

House File 438 - Introduced

HOUSE FILE 438

BY JONES

A BILL FOR

1 An Act concerning persons appointed to a convention called by
2 the United States Congress to propose amendments to the
3 Constitution of the United States, making appropriations, and
4 providing penalties.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. LEGISLATIVE FINDINGS. The general assembly finds
2 all of the following:

3 1. Article V of the Constitution of the United States
4 contains two methods for proposing amendments to the Constitution
5 of the United States:

6 a. The proposal of amendments by Congress whenever two-thirds
7 of both houses shall deem it necessary.

8 b. The call of a convention for proposing amendments by
9 Congress upon the application of the legislatures of two-thirds
10 of the several states.

11 2. There have been over four hundred fifty applications
12 for an Article V convention of the states for the purpose of
13 proposing amendments.

14 3. Every state legislature except Hawaii has enacted one or
15 more resolutions calling for an Article V convention of the
16 states for the purpose of proposing amendments. Some states have
17 rescinded some or all of such resolutions.

18 4. Thirty-seven states have current resolutions calling for
19 an Article V convention of the states for the purpose of
20 proposing amendments. These states are: Alabama, Alaska,
21 Arkansas, California, Connecticut, Florida, Georgia, Illinois,
22 Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts,
23 Michigan, Minnesota, Mississippi, Missouri, Nebraska, New
24 Hampshire, North Carolina, North Dakota, Ohio, Oklahoma,
25 Pennsylvania, Rhode Island, South Carolina, South Dakota,
26 Tennessee, Texas, Utah, Vermont, Washington, West Virginia,
27 Wisconsin, and Wyoming.

28 5. Each of these applications have specified topics for such
29 a convention. A very small number have been a call for a general
30 convention. The vast majority of applications have been for a
31 convention to propose amendments on a specified topic.

32 6. No set of applications from the legislatures of the
33 several states has ever reached the threshold of two-thirds of
34 the states applying for a convention for the same topic.

35 7. An unwavering historical precedent has been established

1 for a valid application for an Article V convention of the
2 states for the purpose of proposing amendments, by requiring
3 two-thirds of the legislatures of the several states to apply for
4 a convention for amendments on the same topic or topics.

5 8. The general assembly of Iowa has passed nine resolutions
6 calling for an Article V convention of the states for the purpose
7 of proposing amendments on a variety of topics. Eight of these
8 resolutions are still valid, although three of them are likely
9 moot since the topic therein concerned the direct election of
10 United States senators.

11 9. There are contemporary efforts to call for an Article V
12 convention of the states for the purpose of proposing amendments
13 that have reached more than one-half of the required number of
14 states to require Congress to call such a convention.

15 10. It is in the best interest of the people of Iowa for
16 its general assembly to be prepared to nominate, credential, and
17 oversee the actions of delegates that it will appoint for such a
18 convention regardless of the topic if such convention is called.

19 11. The historic record makes it clear that the founders
20 used the term "convention of states" to describe the Article V
21 convention process. This terminology has at least one particular
22 legal meaning. It clarifies that the convention will be in the
23 form of states meeting as states. By definition, all conventions
24 of states require voting on the basis of one state, one vote.

25 12. All stages of the convention process proceed on the
26 basis of one state, one vote. Two-thirds of the states are
27 required to call a convention. A majority of the states are
28 required to finalize the text of any proposed amendments drafted
29 by the convention. Three-fourths of the states are required, via
30 either their legislature or in ratification conventions as shall
31 be specified by Congress, to ratify the text of any proposed
32 amendment.

33 13. As established at the original constitutional convention
34 in Philadelphia in 1787, the legislature of each state names its
35 commissioners or delegates, and gives them such instructions as

1 the legislature deems appropriate.

2 14. Once two-thirds of the several states have applied for a
3 convention for the same topic, the duty of Congress to call a
4 convention is mandatory.

5 15. Litigation surrounding the ratification of the equal
6 rights amendment has established the principle that it is
7 unconstitutional to attempt to change the process for adopting
8 a constitutional amendment in the middle of the process.
9 Accordingly, it is unconstitutional for a convention to consider
10 amendments on any topic other than the topic for which it was
11 expressly called by the agreement of two-thirds of the several
12 states.

13 16. The supreme court of the United States has determined
14 that all actions of state legislatures arising under Article V
15 of the Constitution of the United States are based on their
16 authority under Article V of the Constitution of the United
17 States. Accordingly, the general assembly possesses intrinsic
18 power under the Constitution of the United States to call itself
19 into session at any time for the purpose of fulfilling any of its
20 duties under Article V.

21 Sec. 2. NEW SECTION. **38.1 Definitions.**

22 As used in this chapter, unless the context otherwise
23 requires:

24 1. "*Advisory committee*" means a committee consisting of
25 members selected by each chamber using the process defined in
26 this chapter to perform the duties defined in this chapter.

27 2. "*Alternate commissioner*" means a person designated to
28 replace a commissioner upon a vacancy.

29 3. "*Call*" means a measure sent by Congress calling for an
30 Article V convention of states for the purpose of proposing
31 amendments to the Constitution of the United States.

32 4. "*Chamber*" means either the senate or the house of
33 representatives of the general assembly.

34 5. "*Commissioner*" means a person selected by resolution of
35 the general assembly as provided in this chapter to represent

1 this state at an Article V convention of states for proposing
2 amendments.

3 6. "*Commissioning resolution*" means the resolution adopted
4 by both chambers which sets forth the names of the appointed
5 commissioners and their commissions and instructions.

6 7. "*Convention*" means an Article V convention of states for
7 the purpose of proposing amendments to the Constitution of the
8 United States.

9 8. "*Delegation*" means the group of commissioners and interim
10 commissioners chosen by the general assembly to represent Iowa
11 at an Article V convention with the powers and duties defined
12 in this chapter and as may be additionally set forth in the
13 commissioning resolution for a particular convention.

14 9. "*Scope of commissioner's authority*" means the limitation
15 on a commissioner to support only proposed amendments that
16 are directly within the topics specified in the resolutions
17 of two-thirds of the several states which gave rise to the
18 convention in question, which are enumerated in the credentials
19 of each commissioner.

20 Sec. 3. NEW SECTION. **38.2 Call of special session.**

21 If a call of a convention is issued by Congress when the
22 general assembly is not in session and is not scheduled to be
23 in session within thirty days, the majority leader of the senate
24 and the speaker of the house of representatives shall, by joint
25 communication, call a special session of the general assembly
26 limited to fulfilling the duties as specified under this chapter.
27 Other special sessions may be called in like manner to perform
28 any other duties required of the general assembly under this
29 chapter.

30 Sec. 4. NEW SECTION. **38.3 Number of commissioners.**

31 Five commissioners shall be named to represent Iowa at any
32 convention. Any vacancies shall be filled as promptly as
33 possible under the provisions of this chapter to maintain the
34 delegation at full strength at a convention.

35 Sec. 5. NEW SECTION. **38.4 Qualification of commissioners.**

1 1. At the time of appointment and at all times during a
2 convention, a commissioner must be all of the following:

3 a. A current citizen of the United States and a citizen of
4 the United States for at least the last five years.

5 b. A current resident of Iowa and a resident of Iowa for at
6 least the last five years.

7 c. At least twenty-five years of age.

8 d. Registered to vote in this state.

9 2. At the time of appointment and at all times during a
10 convention, a commissioner shall not be any of the following:

11 a. Registered or required to register as a state or federal
12 lobbyist at any time within the last five years.

13 b. A current federal employee or contractor other than as a
14 member of the United States armed forces, at any time within the
15 last ten years.

16 c. A federal appointed officer requiring confirmation by the
17 senate of the United States or a federal elected officer, or a
18 federal appointed officer requiring confirmation by the senate of
19 the United States or a federal elected officer at any time within
20 the last ten years.

21 d. Convicted of a felony in any jurisdiction within the last
22 ten years.

23 e. Currently employed by any agency of any government.

24 f. A member of the general assembly within the last two
25 years.

26 Sec. 6. NEW SECTION. **38.5 Selection of commissioners.**

27 Each chamber shall select two commissioners to be appointed
28 to a convention by adoption of a simple resolution. Each
29 chamber shall nominate one additional commissioner by adoption
30 of a simple resolution. A conference committee appointed by
31 the majority leader of the senate and the speaker of the
32 house of representatives shall decide which of the additional
33 commissioners shall be selected as the fifth commissioner. The
34 additional commissioner that is not so selected shall become the
35 first alternate commissioner.

1 Sec. 7. NEW SECTION. **38.6 Selection of alternate**
2 **commissioners.**

3 Each chamber shall nominate two persons as alternate
4 commissioners by adoption of a simple resolution. Each chamber
5 shall establish a rank-order for which of the two alternates
6 shall be given priority in the event of a vacancy. Whichever
7 chamber's nominee is selected as the first alternate commissioner
8 under section 38.5 shall name the third and fifth alternate
9 commissioners. The alternate commissioners named by the other
10 chamber shall be named as the second and fourth alternate
11 commissioners.

12 Sec. 8. NEW SECTION. **38.7 Commissioning resolution.**

13 1. A resolution naming the commissioners must include the
14 commission of the commissioners. The commission must include but
15 shall not be limited to all of the following components:

16 a. A prohibition on a commissioner voting for or otherwise
17 promoting a method of voting at a convention other than the rule
18 that each state has one vote.

19 b. A prohibition on a commissioner proposing, promoting,
20 or voting in favor of a proposed amendment that would alter
21 the text of or in any way erode the specific guarantees
22 of individual liberty established by the Constitution of
23 the United States, including the original Constitution of
24 the United States, the Bill of Rights, and the thirteenth,
25 fourteenth, fifteenth, nineteenth, twenty-third, twenty-fourth,
26 and twenty-sixth amendments to the Constitution of the United
27 States.

28 2. The commissioning resolution must clearly state the scope
29 of the commissioners' authority, which must be strictly limited
30 to the topic upon which two-thirds of the several states agreed
31 and which formed the basis of the call of the convention.

32 3. The general assembly may provide additional instructions
33 within the commissioning resolution or at any later time by
34 adoption of a subsequent resolution. A copy of any subsequent
35 resolution shall be provided to each commissioner and to the

1 advisory committee by the clerk of the house of representatives.

2 Sec. 9. NEW SECTION. **38.8 Commissioners — oath —**
3 **credentials.**

4 1. Each commissioner shall, before exercising any function of
5 the position, execute the following oath in writing:

6 I do solemnly swear (or affirm) that I accept and will
7 faithfully act according to the limits of authority specified
8 in my commission and any present or subsequent instructions. I
9 understand that violating this oath may subject me to penalties
10 provided by law. I understand that I may be recalled or
11 suspended from my duties by the general assembly or the advisory
12 committee.

13 2. A commissioner's executed oath shall be filed with the
14 secretary of state. Upon filing of a commissioner's oath, the
15 secretary of state shall provide to the commissioner an official
16 copy of the executed oath and the commissioning resolution, which
17 together shall serve as the commissioner's credentials.

18 Sec. 10. NEW SECTION. **38.9 Removal of commissioners.**

19 1. A commissioner may be removed for any reason at any time
20 by adoption of a resolution by a constitutional majority of both
21 chambers.

22 2. A commissioner may be removed for cause by the advisory
23 committee if the advisory committee finds any of the following to
24 be true by a preponderance of the evidence:

25 a. The commissioner has supported a proposal at the
26 convention that goes beyond the topic for which the convention
27 has been called as specified in the commissioner's credentials,
28 or has publicly announced an intention to do so.

29 b. The commissioner has supported any form of voting at the
30 convention other than one state, one vote.

31 c. The commissioner has otherwise failed to adhere to
32 instructions or other limitations imposed by the general
33 assembly that are reflected in the commission or any subsequent
34 instruction provided to the commissioner pursuant to this
35 chapter.

1 d. The commissioner has otherwise violated the commissioner's
2 oath.

3 Sec. 11. NEW SECTION. **38.10 Advisory committee.**

4 1. There shall be an advisory committee consisting of the
5 following members:

6 a. One member selected by the majority leader of the senate.

7 b. One member selected by the speaker of the house of
8 representatives.

9 c. A third member selected by the presiding officer of the
10 chamber whose nominee for the fifth commissioner was not selected
11 pursuant to section 38.5.

12 2. If a member of the advisory committee determines that
13 there is probable cause for the removal of a commissioner, the
14 advisory committee member shall do all of the following within
15 twenty-four hours of making the determination:

16 a. Schedule an in-person or electronic meeting of the
17 advisory committee within forty-eight hours of making the
18 determination.

19 b. Notify the presiding officers of each chamber of the
20 determination.

21 c. Notify the attorney general of the determination.

22 3. a. At a meeting called under subsection 2, paragraph "a",
23 the advisory committee shall determine by majority vote whether
24 there is probable cause to believe that a commissioner has acted
25 in a manner that meets the criteria for removal pursuant to
26 section 38.9, subsection 2.

27 b. If the advisory committee determines that a commissioner
28 has acted in a manner that meets the criteria for removal
29 pursuant to section 38.9, subsection 2, the advisory committee
30 shall immediately communicate notice of the determination to the
31 commissioner. Upon receipt of notice pursuant to this paragraph,
32 the commissioner shall cease voting at the convention pending
33 a final determination. The notice must specify a time on the
34 next business day after the notice is issued for a hearing to
35 determine the truth of the matter concerning actions meriting

1 removal. The hearing may be held electronically or in person
2 at the advisory committee's preference. The commissioner may be
3 represented by counsel of the commissioner's choosing and at the
4 commissioner's expense.

5 4. If the advisory committee determines by a preponderance of
6 the evidence that a commissioner has acted in a manner that meets
7 the criteria for removal pursuant to section 38.9, subsection
8 2, the commissioner shall immediately cease to be a member of
9 the delegation. The alternative commissioner next in line shall
10 immediately join the delegation at the convention.

11 5. A commissioner removed by the advisory committee may
12 appeal to the general assembly if a petition on the
13 commissioner's behalf is signed by at least twenty-five members
14 from each chamber within seven days of the removal. The leaders
15 of each chamber shall call a special session within seven days
16 after each receives the petition bearing sufficient signatures.
17 A constitutional majority in both chambers is required to restore
18 the commissioner to office. If a previously removed commissioner
19 is restored to office, the alternate commissioner shall be
20 withdrawn from the delegation upon the arrival of the restored
21 commissioner at the convention. The alternate commissioner shall
22 then resume the alternate commissioner's place in the priority
23 sequence for alternate commissioners.

24 6. A decision of the advisory committee or general assembly
25 pursuant to this section is not subject to judicial review.

26 Sec. 12. NEW SECTION. **38.11 Commissioners — vacancy.**

27 1. A vacancy is created when any commissioner resigns, dies,
28 or becomes unable to attend the convention for any health or
29 personal reason. Any absence from the convention for more than
30 three consecutive days or for more than five days total shall
31 constitute a vacancy.

32 2. A vacancy shall be filled by the highest ranking alternate
33 commissioner according to the process established in this
34 chapter. The advisory committee shall notify the alternate
35 commissioner of the vacancy within three days of the creation of

1 the vacancy. Upon the filing of the required oath, the alternate
2 commissioner shall be confirmed as a commissioner.

3 Sec. 13. NEW SECTION. **38.12 Commissioners — compensation**
4 **and expenses.**

5 1. A commissioner shall be paid on a monthly basis using an
6 equivalent rate to the salary of a district court judge.

7 2. A commissioner shall receive the same allowance for
8 expenses as provided to a member of the general assembly who is
9 not a resident of Polk county.

10 3. A commissioner shall be considered an employee of the
11 general assembly for administrative purposes.

12 4. During active attendance at a convention, a commissioner
13 shall not be compensated for any other form of employment
14 performed during the time of attendance, but shall be permitted
15 to move to an inactive status of any employment position so as
16 not to impact insurance, retirement, or any other term or benefit
17 of employment.

18 5. There is appropriated from the general fund of the state
19 to the general assembly an amount necessary to pay costs under
20 this section.

21 Sec. 14. NEW SECTION. **38.13 Emoluments and gifts —**
22 **financial disclosures — expenditures.**

23 1. A commissioner shall be subject to the provisions of
24 section 68B.22.

25 2. A commissioner shall make all financial disclosures as are
26 required for a member of the general assembly pursuant to law or
27 rule.

28 3. A person shall not expend any moneys or transfer any
29 item of value to any other person for the purpose of seeking
30 appointment as a commissioner or alternate commissioner.

31 Sec. 15. NEW SECTION. **38.14 Commissioners — criminal**
32 **penalties.**

33 1. A commissioner who knowingly introduces, sponsors, or
34 votes for any proposed amendment that addresses a topic that is
35 beyond the scope of the commissioner's authority is guilty of a

1 class "D" felony.

2 2. Conviction of a felony pursuant to this section shall
3 constitute an infamous crime for the purposes of Article II,
4 section 5, of the Constitution of the State of Iowa.

5 Sec. 16. NEW SECTION. **38.15 Criminal interference.**

6 1. A person who, except as authorized by law, knowingly
7 bribes, threatens, intimidates, or obstructs a commissioner or
8 alternate commissioner from Iowa in the performance of the
9 commissioner's or alternate commissioner's duties is guilty of a
10 class "D" felony. A violation of this subsection is punishable
11 in this state regardless of where the prohibited act occurs.

12 2. If a convention is held in this state, a person who,
13 except as authorized by law, knowingly bribes, threatens,
14 intimidates, or obstructs a commissioner or alternate
15 commissioner from any state in the performance of the
16 commissioner's or alternate commissioner's duties is guilty of a
17 class "D" felony. A violation of this subsection is punishable
18 in Iowa regardless of where the prohibited act occurs.

19 EXPLANATION

20 The inclusion of this explanation does not constitute agreement with
21 the explanation's substance by the members of the general assembly.

22 This bill relates to the appointment and regulation of
23 commissioners to a convention called by Congress to propose
24 amendments to the Constitution of the United States (convention).
25 The bill includes legislative findings.

26 The bill requires the majority leader of the senate and the
27 speaker of the house of representatives to call a special session
28 of the general assembly if Congress calls a convention and the
29 general assembly is not in session and is not scheduled to
30 be in session within 30 days. The special session shall be
31 limited to the matters listed in the bill. The bill requires
32 a delegation sent by Iowa to a convention to always consist of
33 five members (commissioners). The bill requires a commissioner
34 to be and have been for at least 5 years a citizen of the United
35 States and a resident of Iowa, at least 25 years of age, and

1 registered to vote in Iowa. The bill prohibits a commissioner
2 from being registered or required to register as a lobbyist; a
3 federal employee or contractor, other than as a member of the
4 United States armed forces, within the last 10 years; a federal
5 appointed officer requiring confirmation by the senate of the
6 United States or a federal elected officer within the last 10
7 years; convicted of a felony within the last 10 years; currently
8 employed by any agency of any government; or a member of the
9 general assembly within the last 2 years.

10 The bill requires each chamber of the general assembly to
11 select two commissioners by adoption of a simple resolution
12 and to nominate one additional member. A conference committee
13 appointed by the majority leader of the senate and the speaker
14 of the house of representatives shall select which alternate
15 member shall act as the fifth commissioner and which shall serve
16 as the first alternate commissioner. The bill also requires
17 each chamber to select two additional alternate commissioners and
18 provides a process for ranking the alternate commissioners.

19 The bill requires the resolution appointing a commissioner
20 to contain prohibitions on supporting or voting for certain
21 proposals and amendments at a convention and the scope of the
22 commissioner's authority, which shall be limited to the topic
23 of the convention. The bill allows the general assembly to
24 provide additional instructions to a commissioner by adoption
25 of a further resolution. The bill requires each commissioner
26 to execute an oath in writing to obey the commission of the
27 commissioner, which shall be filed with the secretary of state.

28 The bill allows the general assembly to remove a commissioner
29 at any time for any reason by adoption of a resolution by
30 a constitutional majority of both chambers. The bill allows
31 an advisory committee, consisting of a member selected by the
32 majority leader of the senate, a member selected by the speaker
33 of the house of representatives, and a third member selected
34 by the presiding officer of the chamber whose nominee for the
35 fifth commissioner was not selected, to remove a commissioner

1 if the advisory committee finds by a preponderance of the
2 evidence that a commissioner acted contrary to the commissioner's
3 commission or oath. The bill includes a mechanism for calling
4 a meeting of the advisory committee and notifying a commissioner
5 of potential adverse actions. The bill allows a commissioner to
6 be represented by counsel of the commissioner's choosing at the
7 commissioner's expense. The bill allows a removed commissioner
8 to appeal to the general assembly but prohibits judicial review.

9 The bill creates a vacancy in the office of commissioner
10 when a commissioner resigns, dies, or becomes unable to attend
11 the convention for any health or personal reason, or when a
12 commissioner is absent for more than three consecutive days
13 or five days total. The bill provides a mechanism for the
14 replacement of a commissioner with an alternate commissioner.

15 The bill sets the compensation for a commissioner at the
16 same rate as for a district court judge. The bill grants a
17 commissioner an allowance for expenses that is the same as for
18 a member of the general assembly who is not a resident of Polk
19 county. The bill makes a commissioner an employee of the general
20 assembly for administrative purposes and prohibits a commissioner
21 from receiving compensation for outside employment during active
22 attendance at a convention. The bill appropriates necessary
23 moneys from the general fund for these purposes.

24 The bill requires a commissioner to abide by the provisions
25 of Code section 68B.22 (gifts accepted or received) and to make
26 the same financial disclosures as required for a member of the
27 general assembly. The bill prohibits a person from making
28 expenditures to seek appointment as a commissioner or alternate
29 commissioner.

30 A commissioner who knowingly introduces, sponsors, or votes
31 for any proposed amendment that addresses a topic that is beyond
32 the scope of the commissioner's authority is guilty of a class
33 "D" felony, which shall constitute an infamous crime. A class
34 "D" felony is punishable by confinement for no more than five
35 years and a fine of at least \$1,025 but not more than \$10,245.

1 Under the Constitution of the State of Iowa, a person convicted
2 of an infamous crime is not entitled to the privilege of an
3 elector.

4 A person who, except as authorized by law, knowingly bribes,
5 threatens, intimidates, or obstructs a commissioner or alternate
6 commissioner from Iowa, or from any state if the convention
7 is held in Iowa, in the performance of the commissioner's or
8 alternate commissioner's duties is guilty of a class "D" felony.
9 A violation of this provision of the bill is punishable in Iowa
10 regardless of where the prohibited act occurs.

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