the process under this section of examining ballots, declaring and filling
32 vacant positions as required, and recording appropriately completed ballots from the substituted
33 electors until all of this State's electoral votes have been cast and recorded.

34 **"§ 163-216.7. Elector replacement; associated certificates.**

35 (a) After the vote of this State's electors is completed, if the final list of electors differs
36 from any list that the Governor previously included on a Certificate of Ascertainment prepared
37 and transmitted under 3 U.S.C. § 6, the Secretary of State immediately shall prepare an
38 amended Certificate of Ascertainment and transmit it to the Governor for the Governor's
39 signature.

40 (b) The Governor immediately shall deliver the signed amended Certificate of
41 Ascertainment to the Secretary of State and a signed duplicate original of the amended
42 Certificate of Ascertainment to all individuals entitled to receive this State's Certificate of
43 Ascertainment, indicating that the amended Certificate of Ascertainment is to be substituted for
44 the Certificate of Ascertainment previously submitted.

45 (c) The Secretary of State shall prepare a certificate of vote. The electors on the final
46 list shall sign the certificate. The Secretary of State shall process and transmit the signed
47 certificate with the amended Certificate of Ascertainment under 3 U.S.C. §§ 9, 10, and 11.

48 **"§ 163-216.8. Electors and dual office holding.**

49 (a) Upon receiving the filing of a name as a candidate for elector under G.S. 163-216.1,
50 the Secretary of State shall notify that candidate of the dual office holding requirements of the
51 North Carolina Constitution and the General Statutes, including specifically that if an

1 individual elected as elector holds another elective office at the time of taking the oath of office
2 as elector, that other office is vacated upon taking the oath of office.

3 (b) During January of each year in which electors are elected, the Secretary of State
4 shall notify each political party authorized to nominate electors of (i) the requirement under
5 G.S. 163-1(c) to nominate an elector and an alternate elector and (ii) the dual office holding
6 requirements of the North Carolina Constitution and the General Statutes, including specifically
7 that if a person elected as elector holds another elective office at the time of taking the oath of
8 office as elector, that other office is vacated upon taking the oath of office.

9 (c) The office of elector may be held in addition to the maximum number of appointive
10 offices allowed by G.S. 128-1.1.

11 **"§ 163-216.9. Appointment of Presidential Electors by General Assembly in certain**
12 **circumstances, by the Governor in certain other circumstances.**

13 (a) Appointment by General Assembly if No Proclamation by Six Days Before
14 Electors' Meeting Day. – As permitted by 3 U.S.C. § 2, whenever the appointment of any
15 Presidential Elector has not been proclaimed under G.S. 163-216.3 before 12:00 noon on the
16 date for settling controversies specified by 3 U.S.C. § 5, and upon the call of an extra session
17 pursuant to the North Carolina Constitution for the purposes of this section, the General
18 Assembly may fill the position of any Presidential Electors whose election is not yet
19 proclaimed.

20 (b) Appointment by Governor if No Appointment by the Day Before Electors' Meeting
21 Day. – If the appointment of any Presidential Elector has not been proclaimed under
22 G.S. 163-216.3 before 12:00 noon on the date for settling controversies specified by 3 U.S.C. §
23 5, nor appointed by the General Assembly by 12:00 noon on the day before the day set for the
24 meeting of Presidential Electors by 3 U.S.C. § 7, then the Governor shall appoint that Elector.

25 (c) Standard for Decision by General Assembly and Governor. – In exercising their
26 authority under subsections (a) and (b) of this section, the General Assembly and the Governor
27 shall designate Electors in accord with their best judgment of the will of the electorate. The
28 decisions of the General Assembly or Governor under subsections (a) and (b) of this section are
29 not subject to judicial review, except to ensure that applicable statutory and constitutional
30 procedures were followed. The judgment itself of what was the will of the electorate is not
31 subject to judicial review.

32 (d) Proclamation Before Electors' Meeting Day Controls. – If the proclamation of any
33 Presidential Elector under G.S. 163-216.3 is made any time before 12:00 noon on the day set
34 for the meeting of Presidential Electors by 3 U.S.C. § 7, then that proclamation shall control
35 over an appointment made by the General Assembly or the Governor. This section does not
36 preclude litigation otherwise provided by law to challenge the validity of the proclamation or
37 the procedures that resulted in that proclamation."

38 **SECTION 3. G.S. 163-1(c) reads as rewritten:**

39 "(c) On Tuesday next after the first Monday in November in the year 1968, and every
40 four years thereafter, or on such days as the Congress of the United States shall direct, an
41 election shall be held in all of the election precincts of the State for the election of electors of
42 President and Vice-President of the United States. The number of electors to be chosen shall be
43 equal to the number of Senators and Representatives in Congress to which this State may be
44 entitled. Presidential electors shall not be nominated by primary election; instead, they shall be
45 nominated in a State convention of each political party as defined in G.S. 163-96 unless
46 otherwise provided by the plan of organization of the political party; provided, that in the case
47 of a candidate for President of the United States who has qualified to have his name printed on
48 the general election ballot as an unaffiliated candidate under G.S. 163-122, that candidate shall
49 nominate presidential electors. One presidential elector shall be nominated from each
50 congressional district and two from the state-at-large, and in addition, the State convention of
51 each party and the unaffiliated candidate shall each nominate ~~first and second alternate~~

1 ~~electors~~an elector and an alternate elector who shall serve if their slate is elected as provided by
2 ~~G.S. 163-209~~G.S. 163-216.1 and if there is a vacancy as provided by
3 ~~G.S. 163-210~~G.S. 163-216.5."

4 **SECTION 4.** This act becomes effective January 1, 2012, and applies to
5 presidential elections held on or after that date.