

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1058

Introduced by Halloran, 33; Bostelman, 23; Brewer, 43; Briese, 41;
Clements, 2; Ebke, 32; Erdman, 47; Friesen, 34; Hilgers,
21; Kolterman, 24; Larson, 40; Lowe, 37; Stinner, 48;
Watermeier, 1; Wayne, 13; Williams, 36.

Read first time January 17, 2018

Committee: Government, Military and Veterans Affairs

- 1 A BILL FOR AN ACT relating to the Constitution of the United States; to
- 2 adopt the Faithful Delegate to Federal Article V Convention Act.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. This act shall be known and may be cited as the Faithful
2 Delegate to Federal Article V Convention Act.

3 Sec. 2. For purposes of the Faithful Delegate to Federal Article V
4 Convention Act:

5 (1) Alternate delegate means an individual elected by the
6 Legislature to represent this state as an alternate delegate at an
7 Article V convention;

8 (2) Article V convention means a convention called by the United
9 States Congress under Article V of the Constitution of the United States;

10 (3) Delegate means:

11 (a) An individual elected by the Legislature to represent this state
12 as a delegate at an Article V convention; and

13 (b) An alternate delegate who fills a vacancy created by the removal
14 of a delegate or acts in place of the delegate in his or her absence; and

15 (4) Unauthorized vote means a vote by a delegate at an Article V
16 convention that:

17 (a) Is contrary to the instructions adopted by the Legislature in
18 effect at the time the vote is taken;

19 (b) Exceeds the scope of the subject matter of the Article V
20 convention authorized by the Legislature in the application to the United
21 States Congress to call the convention if the Legislature made an
22 application to call the convention; or

23 (c) Exceeds the scope or subject matter of the Article V convention
24 if the Legislature did not make an application to the United States
25 Congress to call the convention.

26 Sec. 3. The purpose of the Faithful Delegate to Federal Article V
27 Convention Act is to provide the rules and procedures necessary to create
28 and guide a delegation to an Article V convention and provide legislative
29 direction relating to the election or recall of a delegate or an
30 alternate delegate, the filling of a vacancy of a delegate or an
31 alternate delegate, and the determination of an unauthorized vote.

1 Sec. 4. (1) As soon as possible following the calling of an Article
2 V convention, the Legislature shall elect delegates and alternate
3 delegates to the convention. Except as provided in subsection (2) of this
4 section, the Legislature shall elect five delegates and five alternate
5 delegates from the membership of the Legislature at the time of the call.

6 (2) If the number of delegates allocated to represent this state at
7 the Article V convention is determined by the United States Congress or
8 by agreement among the states to be a number other than five, the
9 Legislature shall elect the appropriate number of delegates and alternate
10 delegates.

11 (3) Service as a delegate or alternate delegate by a member of the
12 Legislature is an additional duty of the legislative office.

13 (4) The Legislature shall pair each alternate delegate with a
14 delegate at the time of the election. The alternate delegate is
15 designated to automatically fill a vacancy in the position of the paired
16 delegate. If the positions of both the delegate and alternate delegate
17 are simultaneously vacated, the Legislature shall elect a new delegate
18 and paired alternate delegate to succeed the prior delegate and alternate
19 delegate.

20 Sec. 5. (1) The delegates and alternate delegates shall not be
21 compensated for their service as delegates and alternate delegates.

22 (2) The delegates and alternate delegates may be reimbursed for
23 their actual and necessary expenses incurred in the performance of their
24 official duties as provided in sections 81-1174 to 81-1177.

25 (3) A delegate or an alternate delegate may not accept a gift, a
26 loan, food, beverages, entertainment, lodging, transportation, or any
27 other benefits from a person who is required to register as a lobbyist
28 under the Nebraska Political Accountability and Disclosure Act.

29 Sec. 6. (1) Each delegate and alternate delegate shall take the
30 following oath before voting or taking an action as a delegate or
31 alternate delegate of this state: I do solemnly swear (or affirm) that,

1 to the best of my abilities, I will, as a delegate (or alternate
2 delegate) to the Article V convention, act according to the limits of the
3 authority granted to me as a delegate or alternate delegate under the
4 Faithful Delegate to Federal Article V Convention Act, will not consider
5 or vote to approve an amendment to the Constitution of the United States
6 not authorized by the Legislature in its application to the United States
7 Congress to call this convention or an amendment outside of the scope of
8 this convention if the Legislature did not make an application to the
9 United States Congress to call this convention, and will faithfully abide
10 by and execute the instructions to the delegates and alternate delegates
11 adopted by the Legislature.

12 (2) Each delegate and alternate delegate shall file the executed
13 oath with the Secretary of State.

14 Sec. 7. (1) At the time delegates and alternate delegates are
15 elected under the Faithful Delegate to Federal Article V Convention Act,
16 the Legislature shall adopt instructions for the delegates and alternate
17 delegates to govern their actions at the Article V convention.

18 (2) The Legislature shall not adopt instructions for an Article V
19 convention called following the application by the Legislature to the
20 United States Congress for the convention that authorize a delegate or
21 alternate delegate to consider or vote to approve an amendment to the
22 Constitution of the United States that is not authorized by the
23 Legislature in its application for the convention.

24 (3) The Legislature may amend the instructions at any time.

25 Sec. 8. An alternate delegate shall act in the place of the
26 alternate delegate's paired delegate when the delegate is absent from the
27 convention. An alternate delegate acting under this section shall be
28 deemed the delegate for purposes of such action.

29 Sec. 9. (1) A delegate shall not cast an unauthorized vote. A vote
30 determined to be an unauthorized vote is invalid.

31 (2) The determination that a vote is an unauthorized vote shall only

1 be made by the Legislature or by the advisory committee created pursuant
2 to section 11 of this act when the Legislature is not in session.

3 (3) A delegate who casts a vote determined to be an unauthorized
4 vote is disqualified to continue to serve as a delegate or alternate
5 delegate, and the vacancy created by the disqualification shall be filled
6 as provided in section 4 of this act.

7 Sec. 10. When it is determined by the Legislature or the advisory
8 committee created pursuant to section 11 of this act that a delegate has
9 cast an unauthorized vote, the Speaker of the Legislature shall promptly
10 notify the head of the delegation of this state and the presiding officer
11 of the Article V convention that the delegate has cast an unauthorized
12 vote and is disqualified to serve as a delegate.

13 Sec. 11. (1) The Executive Board of the Legislative Council and the
14 Lieutenant Governor shall serve as the advisory committee for the
15 delegates and alternate delegates attending the Article V convention. The
16 chairperson of the executive board shall serve as the chairperson of the
17 advisory committee. If the chairperson or any other member of the
18 executive board is serving as a delegate or an alternate delegate, his or
19 her position on the advisory committee shall be deemed vacant and the
20 vacancy shall be filled in the same manner as a vacancy on the executive
21 board. The Lieutenant Governor may cast the deciding vote in the event of
22 a tie vote by the rest of the members of the advisory committee.

23 (2) If the Legislature is not in session at a regular or special
24 session while an Article V convention is convened, the members of the
25 advisory committee shall:

26 (a) Meet at the call of the chairperson at the State Capitol;

27 (b) Upon the request of a delegate or an alternate delegate, advise
28 the delegate or alternate delegate whether there is reason to believe
29 that an action or an attempt to take an action by a delegate or alternate
30 delegate could result in an unauthorized vote; and

31 (c) Determine whether a vote cast by a delegate is an unauthorized

1 vote as provided in subsection (3) of this section.

2 (3) If a vote cast by a delegate is challenged as an unauthorized
3 vote under the Faithful Delegate to Federal Article V Convention Act, the
4 advisory committee shall determine that the vote is an unauthorized vote
5 only if six or more members of the advisory committee vote that it was an
6 unauthorized vote.

7 (4) The advisory committee shall not take any action when the
8 Legislature is convened in regular or special session.

9 Sec. 12. It shall be a Class IV felony for a delegate or an
10 alternate delegate to knowingly cast an unauthorized vote.