

ACT 114

S.B. NO. 141

A Bill for an Act Relating to Elections.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that ensuring the faithfulness of presidential electors is crucial to the State's democratic system of government. The legislature notes that presidential and vice presidential candidates are elected not by the popular vote but rather by electors, who are themselves elected during general elections, who select the president and vice president by a simple majority.

The legislature further finds that electors who cast votes contrary to the candidates whom they were elected to vote for, thereby acting faithlessly, are acting contrary to democratic values by subverting the will of the people. Additionally, the potential exists for faithless electors to have a decisive effect upon a presidential election's outcome, especially when the election is close.

The purpose of this measure is to align Hawaii law with the Uniform Faithful Presidential Electors Act by:

- (1) Updating rules for certification of electors and their votes to be in full compliance with federal law;
- (2) Providing procedures for the replacement of electors;
- (3) Requiring presidential electors to take a pledge that they will vote for their party's nominee;
- (4) Invalidating the vote of any faithless elector; and
- (5) Removing any faithless elector from the position of elector.

SECTION 2. Chapter 14, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§14- Elector replacement; associated certificates. (a) After the vote of the State's electors is completed, if the final list of electors differs from any list that the governor previously included on a certificate of ascertainment prepared and transmitted under title 3 United States Code section 6, the chief election officer shall immediately prepare an amended certificate of ascertainment and transmit it to the governor for the governor's signature.

(b) The governor shall immediately deliver the signed amended certificate of ascertainment to the chief election officer and a signed duplicate original of the amended certificate of ascertainment to all individuals entitled to receive the State's certificate of ascertainment, indicating that the amended certificate of ascertainment is to be substituted for the certificate of ascertainment previously submitted.

(c) The chief election officer shall prepare a certificate of vote. The electors on the final list shall sign the certificate of vote. The chief election officer shall process and transmit the signed certificate of vote with the amended certificate of ascertainment under title 3 United States Code sections 9, 10, and 11."

SECTION 3. Section 14-21, Hawaii Revised Statutes, is amended to read as follows:

“§14-21 Nomination of presidential electors and alternates; certification[;] by parties; notification of nominees[;]; pledge. (a) In each year when electors of president and vice president of the United States are to be chosen, each of the political parties or parties or groups qualified under section 11-113 shall hold a state party or group convention pursuant to the constitution, bylaws, and rules of the party or group; and nominate as candidates for its party or group as many electors, and a first and second alternate for each elector, of president and vice president of the United States as the State is then entitled. The electors and alternates shall be registered voters of the State. The names and addresses of the nominees shall be certified by the chairperson and secretary of the convention of the respective parties or groups and submitted to the chief election officer ~~[not]~~ no later than 4:30 p.m. on the sixtieth day ~~[prior to]~~ before the general election of the same year. The chief election officer upon receipt thereof, shall immediately notify each of the nominees for elector and alternate elector of the nomination.

(b) Each elector nominee and alternate elector nominee of a political party or group shall execute the following pledge: “If selected for the position of elector, I agree to serve and to mark my ballots for president and vice president for the nominees for those offices of the party or group that nominated me”. The executed pledges shall accompany the submission of the corresponding names to the chief election officer. Electors shall be released from their pledge if the presidential candidate whom they are pledged to vote for dies. Electors shall not be released from their pledge under any circumstance other than the death of the presidential candidate for whom they are pledged to vote.”

SECTION 4. Section 14-25, Hawaii Revised Statutes, is amended to read as follows:

“§14-25 Duties of the governor[;]; certification of electors by the governor. (a) In submitting the State’s certificate of ascertainment as required by title 3 United States Code section 6, the governor shall certify the State’s electors and state in the certificate that:

- (1) The electors shall 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 a substitute elector shall fill the vacancy; and
- (2) If a substitute elector is appointed to fill a vacancy, the governor shall submit an amended certificate of ascertainment stating the names on the final list of the State’s electors.

(b) On or before the day of the meeting of the electors; the governor shall deliver to the electors a list of the names of electors[;] and [the governor shall] perform any other duties relating to the presidential electors [which] that are required of the governor by laws of the United States.”

SECTION 5. Section 14-27, Hawaii Revised Statutes, is amended to read as follows:

“§14-27 Filling vacancies of presidential electors[;]; presiding officer. [In case of the death or absence of any elector chosen, or if the number of electors is deficient for any other reason, the vacancy or vacancies shall be filled by the alternates in the order of their numerical designation for their respective electors causing the vacancy or vacancies, and in the event that vacancy or vacancies still exist, then the electors present shall select from the members of the same political party or group as many persons as will supply the deficiency. Certificates for the alternates or substitutes as presidential electors shall be issued by the governor.]

(a) The chief election officer shall preside at the meeting of electors described in section 14-28.

(b) The position of an elector not present to vote shall be vacant. The chief election officer shall appoint an individual as a substitute elector to fill a vacancy as follows:

- (1) If the alternate elector is present to vote, by appointing the alternate elector for the vacant position;
- (2) If the alternate elector for the vacant position is not present to vote, by appointing an elector chosen by lot from among the alternate electors present to vote who were nominated by the same political party or group;
- (3) If the number of alternate electors present to vote is insufficient to fill any vacant position pursuant to paragraphs (1) and (2), by appointing any immediately available individual who is qualified to serve as an elector and chosen through nomination by and plurality vote of the remaining electors, including nomination and vote by a single elector if only one remains;
- (4) If there is a tie between at least two nominees for substitute elector in a vote conducted under paragraph (3), by appointing an elector chosen by lot from among those nominees; or
- (5) If all elector positions are vacant and cannot be filled pursuant to paragraphs (1) through (4), by appointing a single presidential elector, with remaining vacant positions to be filled under paragraph (3) and, if necessary, paragraph (4).

(c) To qualify as a substitute elector under subsection (b), an individual who has not executed the pledge required under section 14-21(b) shall execute the following pledge: "I agree to serve and to mark my ballots for president and vice president consistent with the pledge of the individual to whose elector position I have succeeded".

SECTION 6. Section 14-28, Hawaii Revised Statutes, is amended to read as follows:

"§14-28 Convening and voting for president and vice president; party vote]. The electors, when convened, if both candidates are alive, shall vote by ballot for that person for president and that person for vice president of the United States, who are, respectively, the candidates of the political party or group which they represent, one of whom, at least, is not an inhabitant of this State.]; **invalid vote.** (a) At the time designated for elector voting and after all vacant positions have been filled under section 14-27, the chief election officer shall provide each elector with a presidential and a vice-presidential ballot. The elector shall mark the elector's presidential and vice-presidential ballots with the elector's votes for the offices of president and vice president, respectively, along with the elector's signature and the elector's legibly printed name.

(b) Except as otherwise provided by law, each elector shall present both completed ballots to the chief election officer, who shall examine the ballots and accept as cast all ballots of electors whose votes are consistent with their pledges executed under section 14-21(b) or 14-27(c). Except as otherwise provided by law, the chief election officer shall not accept and shall not count either an elector's presidential or vice-presidential ballot if the elector has failed to mark both ballots or has marked a ballot in violation of the elector's pledge.

(c) An elector who refuses to present a ballot, presents an unmarked ballot, or presents a ballot marked in violation of the elector's pledge executed under section 14-21(b) or 14-27(c) shall vacate the office of elector, creating a vacant position to be filled pursuant to section 14-27.

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

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 8. This Act shall take effect upon its approval.

(Approved June 23, 2023.)

Note

1. Edited pursuant to HRS §23G-16.5.