**South Carolina General Assembly**

125th Session, 2023-2024

**S. 99**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Campsen and Kimbrell

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Introduced in the Senate on January 10, 2023

Currently residing in the Senate

Summary: Judicial candidates, pledges and election

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 11/30/2022 Senate Prefiled

 11/30/2022 Senate Referred to Committee on **Judiciary**

 1/10/2023 Senate Introduced and read first time (Senate Journal‑page 59)

 1/10/2023 Senate Referred to Committee on **Judiciary** (Senate Journal‑page 59)

 1/16/2024 Senate Referred to Subcommittee: Talley (ch), Malloy,
 Campsen, Sabb, Senn

 2/28/2024 Senate Committee report: Favorable with amendment **Judiciary** (Senate Journal‑page 12)

 3/1/2024 Scrivener's error corrected

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**VERSIONS OF THIS BILL**

[12/01/2022](https://www.scstatehouse.gov/sess125_2023-2024/prever/99_20221201.docx)

[02/28/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/99_20240228.docx)

[03/01/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/99_20240301.docx)

Indicates Matter Stricken

Indicates New Matter

Committee Report

February 28, 2024

S. 99

Introduced by Senators Campsen and Kimbrell

S. Printed 02/28/24--S. [SEC 3/1/2024 10:58 AM]

Read the first time January 10, 2023

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The committee on Senate Judiciary

To whom was referred a Bill (S. 99) to amend the South Carolina Code of Laws by amending Section 2‑19‑70, relating to judicial candidates seeking pledges from members of the General Assembly, so as, etc., respectfully

Report:

That they have duly and carefully considered the same, and recommend that the same do pass with amendment:

 Amend the bill, as and if amended, by adding appropriately numbered SECTIONS to read:

SECTION X. Section 2-19-10(D) of the S.C. Code is amended to read:

 (D) The term of office of a member of the commission who is not a member of the General Assembly shall be for four years subject to a right of removal at any time by the person appointing him, and until his successor is appointed and qualifies. A member of the commission who is a serving member of the General Assembly shall serve for the term of office to which he has been elected.Beginning in 2025, the members appointed to the commission shall serve no more than two nonconsecutive four-year terms provided that a period of four years separates each term.

SECTION X. Section 2-19-20 of the S.C. Code is amended to read:

 Section 2-19-20. (A) It is the responsibility of the Judicial Merit Selection Commission to determine when judicial vacancies are to occur in the administrative law judge division court and on the family court, circuit court, court of appeals, or Supreme Court and to expeditiously investigate in advance the qualifications of those who seek nomination. For purposes of this chapter, a vacancy is created in the administrative law judge division court or on the family court, circuit court, court of appeals, or Supreme Court when any of the following occurs: a term expires; a new judicial position is created; or a judge can no longer serve due to resignation, retirement, disciplinary action, disability, or death.

 (B) The commission, upon receiving notice of a judicial vacancy, ascertaining that a judicial vacancy shall occur, or receiving the decision of an incumbent judge regarding his seeking re-election, shall notify the Supreme Court of the vacancy for publication in the advance sheets provided by the Clerk of the Supreme Court at least thirty days prior to closing applications for the vacancy. The commission shall, if practicable, also notify the South Carolina Bar, other professional legal organizations it considers appropriate, and each newspaper of this State with daily circulation of the vacancy at least thirty days prior to closing applications for the vacancy. This notice must include, but not be limited to, the judicial office in which the vacancy occurs, the address to which, and the date by which interested candidates may apply.

 (C) The Judicial Merit Selection Commission shall announce and publicize vacancies and forthcoming vacancies in the administrative law judge division court, on the family court, circuit court, court of appeals, and Supreme Court. A person who desires to be considered for nomination as justice or judge may make application to the commission. No Except for candidates for an at-large circuit court judge position, no person may concurrently seek more than one judicial vacancy. A candidate for an at-large circuit court position does not designate a particular seat but is considered for all at-large circuit court positions available. The commission shall announce the names of all those persons who have applied for all available judicial positions.

 (D) Any person wishing to seek a judicial office, which is elected by the General Assembly, shall file a notice of intention to seek the office with the Judicial Merit Selection Commission. Upon receipt of the notice of intention, the commission shall begin to conduct the investigation of the candidate as it considers appropriate and may in the investigation utilize the services of any agency of state government. This agency shall, upon request, cooperate fully with the commission.After filing a notice of intention, the Judicial Merit Selection Commission shall provide the candidate with an application package that must be returned to the commission by the deadline in order for the candidate to be considered for a judicial position.

SECTION X. Chapter 19, Title 2 of the S.C. Code is amended by adding:

 Section 2-19-23.  (A) Within two business days after the deadline for receiving the candidates’ application packages, the Judicial Merit Selection Commission must send to the Governor to review and evaluate the packages of all candidates except incumbent justice or judge candidates seeking re-election.

 (B) Upon receiving the application packages, the Governor is authorized to investigate and obtain information relative to any candidate for an administrative law judgeship or a family court, circuit court, court of appeals, or Supreme Court judgeship from any state agency or other group including, but not limited to, court administration and any law enforcement agency, to the extent permitted by law. The agencies shall, upon request, cooperate fully with the Governor.

 (C) To aid in the investigation of candidates, the Governor may appoint an Advisory Council on Judicial Selection. In making appointments to the council, the Governor is encouraged to consider:

 (1) race, gender, national origin, and other demographic factors to ensure nondiscrimination to the greatest extent possible as to all segments of the population of the State;

 (2) experience with or understanding of the state judicial system, including the Supreme Court, court of appeals, circuit court, family court, master-in-equity, and administrative law court;

 (3) representatives from each of the judicial circuits;

 (4) recommendations from:

 (a) the Chief Justice of the South Carolina Supreme Court;

 (b) the South Carolina Association of Justice;

 (c) the South Carolina Defense Trial Lawyers Association;

 (d) the South Carolina Public Defenders Association;

 (e) the South Carolina Prosecution Coordination Commission; and

 (f) the South Carolina Chapter of the American Academy of Matrimonial Lawyers.

 (D) Investigations and consideration of the Governor and the Advisory Council on Judicial Selection should include, but are not limited to, the following areas:

 (1) constitutional qualifications;

 (2) ethical fitness;

 (3) professional and academic ability;

 (4) character;

 (5) reputation;

 (6) physical health;

 (7) mental stability;

 (8) experience; and

 (9) judicial temperament.

 (E) In making recommendations concerning the candidates, race, gender, national origin, and other demographic factors should be considered by the Governor and the Advisory Council on Judicial Selection to ensure nondiscrimination to the greatest extent possible as to all segments of the population of the State.

 (F) After receipt of the candidates’ application packages, the Governor has forty-five days to consider the candidates’ qualifications and to send to the Judicial Merit Selection Commission a report recommending up to five candidates for each judicial position. In his report, the Governor may recommend or not recommend a candidate for a judicial position.

 (G)(1) If, within the forty-five day period, the Governor recommends less than five candidates for a judicial position, he must indicate the reason for returning fewer than five candidates. If the Governor does not recommend a candidate for a judicial position, he must include that information in his report to the Judicial Merit Selection Commission.

 (2) If, within the forty-five day period, the Governor makes no recommendations for a particular judicial position, all the candidates for that position must be considered by the Judicial Merit Selection Commission.

SECTION X. Section 2-19-25 of the S.C. Code is amended to read:

 Section 2-19-25. TheUpon receipt of the Governor’s recommendations, the Judicial Merit Selection Commission is authorized to investigate and obtain information relative to any candidate for an administrative law judgeship or a family court, circuit court, court of appeals, or Supreme Court judgeship from any state agency or other group including, but not limited to, court administration and any law enforcement agency, to the extent permitted by law. The agencies shall, upon request, cooperate fully with the commission. The chairman of the commission shall notify the President of the South Carolina Bar of the judgeships to be filled and of the candidates for those judgeships no later than four weeks before the scheduled date for the public hearing. The chairman of the commission shall also request the South Carolina Bar to offer the commission an assessment of each candidate's qualifications for the judgeship sought, and the date by which the assessment must be returned to the commission. This assessment must specify the bar's finding as to whether each candidate is qualified or unqualified for the judgeship sought and the reasons for that finding. The commission may receive the bar's assessment in that form and at that time it desires but shall attach the assessments to its findings of fact in such form as the commission considers appropriate. Failure of the bar to return the assessment by the date requested is not a ground for delaying the applicable hearings or election.

 The commission may utilize anonymous surveys from the membership of the South Carolina Bar and the Clerks of Court concerning each candidate. The commission must not find a candidate qualified or unqualified solely on the basis of anonymous surveys. Anonymous surveys must be used to indicate a pattern of actions by a candidate.

SECTION X. Chapter 19, Title 2 of the S.C. Code is amended by adding:

 Section 2-19-27. (A) Investigations and findings concerning an incumbent justice or judge candidate seeking re-election are conducted only by the Judicial Merit Selection Commission.

 (B) If an incumbent justice or judge is found unqualified and other candidates for the incumbent justice or judge’s position have been found qualified, an election may be held for the qualified candidates. If the incumbent justice or judge found unqualified is the only candidate for the position, the provisions of Section 2-19-80(C) apply.

Amend the bill further, by striking SECTION 2 and inserting:

SECTION X. Section 2-19-80 of the S.C. Code is amended to read:

 Section 2-19-80. (A) The commission shall make nominations to the General Assembly of candidates and their qualifications for election to the Supreme Court, court of appeals, circuit court, family court, and the administrative law judge divisioncourt. It shall review the qualifications of all applicantscandidates recommended by the Governor for a judicial office and, if the Governor makes no recommendations for a judicial position, all the candidates for that position. select therefrom and The commission shall submit to the General Assembly the names and qualifications of the threeup to five candidates whom it considers bestfinds qualified for the judicial office under consideration. If fewer than threefive persons apply to fill a vacancy or if the commission concludes there are fewer than threefive candidates qualified for a vacancy, it shall submit to the General Assembly only the names and qualifications of those who are considered to be qualified, with a written explanation for submitting fewer than threefive names.

 (B) The nominations of the commission for any judgeship are binding on the General Assembly, and it shall not elect a person not nominated by the commission. Nothing shall prevent the General Assembly from rejecting all persons nominated. In this event, the commission shall submit another group of names and qualifications for that position. Further nominations in the manner required by this chapter must be made until the office is filled.

 (C)(1) If the commission does not find the incumbent justice or judge qualified for the judicial office held and sought, his name shall not be submitted to the General Assembly for re-election and upon expiration of his then current term of office, he shall cease serving in that judicial position.

 (2) If the commission finds an incumbent judge not qualified for the office sought, or if an incumbent judge dies, withdraws, or becomes otherwise disqualified for the office sought between the time he makes application for the office and the date of the election therefor, the election for the office may not be held at that scheduled time, and the commission shall proceed in accordance with the provisions of this chapter to make other nominations for the office as though a new vacancy without an incumbent exists in that office, including reopening the application process with all required notices. Nothing prevents the commission from including in its new nominations the names and qualifications of persons other than the incumbent judge it included in its previous nominations.

 (3) If the commission finds unqualified all the candidates recommended by the Governor for a judicial position, the election for the office may not be held at that scheduled time, and the commission shall proceed in accordance with the provisions of this chapter to reopen the application process with all required notices.

 (D) The commission shall accompany its nominations to the General Assembly with reports or recommendations as to the qualifications of particular candidates.

 (E) A period of at least two weekstwenty-two days must elapse between the date of the commission's initial report of nominations to the General Assembly and the date the General Assembly conducts the election for these judgeships.

SECTION X. Section 2-19-90 of the S.C. Code is amended to read:

 Section 2-19-90. The General Assembly shall meet in joint session for the election of judges. The date and time for the joint session shall be set by concurrent resolution upon the recommendation of the Judicial Merit Selection Commission. The Chairman of the Judicial Merit Selection Commission shall announce the commission's nominees for each judicial race, and no further nominating or seconding speeches shall be allowed by members of the General Assembly. In order to be elected, a candidate must receive a majority of the vote of the members of the General AssemblyHouse of Representatives and a majority vote of the members of the Senate voting in joint session.

SECTION X. The provisions of this act are declared by the General Assembly to be nonseverable, and if any portion of this act is declared by a court of competent jurisdiction to be invalid, unconstitutional, unenforceable, or unlawful, the remaining provisions are declared to be null and void.

SECTION 3. This act takes effect January 1, 2025, and is applicable to judicial screenings starting after January 1, 2025.

Renumber sections to conform.

Amend title to conform.

LUKE RANKIN for Committee.

statement of estimated fiscal impact

Explanation of Fiscal Impact

State Expenditure

This bill specifies that no person may directly or indirectly seek the pledge of a General Assembly member’s vote for any judicial office until the qualifications of all candidates for that office have been determined. Currently, the restriction only applies to the candidate. This bill also changes the time periods required between release of JMSC reports and election of the judges. Currently, the formal release of JMSC’s report may be no sooner than forty-eight hours after the nominees have been initially released to the General Assembly. The bill changes this to no sooner than noon on the twelfth day after the nominees have been initially released to the General Assembly. Further, the waiting period between the initial release of the commission’s report to the General Assembly and the date the General Assembly elects the judges is extended from two weeks to twenty-two days.

Violations of these provision are reported to the House or Senate Ethics Committee, or the State Ethics Commission. Upon conviction, the violation is a misdemeanor, subject to a fine of no more than $1,000 or imprisonment of no more than ninety days.

State Ethics Commission. Based on previous responses to similar legislation, we anticipate any additional violations due to this bill can be managed within existing resources by the State Ethics Commission and, therefore, will have no expenditure impact for the commission.

Judicial. Violations of seeking the pledge of a General Assembly member’s vote prior to the qualification of all candidates for that office have been determined are tried in general sessions court. Judicial anticipates any increase in the caseload of general sessions court can be managed with existing staff and within existing appropriations and, therefore, will have no expenditure impact for Judicial.

House of Representatives and Senate. This bill extends the time-period between the initial release of JMSC’s release of the nominees to the General Assembly and the formal release of the report and the minimum time-period between the initial release of the report and the date the General Assembly elects the judges.

This bill may impact the timing of the judicial elections within the General Assembly. However, both the House and the Senate anticipate that this will have no expenditure impact for the bodies as electing judges is within the normal course of business for the General Assembly.

State Revenue

This bill expands who may not seek the pledge of General Assembly member’s vote for any judicial office to include any person, not just the candidate. This expansion may increase the number of violations, which, upon conviction, are subject to a fine of not more than $1,000 or imprisonment. Court fines and fees are distributed to the General Fund, Other Funds, and local funds. Therefore, we anticipate this bill may result in an undetermined increase in General Fund and Other Funds revenue from fines and fees collections in court.

Local Expenditure

This bill may result in an undetermined increase in local expenditures due to the possible increase in the local jail population for additional convictions and imprisonments for violations of the provisions as noted above.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

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A bill

to amend the South Carolina Code of Laws by amending Section 2‑19‑70, relating to JUDICIAL CANDIDATES SEEKING PLEDGES FROM MEMBERS OF THE GENERAL ASSEMBLY, so as to PROVIDE THAT PLEDGES FOR JUDICIAL CANDIDATES MAY NOT BE DIRECTLY OR INDIRECTLY SOUGHT OR GIVEN UNTIL TWELVE DAYS AFTER THE INITIAL RELEASE OF THE REPORT CONCERNING NOMINEES TO MEMBERS OF THE GENERAL ASSEMBLY; and by amending Section 2‑19‑80, relating to THE NOMINATION OF QUALIFIED CANDIDATES TO THE GENERAL ASSEMBLY, so as to PROVIDE THAT A PERIOD OF AT LEAST TWENTY‑TWO DAYS MUST ELAPSE BETWEEN THE DATE OF THE JUDICIAL MERIT SELECTION COMMISSION’S INITIAL REPORT OF NOMINATIONS TO THE GENERAL ASSEMBLY AND THE DATE THE GENERAL ASSEMBLY CONDUCTS THE ELECTION FOR THESE JUDGESHIPS.

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

SECTION 1. Section 2‑19‑70(C) of the S.C. Code is amended to read:

 (C) No candidate for judicial office A person may not seek directly or indirectly seek the pledge of a member of the General Assembly’s vote or, directly or indirectly, contact a member of the General Assembly regarding screening for the any judicial office until the qualifications of all candidates for that office have been determined by the Judicial Merit Selection Commission and the commission has formally released its report as to the qualifications of all candidates for the vacancy to the General Assembly. No A member of the General Assembly may not directly or indirectly offer his pledge until the qualifications of all candidates for that office have been determined by the Judicial Merit Selection Commission and until the commission has formally released its report as to the qualifications of its nominees to the General Assembly. The formal release of the report of qualifications shall occur no earlier than forty~~‑~~eight hours noon on the twelfth day after the nominees have been initially released to members of the General Assembly. For purposes of this section, indirectly seeking a pledge means the a person, a candidate, or someone acting on behalf of and at the request of the person or candidate, requesting a person someone to contact a member of the General Assembly on behalf of the person or a candidate before nominations for that office are formally made by the commission. The prohibitions of this section do not extend to an announcement of candidacy by the candidate and statements by the candidate detailing the candidate’s qualifications.

SECTION 2. Section 2‑19‑80(E) of the S.C. Code is amended to read:

 (E) A period of at least two weeks twenty‑two days must elapse between the date of the commission’s initial report of nominations to the General Assembly and the date the General Assembly conducts the election for these judgeships.

SECTION 3. This act takes effect and applies to elections taking place after July 1, 2023.

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