

Senate File 638

H-1321

1 Amend Senate File 638, as amended, passed, and reprinted by
2 the Senate, as follows:

3 1. Page 19, after line 15 by inserting:

4 <DIVISION ____

5 JUDICIAL NOMINATING COMMISSION MODERNIZATION

6 Sec. ____ . Section 46.1, Code 2019, is amended to read as
7 follows:

8 **46.1 Appointment of state judicial nominating commissioners.**

9 1. The governor shall appoint, subject to confirmation by
10 the senate, ~~one eligible elector of each congressional district~~
11 nine eligible electors to the state judicial nominating
12 commission ~~for a six-year term beginning and ending as provided~~
13 ~~in [section 69.19](#).~~

14 2. The appointments made by the governor shall be
15 staggered terms of six years each and shall begin and end
16 in even-numbered years as provided in section 69.19. The
17 terms of no more than three nor less than two of the ~~members~~
18 commissioners shall expire within the same two-year period.

19 3. No more than a simple majority of the ~~members~~
20 commissioners appointed by the governor shall be of the same
21 gender.

22 4. All commissioners shall be chosen without reference to
23 political affiliation.

24 5. There shall be at least one commissioner appointed by
25 the governor from each congressional district and there shall
26 not be more than two commissioners appointed by the governor
27 from a single congressional district unless each congressional
28 district has at least two commissioners appointed by the
29 governor.

30 6. A commissioner who has served a full six-year term on the
31 state judicial nominating commission, whether the commissioner
32 was appointed or elected, shall be ineligible to be appointed
33 to a second six-year term.

34 7. No person may be appointed who holds an office of
35 profit of the United States or of the state at the time of

1 appointment.

2 Sec. _____. Section 46.2, Code 2019, is amended by striking
3 the section and inserting in lieu thereof the following:

4 **46.2 Election of state judicial nominating commissioners.**

5 1. The resident members of the bar of each congressional
6 district shall elect two eligible electors of different genders
7 to the state judicial nominating commission.

8 2. The commissioners elected by the bar shall serve
9 staggered terms of six years each and shall be elected in the
10 month of January for terms commencing July 1 of odd-numbered
11 years. The terms of no more than three of the commissioners
12 shall expire within the same two-year period.

13 3. All of the commissioners elected by the bar shall be
14 chosen without reference to political affiliation.

15 4. A commissioner who has served a full six-year term on the
16 state judicial nominating commission, whether the commissioner
17 was appointed or elected, shall be ineligible to be elected to
18 a second six-year term.

19 5. No person may be elected who holds an office of profit of
20 the United States or of the state at the time of election.

21 Sec. _____. Section 46.2A, Code 2019, is amended by striking
22 the section and inserting in lieu thereof the following:

23 **46.2A Special appointment of state judicial nominating**
24 **commissioners and transition provisions.**

25 1. The initial term of the ninth commissioner appointed by
26 the governor shall begin on the effective date of this division
27 of this Act and shall expire on April 30, 2024.

28 2. After the initial term is served pursuant to subsection
29 1, a new commissioner shall be appointed by the governor to a
30 six-year term as provided in section 46.1.

31 3. The terms of any commissioner currently serving on
32 the state judicial nominating commission or any commissioner
33 already elected to begin serving on July 1, 2019, shall not be
34 affected by this Act.

35 Sec. _____. Section 46.5, Code 2019, is amended to read as

1 follows:

2 **46.5 Vacancies.**

3 1. When a vacancy occurs in the office of an appointive
4 judicial nominating commissioner, the chairperson of the
5 particular commission shall promptly notify the governor in
6 writing of such fact or the governor may take note of such a
7 vacancy. Vacancies in the office of an appointive judicial
8 nominating commissioner shall be filled by appointment by the
9 governor, consistent with eligibility requirements. The term
10 of state judicial nominating commissioners so appointed shall
11 commence upon their appointment pending confirmation by the
12 senate at the then session of the general assembly or at its
13 next session if it is not then in session. The term of district
14 judicial nominating commissioners so appointed shall commence
15 upon their appointment.

16 2. ~~Except where the term has less than ninety days~~
17 ~~remaining, vacancies in the office of elective member of the~~
18 ~~state judicial nominating commission shall be filled consistent~~
19 ~~with eligibility requirements by a special election within the~~
20 ~~congressional district where the vacancy occurs, such election~~
21 ~~to be conducted as provided in sections 46.9 and 46.10. An~~
22 ~~appointive commissioner shall be deemed to have submitted a~~
23 ~~resignation if the commissioner fails to attend a meeting of~~
24 ~~the commission that is properly noticed under section 46.13~~
25 ~~and at which the commission conducts interviews or selects~~
26 ~~nominees for judicial office. The governor, in the governor's~~
27 ~~discretion, may accept or reject the resignation. If the~~
28 ~~governor accepts the resignation, the governor shall notify the~~
29 ~~commissioner and the chairperson of the commission in writing~~
30 ~~and shall then make another appointment.~~

31 3. Vacancies in the office of elective judicial nominating
32 ~~commissioner of district judicial nominating commissions~~ shall
33 be filled consistent with eligibility requirements ~~and by~~
34 ~~majority vote of the authorized number of elective members of~~
35 ~~the particular commission, at a meeting of such members called~~

1 ~~in the manner provided in section 46.13. The term of judicial~~
2 ~~nominating commissioners so chosen shall commence upon their~~
3 ~~selection by a special election within the judicial election~~
4 ~~district or congressional district where the vacancy occurs~~
5 ~~unless the term has less than ninety days remaining, in which~~
6 ~~case the office shall remain vacant. The special election~~
7 ~~shall be completed within ninety days of the vacancy arising~~
8 ~~and shall be conducted as provided in sections 46.9, 46.9A, and~~
9 ~~46.10.~~

10 4. If a vacancy occurs in the office of chairperson of a the
11 state judicial nominating commission, or in the members of the
12 commission shall elect a new chairperson as provided in section
13 46.6. If a vacancy occurs in the office of chairperson of a
14 district judicial nominating commission or in the absence of
15 the chairperson, the members of the particular commission shall
16 elect a temporary chairperson from their own number.

17 5. ~~When a vacancy in an office of an elective judicial~~
18 ~~nominating commissioner occurs, the state court administrator~~
19 ~~shall cause to be mailed to each member of the bar whose name~~
20 ~~appears on the certified list prepared pursuant to section 46.8~~
21 ~~for the district or districts affected, a notice stating the~~
22 ~~existence of the vacancy, the requirements for eligibility,~~
23 ~~and the manner in which the vacancy will be filled. Other~~
24 ~~items may be included in the same mailing if they are on sheets~~
25 ~~separate from the notice. The election of a district judicial~~
26 ~~nominating commissioner or the close of nominations for a state~~
27 ~~judicial nominating commissioner shall not occur until thirty~~
28 ~~days after the mailing of the notice. Notwithstanding section~~
29 ~~69.1A, appointed and elected commissioners on the state and~~
30 ~~district judicial nominating commissions shall not hold over~~
31 ~~until their successor is elected and qualified.~~

32 6. All judicial nominating commissioners, including
33 those elected by the bar, shall be subject to removal by
34 the executive council in the same manner as appointive state
35 officers under section 66.26. When the status of a judicial

1 nominating commissioner is in question, the governor shall be
2 the officer responsible for deciding whether a vacancy exists
3 under section 69.2.

4 Sec. _____. Section 46.6, Code 2019, is amended to read as
5 follows:

6 **46.6 Equal seniority Chairperson.**

7 ~~If the judges of longest service, other than the chief~~
8 ~~justice, of the supreme court or of the district court in~~
9 ~~a district are of equal service, the eldest of such judges~~
10 ~~shall be chairperson of the particular judicial nominating~~
11 ~~commission.~~

12 1. The commissioners of the state judicial nominating
13 commission shall elect a chairperson from their own number.
14 The chairperson shall serve a two-year term that expires
15 on April 30 of even-numbered years. A commissioner may be
16 reelected for a second or third term as chairperson. If a
17 chairperson of a judicial nominating commission desires to
18 be relieved of the duties of chairperson while retaining the
19 status of commissioner, the chairperson shall notify the
20 governor and the other commissioners of the commission. At the
21 next meeting of the commission, the commissioners shall elect a
22 new chairperson for the remainder of the two-year term.

23 2. The judge of longest service in the district shall serve
24 as the chair of a particular district judicial nominating
25 commission. If the judges of longest service in the district
26 are of equal service, the eldest of such judges shall be
27 chairperson of the particular judicial nominating commission.

28 Sec. _____. Section 46.7, Code 2019, is amended to read as
29 follows:

30 **46.7 Eligibility to vote.**

31 To be eligible to vote in elections of judicial nominating
32 commissioners, a member of the bar must be eligible to
33 practice and must be a resident of the state of Iowa and of
34 the appropriate congressional district or judicial election
35 district ~~as shown by the member's most recent filing with the~~

1 ~~supreme court for the purposes of showing compliance with~~
2 ~~the court's continuing legal education requirements, or for~~
3 ~~members of the bar eligible to practice who are not required~~
4 ~~to file such compliance, any paper on file by July 1 with the~~
5 ~~state court administrator, for the purpose of establishing~~
6 ~~eligibility to vote under this section, which the court~~
7 ~~determines to show the requisite residency requirements at the~~
8 time the member votes in the election. The member's residency
9 shall be determined by the home address shown on the member's
10 most recent electronic or paper submission to the commission
11 on continuing education and the client security commission or
12 on the member's bar admission records. A judge who has been
13 admitted to the bar of the state of Iowa shall be considered a
14 member of the bar.

15 Sec. _____. Section 46.8, Code 2019, is amended to read as
16 follows:

17 **46.8 Certified list.**

18 1. Each year the The state court administrator shall ~~certify~~
19 a maintain a certified list of the names, addresses, electronic
20 mail addresses, and years of admission of members of the bar
21 who are eligible to vote for state and district judicial
22 nominating commissioners.

23 2. Upon request, the state court administrator shall
24 provide the certified list in electronic form and without
25 charge to any properly qualified nominee for state or district
26 judicial nominating commissioner.

27 Sec. _____. Section 46.9, Code 2019, is amended to read as
28 follows:

29 **46.9 Conduct of elections.**

30 1. When an election of judicial nominating commissioners
31 is to be held, the state court administrator shall administer
32 the voting. The state court administrator may administer
33 the voting by electronic notification and voting or by paper
34 ballot mailed to each eligible attorney. The state court
35 administrator shall mail paper ballots to eligible attorneys or

1 electronically notify and enable eligible attorneys to vote.
2 ~~The elector receiving the most votes shall be elected. When~~
3 ~~more than one commissioner is to be elected, the electors~~
4 ~~receiving the most votes shall be elected, in the same number~~
5 ~~as the offices to be filled.~~

6 2. The state court administrator shall provide a voting
7 period of at least twenty-one days from when the electronic
8 voting notification is sent or the paper ballots are mailed
9 during which eligible attorneys may vote electronically or
10 submit a paper ballot.

11 3. In an election to elect a single commissioner, each
12 eligible attorney may cast a single vote, and the qualified
13 eligible elector receiving the most votes shall be elected.

14 4. In an election to elect one male commissioner and one
15 female commissioner, each eligible attorney may cast one vote
16 for male commissioner and one vote for female commissioner, and
17 the qualified eligible elector of each gender receiving the
18 most votes shall each be elected.

19 5. The election results, including the number of votes cast
20 for each elector and the total number of the members of the
21 bar eligible to vote in each election, shall be made publicly
22 available on the judicial branch internet site and shall be
23 reported to the governor and to the general assembly within ten
24 days after the conclusion of the election.

25 Sec. ____ . Section 46.9A, Code 2019, is amended to read as
26 follows:

27 **46.9A Notice preceding nomination of elective nominating**
28 **commissioners.**

29 At least sixty days prior to the expiration of the term of an
30 elective state or district judicial nominating commissioner or
31 the expiration of the period within which a special election
32 must be held, the state court administrator shall ~~mail paper~~
33 ~~ballots to eligible attorneys or electronically notify and~~
34 ~~enable eligible attorneys to vote. An eligible attorney is~~
35 ~~a member of the bar whose name appears on the certified list~~

1 ~~prepared pursuant to section 46.8 for the district or districts~~
2 ~~affected provide notice of the current or upcoming vacancy~~
3 ~~and the nomination and election process by making the notice~~
4 ~~publicly available on the judicial branch internet site,~~
5 ~~issuing a press release, and electronically notifying members~~
6 ~~of the bar. The election shall not commence until at least~~
7 ~~thirty days after the issuance of the notice required by this~~
8 ~~section.~~

9 Sec. _____. Section 46.10, Code 2019, is amended to read as
10 follows:

11 **46.10 Nomination of elective judicial nominating**
12 **commissioners.**

13 1. In order to have an eligible elector's name printed
14 on the ballot for state or district judicial nominating
15 commissioner, the eligible elector must file in the office of
16 the state court administrator at least thirty days prior to
17 expiration of the period within which the election must be
18 held a nominating petition signed by at least ~~fifty resident~~
19 ~~members of the bar~~ ten eligible electors of the congressional
20 district in case of a candidate for state judicial nominating
21 commissioner, or at least ten ~~resident members of the bar~~
22 eligible electors of the judicial district in case of a
23 candidate for district judicial nominating commissioner. ~~No~~
24 ~~member of the bar may sign more nominating petitions for state~~
25 ~~or district judicial nominating commissioner than there are~~
26 ~~such commissioners to be elected.~~

27 2. Ballots or electronic voting forms for state and district
28 judicial nominating commissioners shall contain blank lines
29 equal to the number of such commissioners to be elected, where
30 names may be written in. Any electronic voting form must
31 permit a voter to write in the name of any eligible elector.

32 Sec. _____. Section 46.11, Code 2019, is amended to read as
33 follows:

34 **46.11 Certification of commissioners.**

35 The Upon making an appointment, the governor and the state

1 ~~court administrator respectively~~ shall promptly certify
2 the names and addresses of ~~appointive and elective~~ judicial
3 nominating commissioners to the state commissioner of
4 elections ~~and the chairperson of the respective nominating~~
5 ~~commissions.~~ Upon the completion of an election, the state
6 court administrator shall certify the names and addresses of
7 the elected judicial nominating commissioners to the state
8 commissioner of elections and the governor.

9 Sec. _____. Section 46.12, subsection 1, Code 2019, is amended
10 to read as follows:

11 1. When a vacancy occurs or will occur within one hundred
12 twenty days in the supreme court, the court of appeals, or
13 district court, the state commissioner of elections shall
14 forthwith so notify the ~~chairperson of the proper judicial~~
15 ~~nominating commission~~ governor. The ~~chairperson~~ governor shall
16 call a meeting of the proper judicial nominating commission
17 within ten days after such notice; if the ~~chairperson~~ governor
18 fails to do so, the chief justice shall call such meeting.

19 Sec. _____. Section 46.13, Code 2019, is amended to read as
20 follows:

21 **46.13 Notice of meetings and application process.**

22 1. The governor or chairperson of each judicial nominating
23 commission shall give the members of the commission at least
24 five days' written notice by mail or electronic mail of the
25 time and place of every meeting, except as to members who
26 execute written waivers of notice at or before the meeting or
27 unless the commission at its next previous meeting designated
28 the time and place of the meeting.

29 2. Each commission, with the technical support of the
30 judicial branch, shall publish all of the following on the
31 judicial branch internet site:

32 a. Notice that the commission is accepting applications
33 for judge or justice along with a copy of the application form
34 at least two weeks before applications are required to be
35 submitted to the commission.

1 b. Copies of nonconfidential application materials submitted
2 by applicants.

3 c. The schedule of applicant interviews before the
4 commission.

5 d. The list of nominees submitted by the commission to the
6 governor and the chief justice.

7 3. Commissioners shall be permitted to conduct individual
8 interviews with applicants in advance of the commission's
9 meetings to choose the nominees.

10 4. The state judicial nominating commission shall adopt
11 uniform rules for the state and district judicial nominating
12 commissions that shall be consistent with this chapter
13 and shall provide for a uniform and fair process for the
14 commissions to consider applicants and select nominees. The
15 state judicial nominating commission shall provide for a public
16 comment period of at least thirty days on its proposed uniform
17 rules prior to adopting the rules and shall adopt the rules
18 within six months of the effective date of this division of
19 this Act. Such rules shall be made publicly available on the
20 judicial branch internet site.

21 **Sec. ____.** NEW SECTION. **46.15A Severability and judicial**
22 **review.**

23 1. If any provision or clause of this chapter or any
24 application of this chapter to any person or circumstances
25 is held invalid, such invalidity shall not affect other
26 provisions, clauses, or applications of this chapter which can
27 be given effect without the invalid provision or application,
28 and to this end the provisions and clauses of this chapter are
29 declared to be severable.

30 2. Notwithstanding any provision of law to the contrary,
31 if any provision of this chapter is preliminarily enjoined,
32 no judicial nominating commission shall meet to nominate
33 persons to serve as a judge or justice while the preliminary
34 injunction is in effect or while any appeal of the preliminary
35 injunction or a related permanent injunction is pending unless

1 the injunction is subsequently stayed or otherwise lifted.

2 Sec. ____ . EFFECTIVE UPON ENACTMENT. This division of this
3 Act, being deemed of immediate importance, takes effect upon
4 enactment.

5 DIVISION ____

6 CHIEF JUSTICE SELECTION

7 Sec. ____ . Section 602.4103, Code 2019, is amended to read
8 as follows:

9 **602.4103 Chief justice.**

10 ~~The justices of the supreme court shall select one justice as~~
11 ~~chief justice, to serve during that justice's term of office.~~

12 1. At the first meeting in each odd-numbered year, the
13 justices of the supreme court by majority vote shall designate
14 one justice as chief justice, to serve for a two-year term.
15 A vacancy in the office of chief justice shall be filled for
16 the remainder of the unexpired term by majority vote of the
17 justices of the supreme court, after any vacancy on the court
18 has been filled.

19 2. If the chief justice desires to be relieved of the duties
20 of chief justice while retaining the status of justice of the
21 supreme court, the chief justice shall notify the governor and
22 the other justices of the supreme court. The office of chief
23 justice shall be deemed vacant, and shall be filled as provided
24 in this section.

25 3. The chief justice is eligible for reselection.

26 4. The chief justice shall appoint one of the other justices
27 to act during the absence or inability of the chief justice
28 to act, and when so acting the appointee has all the rights,
29 duties, and powers of the chief justice.

30 Sec. ____ . NEW SECTION. 602.4103A Transition provisions.

31 1. The term of the chief justice serving on the effective
32 date of this division of this Act shall expire on January
33 15, 2021, or upon the conclusion of the first meeting of the
34 justices of the supreme court in January 2021, whichever occurs
35 earlier.

1 2. If the office of chief justice becomes vacant prior to
2 the expiration of the term in January 2021, the office shall be
3 filled for the remainder of the unexpired term as provided for
4 in section 602.4103.
5 3. This section is repealed July 1, 2021.>
6 2. By renumbering as necessary.

HOLT of Crawford