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**S. 216**

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Summary: Judicial Merit Selection Commission

**HISTORY OF LEGISLATIVE ACTIONS**

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**VERSIONS OF THIS BILL**

[12/17/2008](file:///p:\pprever\2009-10\216_20081217.docx)

**A** **BILL**

TO AMEND SECTIONS 2‑19‑10, 2‑19‑20, 2‑19‑25, 2‑19‑30, AS AMENDED, 2‑19‑35, 2‑19‑70, 2‑19‑80, CODE OF LAWS OF SOUTH CAROLINA, 1976, ALL RELATING TO THE JUDICIAL MERIT SELECTION COMMISSION AND THE PROCEDURES AND REQUIREMENTS FOR ELECTING PERSONS TO JUDICIAL OFFICES OF THIS STATE, SO AS TO FURTHER PROVIDE FOR THESE PROCEDURES AND REQUIREMENTS INCLUDING SITUATIONS WHERE MORE THAN THREE CANDIDATES MAY BE NOMINATED FOR ELECTION TO A PARTICULAR JUDICIAL OFFICE; AND TO AMEND SECTION 20‑7‑1370, AS AMENDED, RELATING TO THE QUALIFICATIONS FOR ELECTION TO THE OFFICE OF FAMILY COURT JUDGE, SO AS TO REQUIRE A CANDIDATE TO HAVE BEEN A RESIDENT OF THE CIRCUIT WHERE THE FAMILY COURT IS LOCATED FOR AT LEAST ONE YEAR PRECEDING HIS ELECTION.

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

SECTION 1. Section 2‑19‑10(G) of the 1976 Code is amended to read:

“(G) No member of the Judicial Merit Selection Commission is eligible ~~for nomination and appointment~~ to seek judicial office as a judge or justice of the state court system or administrative law judge division while serving on the commission and for a period of one year thereafter.”

SECTION 2. Section 2‑19‑20 of the 1976 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~~ will 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~~ judicial office. 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:

(1) a term expires;

(2) a new judicial position is created; or

(3) 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~~ will 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 also shall~~, if practicable, also~~ notify the South Carolina Bar, if practicable, 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 person may concurrently seek more than one judicial vacancy. The commission shall announce the names of those persons who have applied.

(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 may utilize the services of any agency of state government. ~~This~~ Upon request, the agency shall~~, upon request,~~ cooperate fully with the commission.”

SECTION 3. Section 2‑19‑25 of the 1976 Code is amended to read:

“Section 2‑19‑25. The Judicial Merit Selection Commission is authorized to investigate and obtain information relative to any candidate for an administrative law ~~judgeship or a~~ court, 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 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 shall 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~~ a form ~~as~~ that 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.”

SECTION 4. Section 2‑19‑30 of the 1976 Code, as last amended by Act 219 of 2008, is further amended to read:

“Section 2‑19‑30. (A) Upon completion of the investigation, the Chairman of the Judicial Merit Selection Commission shall schedule a public hearing concerning the qualifications of the candidates. Any person who desires to testify at the hearing, including candidates, shall furnish a written statement of his proposed testimony to the commission. The statements must be furnished no later than forty‑eight hours before the date and time set for the hearing. The commission shall determine the persons ~~who shall~~ to testify at the hearing. All testimony, including documents furnished to the commission, must be submitted under oath and persons knowingly furnishing false information either orally or in writing are subject to the penalties provided by law for perjury and false swearing.

(B) During the course of the investigation, the commission may schedule an executive session at which each candidate, and other persons whom the commission wishes to interview, may be interviewed by the commission on matters pertinent to the candidate’s qualification for the office to be filled.

(C) ~~A~~ After a reasonable time ~~thereafter~~, the commission shall render its tentative findings as to whether the candidate is qualified for the office to be filled and its reasons ~~therefor~~ for the findings as to each candidate.

(D) As soon as possible after the completion of the hearing, a verbatim copy of the testimony, documents submitted at the hearing, and findings of fact must be transcribed and published or otherwise made available in a reasonable number of copies to the members of both houses prior to the date of the scheduled election, and a copy ~~thereof shall~~ must be furnished to each candidate and anyone else upon request. A charge for these copies may be made as authorized in the Freedom of Information Act.

(E) A candidate may withdraw at any stage of the proceedings and in this event no further inquiry or consideration of his candidacy shall be made. All materials concerning that candidate including his report, transcript, application, materials, and other information gathered during the commission’s investigation must be kept confidential and destroyed as soon as possible after the candidate’s written notification to the commission of his withdrawal. The information concerning a withdrawn candidate also ~~shall be~~ is exempt from disclosure pursuant to Chapter 4 of Title 30.”

SECTION 5. Section 2‑19‑35 of the 1976 Code is amended to read:

“Section 2‑19‑35. (A) The responsibility of the Judicial Merit Selection Commission is to investigate and consider the qualifications of the candidates for judicial office in the administrative law ~~judge division~~ court or on the family court, circuit court, court of appeals, or Supreme Court. Investigations and consideration of the commission 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.

(B) In making nominations, race, gender, national origin, and other demographic factors should be considered by the commission to ensure nondiscrimination to the greatest extent possible as to all segments of the population of the State.”

SECTION 6. Section 2‑19‑70 of the 1976 Code is amended to read:

“Section 2‑19‑70. (A) ~~No~~ A member of the General Assembly may not be elected to a judicial office while he is serving in the General Assembly nor shall that person be elected to a judicial office for a period of one year after he either:

(1) ceases to be a member of the General Assembly; or

(2) fails to file for election to the General Assembly in accordance with Section 7‑11‑15.

(B) The privilege of the floor in either house of the General Assembly ~~may~~ must not be granted to any candidate or any immediate family member of a candidate unless the family member is serving in the General Assembly, during the time the candidate’s:

(1) application is pending before the commission and during the time his nomination is pending;

(2) determination of qualification by the commission for election to a particular judicial office is pending before the commission; or

(3) election is pending in the General Assembly.

(C)(1) ~~No~~ A person who plans to seek judicial office or a candidate for judicial office ~~may~~ must not:

(a) seek, directly or indirectly, the pledge of a member of the General Assembly’s vote; or~~,~~

(b) contact, directly or indirectly, ~~contact~~ a member of the General Assembly regarding screening for the 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.

(2) ~~No~~ A member of the General Assembly ~~may~~ must not directly or indirectly offer his pledge to any person who plans to seek any judicial office or to any candidate until:

(a) the qualifications of all candidates for that office have been determined by the Judicial Merit Selection Commission; and ~~until~~

(b) the commission has formally released its report as to the qualifications of its nominees to the General Assembly.

(3) The formal release of the report of qualifications shall occur no earlier than forty‑eight hours after the nominees have been initially released to members of the General Assembly. For purposes of this section, ‘indirectly seeking a pledge’ means the candidate, or someone acting on behalf of and at the request of the candidate, ~~requesting~~ requests a person to contact a member of the General Assembly on behalf of the 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.

(D) ~~No~~ A member of the General Assembly ~~may~~ must not trade anything of value, including pledges to vote for legislation or for other candidates, in exchange for another member’s pledge to vote for a candidate for judicial office.

(E) Violations of this section ~~may~~ must be considered by the ~~merit selection~~ commission when it considers the candidate’s qualifications. Violations of this section by members of the General Assembly ~~shall~~ must be reported by the commission to the House or Senate Ethics Committee, as ~~may be~~ applicable. Violations of this section by nonlegislative commission members ~~shall~~ must be reported by the commission to the State Ethics Commission. A violation of this section is a misdemeanor and, upon conviction, the violator must be fined not more than one thousand dollars or imprisoned not more than ninety days. Cases tried under this section ~~may~~ must not be transferred from general sessions court ~~pursuant to~~ notwithstanding the provisions of Section 22‑3‑545.”

SECTION 7. Section 2‑19‑80 of the 1976 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 division. It shall review the qualifications of all applicants for a judicial office and select therefrom and submit to the General Assembly the names and qualifications of the three candidates whom it considers best qualified for the judicial office under consideration. If fewer than three persons apply to fill a vacancy or if the commission concludes there are fewer than three 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 three 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.~~

~~(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 weeks must elapse between the date of the commission’s nominations to the General Assembly and the date the General Assembly conducts the election for these judgeships~~.

(A)(1) The commission shall make nominations and reports of judicial candidates for election to the Supreme Court, court of appeals, circuit court, family court, and the administrative law court, only as provided in this section, and shall make its nominations based upon the candidates’ qualifications.

(2) Prior to making nominations, the commission shall review the qualifications of all applicants for a judicial office and select therefrom and submit to the General Assembly the names of no more than three candidates, except as provided in item (3).

(3) In the event the commission finds by a vote of two‑thirds of the members physically present and voting without using a proxy that nominating only three candidates would deprive the General Assembly of the opportunity to consider for election a candidate or candidates whose qualifications are of substantially the same level as those three qualified candidates receiving the highest number of votes for nomination, the commission may nominate additional candidates meeting these criteria not to exceed a total of five nominations.

(4) If fewer than three persons apply to fill a vacancy or if the commission concludes there are fewer than three candidates qualified for a vacancy, the commission shall submit to the General Assembly:

(a) only the names found to be qualified for nomination;

(b) the report of those candidates who are considered to be qualified; and

(c) a written explanation for submitting fewer than three names.

(5) Any vote by the commission concerning the qualifications and nomination of the candidates must be in open session with each member’s vote recorded separately.

(B) The nominations of the commission for any judgeship are binding on the General Assembly, and the General Assembly 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 report of qualifications of candidates 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, the incumbent’s 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 must 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.

(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 weeks must elapse between the date of the commission’s release of the report of qualifications of candidates to the General Assembly and the date the General Assembly conducts the election for these judgeships.”

SECTION 8. Section 20‑7‑1370A. of the 1976 Code, as last amended by Act 391 of 1996, is further amended to read:

“A. No person shall be eligible for election 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 for at least one year 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.

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.”

SECTION 9. If any section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, items, subitems, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 10. This act takes effect upon approval by the Governor.

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