**South Carolina General Assembly**

125th Session, 2023-2024

**H. 4296**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. White, McCabe, A.M. Morgan, T.A. Morgan, Cromer and S. Jones

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**HISTORY OF LEGISLATIVE ACTIONS**

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 4/26/2023 House Member(s) request name added as sponsor: Cromer

 5/11/2023 House Member(s) request name added as sponsor: S. Jones

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**VERSIONS OF THIS BILL**

[04/06/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/4296_20230406.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 1‑23‑510, RELATING TO ELECTION OF ADMINISTRATIVE LAW JUDGES, SO AS TO PROVIDE THESE JUDGES ARE APPOINTED BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE GENERAL ASSEMBLY; BY AMENDING SECTION 14‑3‑10, RELATING TO COMPOSITION OF THE SUPREME COURT AND ELECTION OF JUSTICES, SO AS TO PROVIDE THAT THE JUSTICES ARE APPOINTED BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE GENERAL ASSEMBLY; BY AMENDING SECTION 14‑5‑610, RELATING TO ELECTION OF CIRCUIT COURT JUDGES, SO AS TO PROVIDE THAT THESE JUDGES ARE ELECTED BY THE QUALIFIED ELECTORS OF EACH JUDICIAL CIRCUIT OR FROM THE STATE AT LARGE; BY AMENDING SECTION 14‑8‑20, RELATING TO ELECTION OF MEMBERS OF THE COURT OF APPEALS, SO AS TO PROVIDE THAT THE MEMBERS OF THE COURT ARE APPOINTED BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE GENERAL ASSEMBLY; BY AMENDING SECTION 22‑1‑10, RELATING TO APPOINTMENTs AND TERMs OF MAGISTRATES, SO AS TO PROVIDE THAT MAGISTRATES ARE ELECTED BY THE QUALIFIED ELECTORS OF EACH COUNTY; BY AMENDING SECTION 22‑1‑16, RELATING TO TRIAL OBSERVATION REQUIREMENTs FOR NEW MAGISTRATES WHO ARE NOT ATTORNEYS, SO AS TO MAKE CONFORMING CHANGES; BY AMENDING SECTION 22‑2‑5, RELATING TO ELIGIBILITY EXAMINATIONS FOR MAGISTRATES, SO AS TO MAKE CONFORMING CHANGES; BY AMENDING SECTION 22‑2‑40, RELATING TO the NUMBER AND LOCATION OF MAGISTRATES IN COUNTies, so as to make conforming changes; BY AMENDING SECTION 63‑3‑30, RELATING TO FAMILY COURT JUDGES’ QUALIFICATIONS AND TERMS, SO AS TO PROVIDE THAT THESE JUDGES ARE ELECTED BY THE QUALIFIED ELECTORS OF EACH JUDICIAL CIRCUIT; BY AMENDING SECTION 63‑3‑40, RELATING TO INITIAL ELECTION OF FAMILY COURT JUDGES, SO AS TO MAKE CONFORMING CHANGES; and BY REPEALING Chapter 19 of title 2 relating to the judicial merit selection commission and sections 22‑1‑30, 22‑2‑10, and 22‑2‑15 all RELATING TO THE APPOINTMENT AND SELECTION OF MAGISTRATES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 1‑23‑510 of the S.C. Code is amended to read:

 Section 1‑23‑510. (A) The judges of the division court must be electedappointed by the Governor with the advice and consent of the General Assembly in joint session, for a term of five years and until their successors are elected appointed and qualify; provided, that of those judges initially electedappointed, the chief judge, elected appointed to Seat 1 must be elected appointed for a term of five years, the judge elected appointed to Seat 2 must be elected appointed for a term of three years,

the judge elected appointed to Seat 3 must be elected appointed for a term of one year. The remaining judges of the division court must be elected appointed for terms of office to begin February 1, 1995, for terms of five years and until their successors are elected appointed and qualify; provided, that those judges elected appointed to seats whose terms of office are to begin on February 1, 1995, to Seat 4 must be initially elected appointed for a term of five years, the judge elected appointed to Seat 5 must be initially elected appointed for a term of three years, and the judge elected appointed to Seat 6 must be initially elected appointed for a term of one year. The terms of office of the judges of the division court for Seats 1, 2, and 3 shall begin on March 1, 1994. The terms of office of the judges of the division court for Seats 4, 5, and 6 shall begin on February 1, 1995. The terms of office of each of the seats shall terminate on the thirtieth day of June in the final year of the term for the respective seats.

 (B) In electing appointing administrative law judges, race, gender, and other demographic factors including age, residence, type of practice, and law firm size should be considered to assure nondiscrimination, inclusion, and representation to the greatest extent possible of all segments of the population of this State.

 (C) Before election as an administrative law judge, a candidate must undergo screening pursuant to the provisions of Section 2‑19‑10, et seq.

 (D) Each seat on the division court must be numbered. Elections Appointments are required to be for a specific seat. The office of chief administrative law judge is a separate and distinct office for the purpose of an election.

 (E)(D) In the event that there is a vacancy in the position of the chief administrative law judge or for any reason the chief administrative law judge is unable to act, his powers and functions must be exercised by the most senior administrative law judge as determined by the date of their election appointment to the divisioncourt.

SECTION 2. Section 14‑3‑10 of the S.C. Code is amended to read:

 Section 14‑3‑10. The Supreme Court shall consist of a Chief Justice and four associate justices, who shall be elected by a joint viva voce voteappointed by the Governor with the advice and consent of the General Assembly for a term of ten years and shall continue in office until their successors are elected and qualified. They shall be so classified that one of them shall go out of office every two years. The successors of the Chief Justice and associate justices shall each be elected at the session of the General Assembly next preceding the expiration of their respective terms. The time for the commencement of their terms of office shall be the first day of August after their electionappointment.

SECTION 3. Section 14‑5‑610(B) and (C) of the S.C. Code is amended to read:

 (B) One judge must be elected by the qualified electors of from the sixth and twelfth circuits. Two judges must be elected by the qualified electors of from the first, second, third, fourth, seventh, eighth, tenth, eleventh, and sixteenth circuits. Three judges must be elected by the qualified electors of from the fifth, fourteenth, and fifteenth circuits. Four judges must be elected by the qualified electors offrom the ninth and thirteenth circuits.

 (C) In addition to the above judges authorized by this section, there must be sixteen additional circuit judges elected by the General Assembly fromby the qualified electors of the State at large for terms of office of six years. These additional judges must be elected without regard to county or circuit of residence. Each office of the at‑large judges is a separate office and is assigned numerical designations of Seat No. 1 through Seat No. 16, respectively.

SECTION 4. Section 14‑8‑20 of the S.C. Code is amended to read:

 Section 14‑8‑20. (a) The members of the Court shall be elected by joint public voteappointed by the Governor with the advice and consent of the General Assembly for a term of six years and until their successors are elected appointed and qualify; provided, however, that of those judges initially electedappointed, the Chief Judge (Seat 5) and the judge elected appointed to Seat 6 shall be elected appointed for terms of six years each, the judges elected appointed to Seats 3 and 4 shall be elected appointed for terms of four years each, and the judges elected appointed to Seats 1 and 2 shall be elected appointed for terms of two years each. The terms of office of the judges of the Court shall begin on July 1, 1985. Prior to such date, the General Assembly shall have authority to take such measures as necessary to secure accommodations, personnel, supplies, and equipment and such other matters as may be necessary to effect full implementation of the Court for operation by such date.

 (b) Each seat on the Court shall be numbered. Candidates shall be required to file for a specific seat. Seat five shall be designated as the office of Chief Judge and shall be a separate and distinct office for the purpose of an election.

 (c) In any contested election, the vote of each member of the General Assembly present and voting shall be recorded; provided, that the provisions of Chapter 19 of Title 2 shall be followed in the course of electing the members of the Court.

SECTION 5. Section 22‑1‑10 of the S.C. Code is amended to read:

 Section 22‑1‑10. (A) The Governor, by and with the advice and consent of the Senate, may appoint Magistrates in each county of the State shall be elected by the qualified electors of each county for a

term of four years and until their successors are appointed elected and qualified, or their positions are terminated as provided in subsection (B), Section 22‑1‑30, or Section 22‑2‑40.

 Magistrates serving the counties of Abbeville, Allendale, Bamberg, Beaufort, Calhoun, Cherokee, Chesterfield, Clarendon, Colleton, Dillon, Edgefield, Florence, Greenville, Hampton, Jasper, Lancaster, Lee, Marion, McCormick, Oconee, Pickens, Saluda, Sumter, and Williamsburg shall serve terms of four years commencing May 1, 1990. Magistrates serving the counties of Aiken, Anderson, Barnwell, Berkeley, Charleston, Chester, Darlington, Dorchester, Fairfield, Georgetown, Greenwood, Horry, Kershaw, Laurens, Lexington, Marlboro, Newberry, Orangeburg, Richland, Spartanburg, Union, and York shall serve terms of four years commencing May 1, 1991.

 At least ninety days before the date of the commencement of the terms provided in the preceding paragraph and every four years thereafter, each county governing body must inform, in writing, the Senators representing that county of the number of full‑time and part‑time magistrate positions available in the county, the number of work hours required by each position, the compensation for each position, and the area of the county to which each position is assigned. If the county governing body fails to inform, in writing, the Senators representing that county of the information as required in this section, then the compensation, hours, and location of the full‑time and part‑time magistrate positions available in the county remain as designated for the previous four years.

 Each magistrate's number of work hours, compensation, and work location must remain the same throughout the term of office, except for a change (1) specifically allowed by statute or (2) authorized by the county governing body at least four years after the magistrate's most recent appointment election and after a material change in conditions has occurred which warrants the change. Nothing provided in this section prohibits the raising of compensation or hours and compensation during a term of office. No magistrate may be paid for work not performed except for bona fide illness or as otherwise provided by law.

 The number of magistrates to be appointed elected for each county and their territorial jurisdiction are as prescribed by law before March 2, 1897, for trial justices in the respective counties of the State, except as otherwise provided in this section.

 (B)(1) No person is eligible to hold the office of magistrate who is not at the time of his appointment election a citizen of the United States and of this State, and who has not been a resident of this State for at least five years, has not attained the age of twenty‑one years upon his appointmentelection, and has not received a high school diploma or its equivalent educational training as recognized by the State Department of Education.

 (2) Notwithstanding the educational qualifications required in item (1):

 (a) On and after July 1, 2001, no person is eligible for an initial appointment election to hold the office of magistrate who (i) is not at the time of his appointment election a citizen of the United States and of this State, (ii) has not been a resident of this State for at least five years, (iii) has not

attained the age of twenty‑one years upon his appointmentelection, and (iv) has not received a two‑year associate degree.

 (b) On and after July 1, 2005, no person is eligible for an initial appointment election to hold the office of magistrate who (i) is not at the time of his appointment election a citizen of the United States and of this State, (ii) has not been a resident of this State for at least five years, (iii) has not attained the age of twenty‑one years upon his appointmentelection, and (iv) has not received a four‑year baccalaureate degree.

 (C) Notwithstanding any other provision of law relating to the terms and qualifications of magistrates:

 (1) All magistrates shall complete a training program or pass certification or recertification examinations, or both, pursuant to standards established by the Supreme Court of South Carolina. The examination must be offered at least three times each year.

 (a) Magistrates appointed elected for the first time on or after the effective date of this act shall complete the training program and pass the certification examination within one year after taking office, or before April 30, 1995, whichever is later.

 (b) Magistrates serving the counties of Abbeville, Allendale, Bamberg, Beaufort, Calhoun, Cherokee, Chesterfield, Clarendon, Colleton, Dillon, Edgefield, Florence, Greenville, Hampton, Jasper, Lancaster, Lee, Marion, McCormick, Oconee, Pickens, Saluda, Sumter, and Williamsburg, as of the effective date of this act, shall pass a certification examination before April 30, 1995.

 (c) Magistrates serving the counties of Aiken, Anderson, Barnwell, Berkeley, Charleston, Chester, Darlington, Dorchester, Fairfield, Georgetown, Greenwood, Horry, Kershaw, Laurens, Lexington, Marlboro, Newberry, Orangeburg, Richland, Spartanburg, Union, and York, as of the effective date of this section, shall pass a certification examination before April 30, 1996.

 (d) Every magistrate shall pass a recertification examination within eight years after passing the initial certification examination, and at least once every eight years thereafter.

 (2) If any magistrate does not comply with these training or examination requirements, his office is declared vacant on the date the time expires, or when he is notified, as provided in subsection (D), whichever is earlier.

 (D) Upon written notification of the Supreme Court or its designee to the affected magistrate and the Governor of the failure of the magistrate to complete the training program or pass the certification examination required pursuant to subsection (C), the magistrate’s office is declared vacant, the magistrate does not hold over, and the Governor shall appoint a successor in the manner provided by law; however, the Governor shall not reappoint the current magistrate who failed to complete the training program or pass the certification examination required pursuant to subsection (C) to a new term or to fill the vacancy in the existing term.

SECTION 6. Section 22‑1‑16 of the S.C. Code is amended to read:

 Section 22‑1‑16. (A) A magistrate whose initial appointment election begins on or after July 1, 2001, and who is not an attorney licensed in this State at the time of his initial appointment election may not try a case until a certificate is filed with the Clerk of the Supreme Court stating that the magistrate has observed ten trials. The certificate must state the name of the proceeding, the dates and the tribunals involved, and must be attested to by the judge conducting the proceeding.

 (B) The required trial experiences must include the following:

 (1) four criminal cases in a magistrates court, two of which must be in a magistrates court where he will not preside;

 (2) four civil cases in a magistrates court, two of which must be in a magistrates court where he will not preside;

 (3) one criminal jury trial in circuit court; and

 (4) one civil jury trial in circuit court.

 (C) The trial observations may be undertaken and completed any time after a person has been nominated by the senatorial delegation filed any necessary paperwork and paid any necessary fees to become a candidate for the position of magistrate.

SECTION 7. Section 22‑2‑5 of the S.C. Code is amended to read:

 Section 22‑2‑5. (A) The South Carolina Court Administration, in cooperation with the technical college system, shall select and administer an eligibility examination to test basic skills of persons seeking an initial appointmentelection to office as magistrate on or after July 1, 2001. In determining the persons to be recommended to the Governor for initial appointments as magistrates on or after July 1, 2001, a senatorial delegation must use the results of these eligibility examinations to assist in its selection of nominees. No person is eligible to be appointed as a candidate for election to the office of magistrate unless he receives a passing score on the eligibility examination. The results of these eligibility examinations are valid for six months before and six months after the time the appointment is to be madeof the election.

 (B) The court administration shall establish guidelines for exempting persons from taking the examination if certain prescribed educational equivalency requirements have been met.

 (C) The court administration, in cooperation with the technical college system, shall develop an optional examination preparatory course. The technical college system may assess a reasonable fee from each participant who takes the examination or the preparatory course in order to pay for administering the examination and course. The planning and development of the eligibility

examination and optional examination preparatory course shall begin on or after July 1, 2000.

SECTION 8. Section 22‑2‑40 of the S.C. Code is amended to read:

 Section 22‑2‑40. (A) The General Assembly shall provide for the number and location of magistrates in each county. The provisions of this chapter shall not be construed to prevent more than one magistrate from being assigned to the same jury area.

 (B) In each county, one or more magistrates may be designated by the Governor with the advice and consent of the Senateelected by the qualified electors of the county as ministerial magistrates for the purpose of carrying out the following responsibilities:

 (1) to issue criminal warrants;

 (2) to approve and accept written bonds in criminal matters, or in lieu of written bonds to approve and accept cash bonds;

 (3) to order the release of prisoners when proper and adequate bonds have been duly posted; and

 (4) to transfer any such warrant and written or cash bond to a magistrate having proper jurisdiction.

 Ministerial magistrates shall be available at nighttime and on weekends during such hours as may be designated by the chief magistrate.

 (C) Notwithstanding the provisions of subsection (A), Section 22‑1‑10(A), or Section 22‑8‑40(C) and (D), the number, location, and full‑time or part‑time status of magistrates in the county may be increased or decreased from the required and permissive provisions in Section 22‑8‑40(C) and (D) as provided in Section 22‑1‑30(B), or by filing with court administration a written agreement between the members of the Senate delegation for the county and the county governing body; however, a magistrate's compensation must not be decreased during his term in office.

SECTION 9. Section 63‑3‑30 of the S.C. Code is amended to read:

 Section 63‑3‑30. (A)(1) No person shall be eligible to the office of family court judge who is not at the time of his assuming the duties of such office a citizen of the United States and of this State, and has not attained the age of thirty‑two years, has not been a licensed attorney at law for at least eight years, and has not been a resident of this State for five years next preceding his election, and is not a resident of the circuit wherein the family court of which he is a judge is located. Notwithstanding any other provision of law, any former member of the General Assembly may be elected to the office of family court judge.

 (2) Any family court judge serving in office on the effective date of the provisions of this section requiring a family court judge to be at least thirty‑two years of age and to have at least eight years of

service as a licensed attorney at law who is not of that age or who has not been licensed for this

required period of time may continue to serve for the remainder of his current term and is considered to have the requisite age and years of service as a licensed attorney at law for purposes of future re‑elections to the office of family court judge.

 (B) Family court judges must be elected by the General Assemblythe qualified electors of each judicial circuit for terms of six years and until their successors are elected and qualify.

 (C) The terms of all family court judges expire on the thirtieth day of June of the year in which their terms are scheduled to expire.

 (D) For the purpose of electing family court judges, if more than one judge is to be elected from a circuit, each judgeship in that circuit shall be serially numbered beginning with the number (1) and the General Assemblyqualified electors of that circuit shall elect a judge for each such judgeship. Any candidate for the office of family court judge in a circuit shall specifically file and run for a serially numbered judgeship in that circuit.

 (E) When a vacancy occurs for an unexpired term in an office of family court judge, the Governor, upon recommendation of the Chief Justice, shall commission a temporary family court judge to fill such vacancy until such time as the General Assemblyqualified electors of the circuit shall elect a successor who shall serve for the remainder of the unexpired term. Such temporary family court judge shall receive as compensation for his services the salary paid to a regular family court judge and in addition thereto shall also receive the subsistence and mileage as authorized by law for family court judges.

SECTION 10. Section 63‑3‑40 of the S.C. Code is amended to read:

 Section 63‑3‑40. (A) The General Assemblyqualified electors of each judicial circuit shall elect a number of family court judges from each judicial circuit as follows:

|  |  |  |
| --- | --- | --- |
| 25 | First Circuit | Four Judges |
| 26 | Second Circuit | Two Judges |
| 27 | Third Circuit | Three Judges |
| 28 | Fourth Circuit | Three Judges |
| 29 | Fifth Circuit | Four Judges |
| 30 | Sixth Circuit | Two Judges |
| 31 | Seventh Circuit | Four Judges |
| 32 | Eighth Circuit | Three Judges |
| 33 | Ninth Circuit | Six Judges |
| 34 | Tenth Circuit | Three Judges |
| 35 | Eleventh Circuit | Three Judges |
| 36 | Twelfth Circuit | Three Judges |

|  |  |  |
| --- | --- | --- |
| 1 | Thirteenth Circuit | Six Judges |
| 2 | Fourteenth Circuit | Three Judges |
| 3 | Fifteenth Circuit | Three Judges |
| 4 | Sixteenth Circuit | Three Judges. |

 (B) In the following judicial circuits at least one family court judge must be a resident of each county in the circuit: fifth, seventh, tenth, twelfth, thirteenth, fifteenth, and sixteenth. In those judicial circuits made up of three or more counties, at least one family court judge must be a resident of one of the counties which does not have the largest population in the circuit. In the ninth circuit, both counties in the circuit must have at least two resident family court judges.

 (C) No county in the sixth circuit shall have more than one resident family court judge.

 (D) In addition to the judges authorized by this section, there must be eight additional family court judges elected by the General Assembly fromqualified electors of the State at large for terms of office of six years. These additional judges must be elected without regard to county or circuit of residence. Each office of the at‑large judges is a separate office and is assigned numerical designations of Seat No. 1 through Seat No. 8, respectively.

SECTION 11. Chapter 19, Title 2, and Sections 22‑1‑30, 22‑2‑10, and 22‑2‑15 of the S.C. Code are repealed.

SECTION 12. This act takes effect upon approval by the Governor.

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