Appointment of Presidential Electors

This SSL draft is based on North Carolina law. It provides for the selection of presidential electors by the General Assembly if the election results have not been proclaimed by the sixth day before electors are to meet, and by the governor if electors have not been selected by the day before electors are to meet.

It references these federal provisions:

3 U.S.C. § 2: Failure to Make Choice on Prescribed Day:

Whenever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct.

3 U.S.C. § 5: Determination of Controversy as to Appointment of Electors:

If any State shall have provided, by laws enacted prior to the day fixed for the appointment of the electors, for its final determination of any controversy or contest concerning the appointment of all or any of the electors of such State, by judicial or other methods or procedures, and such determination shall have been made at least six days before the time fixed for the meeting of the electors, such determination made pursuant to such law so existing on said day, and made at least six days prior to said time of meeting of the electors, shall be conclusive, and shall govern in the counting of the electoral votes as provided in the Constitution, and as hereinafter regulated, so far as the ascertainment of the electors appointed by such State is concerned.

3 U.S.C. § 7: Meeting and Vote of Electors:

The electors of President and Vice President of each State shall meet and give their votes on the first Monday after the second Wednesday in December next following their appointment at such place in each State as the legislature of such State shall direct.

Submitted as:
North Carolina
Chapter 289 of 2001

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [Short Title.] This Act may be cited as “An Act Relating to Appointing Presidential Electors.”

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3 Section 2. [Appointment of Presidential Electors by General Assembly in Certain Circumstances, by the Governor in Certain other Circumstances.] As permitted by 3 U.S.C. § 2, whenever the appointment of any Presidential Elector has not been proclaimed under [insert citation] before noon on the date for settling controversies specified by 3 U.S.C. § 5, and upon the call of an extra session pursuant to the [state constitution] for the purposes of this section, the [General Assembly] may fill the position of any Presidential Electors whose election is not yet proclaimed.

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5 Section 3. [Appointment by Governor if no Appointment by the Day Before Electors’ Meeting Day.] If the appointment of any Presidential Elector has not been proclaimed under [insert citation] before noon on the
date for settling controversies specified by 3 U.S.C. § 5, nor appointed by the [General Assembly] by noon on
the day before the day set for the meeting of Presidential Electors by 3 U.S.C. § 7, then the [Governor] shall
appoint that Elector.

Section 4. [Standard for Decision by General Assembly and Governor.] In exercising their authority
under subsections (2) and (3) of this section, the [General Assembly] and the [Governor] shall designate
Electors in accord with their best judgment of the will of the electorate. The decisions of the [General
Assembly] or [Governor] under subsections (2) and (3) of this Act are not subject to judicial review, except to
ensure that applicable statutory and constitutional procedures were followed. The judgment itself of what was
the will of the electorate is not subject to judicial review.

Section 5. [Proclamation Before Electors’ Meeting Day Controls.] If the proclamation of any
Presidential Elector under [insert citation] is made any time before noon on the day set for the meeting of
Presidential Electors by 3 U.S.C. § 7, then that proclamation shall control over an appointment made by the
[General Assembly] or the [Governor]. This section does not preclude litigation otherwise provided by law to
challenge the validity of the proclamation or the procedures that resulted in that proclamation.

Section 6. [Severability.] [Insert severability clause.]

Section 7. [Repealer.] [Insert repealer clause.]

Section 8. [Effective Date.] [Insert effective date.]