

2025 South Dakota Legislature

Senate Bill 94

AMENDMENT 94B FOR THE SENATE ENGROSSED BILL

1 **An Act to amend provisions pertaining to the duties of presidential electors.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That a NEW SECTION be added to chapter 12-5:**

4 Each presidential elector nominated pursuant to § 12-5-21, shall execute the
 5 following pledge upon nomination: "If selected for the position of presidential elector, I
 6 agree to serve and to mark my ballots for President and vice president for the nominees
 7 for those offices of the party that nominated me." The executed pledges must accompany
 8 the submission of the corresponding names to the secretary of state.

9 **Section 2. That a NEW SECTION be added to chapter 12-7:**

10 Each presidential elector of an unaffiliated or independent presidential candidate
 11 shall execute the following pledge upon nomination: "If selected for the position of elector
 12 as a nominee of an unaffiliated or independent presidential candidate, I agree to serve
 13 and to mark my ballots for that candidate and for that candidate's vice-presidential
 14 running mate." The executed pledges must accompany the submission of the
 15 corresponding names to the secretary of state.

16 **Section 3. That § 12-24-1 be AMENDED:**

17 12-24-1. Each ~~Before~~ eleven a.m. on the day designated by Congress to elect a
 18 President and vice president of the United States, each elector of President and vice
 19 president of the United States shall, before the hour of eleven o'clock in the morning of
 20 the day fixed by the act of Congress to elect a President and vice president, give notice to
 21 shall notify the Governor that he is at the elector is:

22 (1) At the seat of government and ready at the proper time; and

23 (2) Ready to perform the duties of an elector; and the.

1 Upon receipt of the notice, the Governor shall~~forthwith~~ deliver to the electors
2 present a certificate of all the names of the electors.

3 **Section 4. That a NEW SECTION be added to chapter 12-24:**

4 At least six days before the day designated by Congress for the meeting of the
5 electors, the Governor shall issue a certificate of ascertainment of appointment. The
6 Governor shall certify the names of the electors chosen at the general election and that
7 the electors will serve as electors unless a vacancy occurs in the office of elector pursuant
8 to section 6 of this Act.

9 If a vacancy occurs in the office of elector after the Governor issues the certificate
10 of ascertainment and a replacement is selected pursuant to § 12-24-2, the Governor, or
11 in the absence of the Governor, the secretary of state, must immediately create and
12 submit a new certificate of ascertainment stating the names of the final list of the state's
13 electors in accordance with 3 U.S.C. § 5 (January 1, 2025).

14 Any final certificate of vote must be signed by each elector on the final list and
15 must be immediately transmitted with the final certificate of ascertainment pursuant to 3
16 U.S.C. §§ 9 to 11, inclusive (January 1, 2025).

17 **Section 5. That § 12-24-2 be AMENDED:**

18 **12-24-2.** If a vacancy occurs before the meeting of the electors, the chair of the
19 political party that nominated the elector must immediately select a replacement and file
20 the selection with the secretary of state.

21 ~~If any an~~ elector named in the Governor's certificate fails to appear before nine
22 ~~o'clock in the morning of a.m. on~~ the day of election of President and vice president ~~as~~
23 ~~aforsaid,~~ the electors there present ~~shall immediately proceed to elect by ballot, in the~~
24 ~~presence of the Governor, a person to fill such~~ must immediately elect, by ballot, an
25 individual to fill the vacancy. If more than one ~~person voted for to fill such vacancy shall~~
26 ~~have the highest and~~ individual receives an equal number of votes, the Governor, ~~in the~~
27 ~~presence of the electors attending, shall decide by lot which of such persons shall be~~
28 ~~elected~~ must, in the presence of the remaining electors, name one of the individuals
29 receiving an equal number of votes to fill the vacancy. If the Governor is not present or is
30 one of the remaining electors, the secretary of state must name ~~the individual one of the~~
31 individuals receiving an equal number of votes to fill the vacancy.

32 If two electors named in the Governor's certificate fail to appear before nine a.m.
33 on the day of election of President and vice president, the Governor, or in the absence of

1 the Governor, the secretary of state, must immediately appoint an elector. Upon
 2 appointment, the electors must immediately elect, by ballot, an individual to fill the
 3 remaining vacancy, in accordance with this section.

4 If no electors named in the Governor's certificate appear before nine a.m. on the
 5 day of election of President and vice president, the Governor, or in the absence of the
 6 Governor, the secretary of state, must immediately appoint an elector. Upon appointment,
 7 the elector must immediately appoint a second elector. Upon the appointment of the
 8 second elector, the electors must immediately elect, by ballot, an individual to fill the
 9 remaining vacancy, in accordance with this section.

10 **Section 6. That a NEW SECTION be added to chapter 12-24:**

11 The office of presidential elector becomes vacant if the elector:

12 (1) Dies;

13 (2) Resigns;

14 (3) Fails to qualify, as provided by law; ~~or~~

15 (4) Fails to appear at the designated time and place of the meeting;

16 (5) Refuses to vote;

17 (6) Attempts to cast a blank ballot; or

18 (7) Except as provided for in section 9 of this Act, attempts to vote for any candidate
 19 other than the candidate receiving the highest number of votes in this state's
 20 general election.

21 If a presidential elector casts a ballot that results in the elector's position becoming
 22 vacant, the ballot may not be accepted or counted. An elector may resign the office of
 23 presidential elector by submitting a letter of resignation to the secretary of state.

24 **Section 7. That § 12-24-3 be AMENDED:**

25 **12-24-3.** Immediately after ~~such~~ the choice of elector is made, the name of the
 26 person so chosen shall forthwith individual chosen to fill the vacancy must be certified to
 27 the Governor by the electors making ~~such~~ the choice; ~~and the~~. The Governor shall cause
 28 notice to be immediately given, in writing, to the ~~elector~~ individual chosen to fill ~~such~~ the
 29 vacancy; ~~and the person so chosen shall be an elector and~~. If the Governor is not present,
 30 the secretary of state shall notify the individual chosen to fill the vacancy.

31 The individual chosen to fill the vacancy shall meet the other electors at the ~~same~~
 32 time and place, ~~and then and there discharge all and singular set forth in § 12-24-1 to~~

1 discharge the duties enjoined upon ~~him~~ the individual as an elector, by the Constitution
2 and laws of the United States and of this state.

3 **Section 8. That § 12-24-4 be AMENDED:**

4 ~~12-24-4. The~~ At twelve p.m. on the day which is designated by Congress to elect
5 a President and vice president of the United States, the electors of President and vice
6 president shall, ~~at twelve noon on the day which is or may be directed by the Congress of~~
7 ~~the United States,~~ meet at the seat of government of this state and then and there perform
8 the duties enjoined upon them by the Constitution and laws of the United States.

9 Excepted as provided in section 9 of this Act, each elector of President and vice
10 president of the United States, from this state, shall vote for the candidates for the office
11 of President and vice president receiving the highest number of votes in this state's general
12 election.

13 **Section 9. That a NEW SECTION be added to chapter 12-24:**

14 If, between the date of the general election and the date when the electors cast
15 the votes for President and vice president of the United States, a candidate for the office
16 of President or vice president receiving the highest number of votes in this state's general
17 election withdraws, dies or, because of a permanent disability, becomes unable to
18 discharge the powers and duties of the office to which the candidate is elected, each
19 elector of President and vice president of the United States from this state, must vote for
20 the replacement candidate nominated according to the bylaws of the party to which the
21 previous candidate belonged.

22 **Section 7. That a NEW SECTION be added to chapter 12-24:**

23 ~~Each elector of President and vice president of the United States, from this state,~~
24 ~~shall vote for the candidates for the office of president and vice president receiving the~~
25 ~~highest number of votes in this state's general election.~~

26 ~~An elector vacates the office of presidential elector if the elector:~~

27 ~~(1) Refuses to vote; or~~

28 ~~(2) Attempts to vote for any candidate other than the candidate receiving the highest~~
29 ~~number of votes in this state's general election.~~

1 If the office of presidential elector becomes vacant pursuant to this section, the
2 remaining electors present must fill the vacancy in the same manner as provided in § 12-
3 24-2.

AMENDMENT