**South Carolina General Assembly**

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**H. 4278**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Mitchell and Littlejohn

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

Summary: Magistrates

**HISTORY OF LEGISLATIVE ACTIONS**

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12/15/2009 House Referred to Committee on **Judiciary**

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**VERSIONS OF THIS BILL**

[12/15/2009](file:///p:\pprever\2009-10\4278_20091215.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 22‑1‑12 SO AS TO PROVIDE FOR THE SCREENING OF MAGISTRATE CANDIDATES BY COUNTY LEGISLATIVE DELEGATIONS PRIOR TO THE GOVERNOR APPOINTING A MAGISTRATE WITH THE ADVICE AND CONSENT OF THE SENATE; AND TO AMEND SECTION 22‑1‑10, RELATING TO THE APPOINTMENT, CERTIFICATION, AND TRAINING REQUIREMENTS OF MAGISTRATES, SO AS TO REFERENCE THE SCREENING OF MAGISTRATE CANDIDATES BY THE LEGISLATIVE DELEGATIONS.

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

SECTION 1. Chapter 1, Title 22 of the 1976 Code is amended by adding:

“Section 22‑1‑12. (A) When a magistrate’s term expires or a vacancy occurs, the appropriate county legislative delegation shall meet to consider the qualifications of the magistrate candidates. The county legislative delegation shall adopt rules necessary for purposes of determining the qualifications of magistrate candidates. These rules must address, among other things:

(1) confidentiality of records and other information received concerning magistrate candidates;

(2) conduct of proceedings before the legislative delegation;

(3) receipt of public statements in support of or in opposition to any of the magistrate candidates;

(4) procedures to review the qualifications of current magistrates for continued service;

(5) contacting incumbent magistrates regarding their desire to seek reelection;

(6) prohibition against magistrate candidates communicating with individual members of the legislative delegation concerning the qualifications of candidates unless specifically authorized by the legislative delegation.

(B) In making a recommendation to the Senate, the legislative delegation should consider 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.

(C) It is the responsibility of the legislative delegation to expeditiously investigate in advance the qualifications of those who seek recommendation.

(D) A person wishing to seek a magistrate position shall file a notice of intention to seek the office with the appropriate legislative delegation. Upon receipt of the notice of intention, the legislative delegation shall begin to conduct the investigation of the magistrate candidate as it considers appropriate and in the investigation may utilize the services of other agencies of state government. Upon request, the agency shall cooperate fully with the legislative delegation.

(E) The legislative delegation is authorized to investigate and obtain information relative to a magistrate candidate from a state agency or other group including, but not limited to, court administration and any law enforcement agency, to the extent permitted by law.

(F) Upon completion of the investigation, the chairman of the legislative delegation shall schedule an interview concerning the qualifications of the magistrate candidates. A person who desires to testify at the interview, including a magistrate candidate, shall furnish a written statement of his proposed testimony to the legislative delegation no later than two weeks prior to the date and time set for the interview unless sufficient cause is determined by the legislative delegation for allowing the submitting individual’s testimony after the deadline. The legislative delegation shall determine the persons who may testify at the interview. All testimony, including documents furnished to the legislative delegation, 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.

(G) During the course of the interview, the legislative delegation may schedule an executive session at which each candidate, and other persons whom the legislative delegation wishes to interview, may be interviewed by the legislative delegation on matters pertinent to the candidate’s qualifications.

(H) At a reasonable time after the interview, the legislative delegation shall render its tentative findings as to whether the magistrate candidate is qualified and its reasons for finding each candidate qualified.

(I) As soon as possible after the interview, a summary of the interview, documents submitted at the interview, and findings of the legislative delegation as to each magistrate candidate’s qualifications must be furnished to the appropriate member of the Senate and a copy 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.

(J) A magistrate candidate may withdraw at any stage of the proceedings and in this event no further inquiry or consideration of his candidacy may be made. All materials concerning that candidate gathered during the legislative delegation’s interview process must be kept confidential and destroyed as soon as possible after the candidate’s written notification to the legislative delegation of his withdrawal. The information concerning a withdrawn candidate also is exempt from disclosure pursuant to Chapter 4, Title 30.

(K) Before making its recommendation, the legislative delegation shall consider the following:

(1) statutory 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.

(L) Notwithstanding the provisions of this section, when there is no known opposition to a magistrate candidate, and there appears to be no substantial reason for conducting an interview, whether or not a candidate is an incumbent, and no request is made by a member of the legislative delegation, the chairman of the legislative delegation, upon recommendation of the legislative delegation, may determine that the interview is unnecessary and it may not be held.

(M) All records, information, and other material that the legislative delegation obtained or used to make its recommendation, except materials, records, and information presented under oath at the public hearing, must be kept strictly confidential. After the legislative delegation has reported its recommendations, all records, information, and material required to be kept confidential must be destroyed. The information required to be kept confidential also is exempt from disclosure pursuant to Chapter 4, Title 30.

(N) The legislative delegation in the discharge of its duties may administer oaths and affirmations, take depositions, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary in connection with the investigation of the candidate. A person may not be excused from attending and testifying or from producing books, papers, correspondence, memoranda, or other records before the legislative delegation on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. An individual may not be prosecuted or subjected to a criminal penalty based upon testimony or evidence submitted or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self‑incrimination, to testify or produce evidence, documentary or otherwise, except that the individual testifying is not exempt from prosecution and punishment for perjury and false swearing committed in testifying. In case of contumacy by a person or refusal to obey a subpoena issued to a person, a circuit court of this State or circuit judge within the jurisdiction of which the person guilty of contumacy or refusal to obey is found, resides, or transacts business, upon application by the legislative delegation may issue to this person an order requiring him to appear before the commission to produce evidence if so ordered or to give testimony touching the matter under investigation. Failure to obey an order of the court may be punishable as contempt of court. Subpoenas must be issued in the name of the legislative delegation and must be signed by the chairman of the legislative delegation. Subpoenas may be issued to those persons as the legislative delegation may designate.

(O) No member of the legislative delegation may 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 recommendation of a magistrate candidate. Violations of this subsection by members of the legislative delegation must be reported by the legislative delegation to the House or Senate Ethics Committee, as applicable. A violation of this subsection 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 pursuant to this subsection may not be transferred from general sessions court pursuant to Section 22‑3‑545.

(P) The legislative delegation shall make recommendations to the appropriate Senator of magistrate candidates and their qualifications for appointment. The legislative delegation shall review the qualifications of all magistrate candidates and select and submit to the appropriate Senator the names and qualifications of the three magistrate candidates whom it considers best qualified. If fewer than three persons apply to fill a magistrate position or if the legislative delegation concludes there are fewer than three candidates qualified for the position, it shall submit to the appropriate senator only the names and qualifications of those who are considered to be qualified, with a written explanation for submitting fewer than three names. If the legislative delegation does not find an incumbent magistrate qualified for the position held and sought, his name may not be submitted to the appropriate Senator for reappointment and upon expiration of his then current term of office, he shall cease serving in that position.

(Q) The recommendations of the legislative delegation are binding on the Senator, and he shall not select a person not nominated by the legislative delegation for advice and consent of the Senate and appointment by the Governor.”

SECTION 2. 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 subject to the requirements of Section 22‑1‑12, 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 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 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~~ A magistrate may not 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 3. 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 4. This act takes effect upon approval by the Governor.

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