**South Carolina General Assembly**

118th Session, 2009-2010

**H. 3237**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Anthony, Harrell, Mitchell, Allison, Owens, Forrester, Hiott, Kelly, Littlejohn, Parker, Skelton and Brady

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Introduced in the House on January 13, 2009

Currently residing in the House Committee on **Judiciary**

Summary: Magistrates

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/13/2009 House Introduced and read first time [HJ](file:///h:\HJ%20Archive\2009\01-13-09.docx)‑99

1/13/2009 House Referred to Committee on **Judiciary** [HJ](file:///h:\HJ%20Archive\2009\01-13-09.docx)‑100

1/27/2009 House Member(s) request name added as sponsor: Brady

**VERSIONS OF THIS BILL**

[1/13/2009](file:///p:\pprever\2009-10\3237_20090113.docx)

**A** **BILL**

TO AMEND SECTION 22‑1‑10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE APPOINTMENT AND QUALIFICATIONS OF MAGISTRATES, SO AS TO PROVIDE THAT APPOINTMENT IS BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE GENERAL ASSEMBLY RATHER THAN THE SENATE AND TO SUBSTITUTE THE COUNTY LEGISLATIVE DELEGATION FOR THE SENATE DELEGATION; AND TO AMEND SECTION 22‑1‑16, RELATING TO TRIAL OBSERVATION REQUIREMENTS FOR MAGISTRATES, SECTION 22‑2‑10, RELATING TO THE SCREENING COMMITTEE FOR MAGISTRATES, SECTION 22‑2‑15, RELATING TO SPECIAL ELECTIONS OF MAGISTRATES, AND SECTION 22‑2‑40, RELATING TO THE NUMBER AND LOCATION OF MAGISTRATES, ALL SO AS TO MAKE CONFORMING CHANGES.

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

SECTION 1. Section 22‑1‑10(A) of the 1976 Code is amended to read:

“(A) The Governor, by and with the advice and consent of the ~~Senate~~General Assembly, may appoint magistrates in each county of the State for a term of four years and until their successors are appointed and qualified.

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~~appropriate county legislative delegation 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 legislative delegation 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 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 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.”

SECTION 2. Section 22‑1‑16(C) of the 1976 Code is amended to read:

“(C) The trial observations may be undertaken and completed any time after a person ~~has been~~is nominated by the ~~senatorial~~county legislative delegation for the position of magistrate.”

SECTION 3. Section 22‑2‑10 of the 1976 Code is amended to read:

“Section 22‑2‑10. A ~~senatorial~~county legislative delegation in determining the persons to be recommended to the Governor for appointment as magistrates may appoint a screening committee to assist them in their selection of nominees.”

SECTION 4. Section 22‑2‑15 of the 1976 Code is amended to read:

“Section 22‑2‑15. Notwithstanding the provisions of Section 22‑2‑10, in the event a ~~senatorial~~county legislative delegation representing a particular county desires to fill a vacancy in the office of magistrate and conduct a nonpartisan preferential election relating to the filling of ~~such~~the vacancy more than six months prior to a scheduled general election, the delegation may direct the county election commission to conduct a special election. The majority of the ~~senatorial~~county legislative delegation shall call for ~~such~~this election by notifying the county election commission in writing of its wishes at least sixty days ~~prior to~~before the date on which it desires to have the election. The election commission shall cause ~~such~~the election to be advertised in a newspaper of general circulation in the magisterial district in which the election is to be held at least twice in ~~such~~the sixty‑day period ~~setting forth~~providing the date and subject of ~~such~~the election. Any qualified elector residing in the magisterial district may have his name placed on the preferential election ballot by filing a petition with the election commission at least forty‑five days ~~prior to~~before the date of the special election. Except as specifically provided in this section, the election ~~shall be~~is governed by the provisions of Section 22‑2‑10 as they relate to nonpartisan preferential elections.”

SECTION 5. Section 22‑2‑40 of the 1976 code is amended to read:

“(A) The General Assembly shall provide for the number and location of magistrates in each county. The provisions of this chapter ~~shall~~may 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 ~~Senate~~General Assembly 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~~a warrant and written or cash bond to a magistrate having proper jurisdiction.

Ministerial magistrates ~~shall~~must 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) by filing with court administration a written agreement between the members of the ~~Senate~~county legislative delegation ~~for the county~~and the county governing body; however, a magistrate’s compensation must not be decreased during his term in office.”

SECTION 6. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 7. This act takes effect upon approval by the Governor.

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