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**S. 97**

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Sponsors: Senators Grooms, Rose and McConnell

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Summary: Constitutional amendment proposed

**HISTORY OF LEGISLATIVE ACTIONS**

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2/23/2011 Senate Referred to Subcommittee: Campsen (ch), Malloy, Sheheen, Massey, Shoopman

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**VERSIONS OF THIS BILL**

[12/1/2010](file:///p:\pprever\2011-12\97_20101201.docx)

**A** **JOINT RESOLUTION**

PROPOSING AN AMENDMENT TO ARTICLE XV OF THE CONSTITUTION OF SOUTH CAROLINA, 1895, RELATING TO IMPEACHMENT OF CERTAIN EXECUTIVE AND JUDICIAL OFFICERS OF THIS STATE, BY ADDING SECTION 4 SO AS TO PROVIDE PROCEDURES FOR RECALLING AND REMOVING FROM PUBLIC OFFICE PERSONS HOLDING PUBLIC OFFICES OF THE STATE OR ITS POLITICAL SUBDIVISIONS IN THE EXECUTIVE AND LEGISLATIVE BRANCHES OF STATE OR LOCAL GOVERNMENTS; AND PROPOSING AN AMENDMENT TO ARTICLE XVII, BY ADDING SECTION 15 SO AS TO ESTABLISH A SPECIFIED PROCEDURE FOR THE ENACTMENT OR REPEAL OF LAWS AND CONSTITUTIONAL AMENDMENTS BY INITIATIVE PETITION AND REFERENDUM AND TO PROVIDE EXCEPTIONS.

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

SECTION 1. It is proposed that Article XV of the Constitution of this State be amended by adding at the end:

“Section 4. Persons holding public office in the executive or legislative branch of state or local governments may be recalled by the people as follows:

(1) As used in this section:

(a) ‘Public office’ means a position of duty, trust, or authority in the executive or legislative branch of government created by this Constitution, the General Assembly, or a political subdivision through authority conferred by the Constitution or the General Assembly that is filled by a vote of qualified electors for a definite term of office fixed by law.

(b) ‘Political subdivision’ means a local government unit including, but not limited to, a county, municipal corporation, school district, or special purpose district.

(c) ‘State‑district’ means a house of representatives or senatorial district or a judicial circuit.

(2)(a) Every person holding a public office of the State or any of its political subdivisions in the executive or legislative branch of state or local government, filled by a vote of qualified electors, is subject to recall from the office.

(b) A public officer holding an elective office may be recalled by the qualified electors entitled to vote for his successor.

(c) Physical or mental lack of fitness, incompetence, violation of his oath of office, official misconduct, or conviction of a felony offense enumerated in the current statutory laws of this State is the only basis for recall. No person may be recalled for performing a mandatory duty of the office he holds or for not performing an act that, if performed, would subject him to prosecution for official misconduct.

(3) The recall is cumulative and additional to, rather than a substitute for, other methods for removal of public officers.

(4)(a) Every person who is a qualified elector of this State may sign a petition for recall of a state officer.

(b) Every person who is a qualified elector of a district of the State from which a state‑district officer is elected may sign a petition for recall of a state‑district officer of that district.

(c) Every person who is a qualified elector of a political subdivision of this State may sign a petition for recall of an officer of that political subdivision. However, if a political subdivision is divided into election districts, a person must be a qualified elector in the election district to be eligible to sign a petition to recall an officer elected from that election district and the signature requirements of item (6) apply only to persons registered in the appropriate election district.

(5)(a) A recall petition may not name more than one officer to be recalled.

(b) No recall petition against an officer may be approved for circulation, as required in paragraph (9)(c) of this section, until the officer has held office for three months.

(c) No recall petition may be filed against an officer for whom a recall election has been held for a period of two years during his term of office unless the State or political subdivision financing the recall election is first reimbursed for all expenses of the preceding recall election.

(6) Recall petitions for state officers must contain the signatures of qualified electors equaling at least fifteen percent of the number of persons registered to vote at the preceding state general election. A petition for the recall of a state‑district officer must contain the signatures of qualified electors equaling at least twenty‑five percent of the number of persons registered to vote in the last preceding election in that district. Recall petitions for county officers must contain the signatures of qualified electors equaling at least twenty‑five percent of the number of persons registered to vote at the preceding county general election. Recall petitions for elected officers of municipalities, special purpose districts, or school districts must contain the signatures of qualified electors equaling at least twenty‑five percent of the number of persons registered to vote at the preceding election for offices of the municipality, special purpose district, or school district.

(7)(a) Recall petitions must be filed with the official who is provided by law to accept the declaration of nomination or petition for nomination for the office.

(b) If the appropriate filing official refuses to accept and file a petition for recall with the proper number of signatures of qualified electors, an elector may within ten days after the refusal apply to the circuit court for a writ of mandamus. If it is determined that the petition is sufficient, the circuit court shall order the petition to be filed with a certified copy of the writ attached as of the date when it was originally offered for filing. Upon a showing that a filed petition is not sufficient, the court may enjoin certification, printing, or the recall election.

(c) All suits or appeals must be advanced on the court docket and heard and decided by the court as expeditiously as possible.

(d) An aggrieved party may file an appeal within ten days after an adverse order or decision as provided by law.

(8)(a) The form of the recall petition is substantially as follows:

‘RECALL PETITION

To the Honorable \_\_\_\_\_\_\_\_\_\_\_\_\_, (name and office of filing officer): We, the undersigned qualified electors of the State of South Carolina (or name of appropriate state‑district or political subdivision and appropriate election district) respectfully petition that an election be held as provided by law on the question of whether , holding the office of , should be recalled for the following reasons: (Setting out a general statement of the reasons for recall in not more than two hundred words). By his signature each signer certifies: I have personally signed this petition; I am a qualified elector of the State of South Carolina and (name of appropriate political subdivision and appropriate election district); and my residence and post‑office address are correctly written after my name to the best of my knowledge and belief.’

(b) Numbered lines must follow the above heading. Each numbered line must contain spaces for the signature, post‑office address, and printed last name of the signer. Each separate sheet of the petition must contain the heading and reasons for the proposed recall as prescribed above.

(9)(a) The signatures on each petition must be placed on sheets of paper known as circulation sheets. Each circulation sheet must be substantially 8½ x 14 inches or a continuous sheet may be folded so as to meet this size limitation. The circulation sheets must be ruled with a horizontal line 1½ inches from the top. The space above the line must remain blank and must be for the purpose of binding.

(b) The petition, for purposes of circulation, may be divided into sections, each section to contain not more than twenty‑five circulation sheets.

(c) Before a petition may be circulated for signatures, a sample circulation sheet must be submitted to the officer with whom the petition must be filed in the form in which it must be circulated. The filing officer shall review the petition for sufficiency as to form and approve or reject the form of the petition, stating his reasons, within one week of receiving the sheet.

(d) The petition form submitted must be accompanied by a written statement containing the reasons for the desired recall as stated on the petition. The truth of purported facts contained in the statement must be sworn to by at least one of the petitioners before a person authorized to administer oaths.

(e) The filing officer serially shall number all approved petitions continuously from year to year.

(10)(a) Signed circulation sheets or sections of a petition for recall must be submitted to the officer responsible for registration of electors in the county in which the signatures were obtained within three months of the date the form of the petition was approved under item (9).

(b) An affidavit, in substantially the following form, must be attached to each circulation sheet or section submitted to the county officer:

‘\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Name of person circulating petition), being first sworn, deposes and says: I circulated or assisted in circulating the petition to which this affidavit is attached, and I believe the signatures thereon are genuine, are the signatures of the persons whose names they purport to be and that the signers knew the contents of the petition before signing it.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Signature)

Subscribed and sworn before me this \_\_\_\_ day of\_\_\_\_\_\_\_\_\_\_, 20\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Person authorized to take oaths)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Title or notarial information) Seal’.

(11)(a) The county election commission in each county in which a petition is signed shall verify and compare the signatures of each person who has signed the petition to assure that he is an elector in that county and, if satisfied the signatures are genuine, certify that fact to the officer with whom the recall petition is to be filed in substantially the following form:

‘To the Honorable \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (name and title of filing officer):

I, \_\_\_\_\_\_\_, \_\_\_\_\_ (title) of \_\_\_\_\_\_\_\_\_\_ County certify that I have compared the signatures on \_\_\_\_\_ sheets (specifying number of sheets) of the petition for Recall No. \_\_\_\_\_ attached, in the manner prescribed by law, and I believe \_\_\_\_ (number) signatures are valid for the purpose of the petition. I further certify that the affidavit of the circulator of the (sheet) (section) of the petition is attached and that the post‑office address is completed for each valid signature.

\_\_\_\_\_\_\_\_\_\_\_ (Date)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Signature)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Seal)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Title)’.

(b) The certificate is prima facie evidence of the facts stated in it, and the officer receiving the recall petition may consider and count only the signatures as are certified. However, the officer with whom the recall petition is filed shall consider and count any remaining signatures of the registered voters which prove to be genuine, and those signatures must be considered and counted if they are attested to in the manner and form as provided contested ballots in general elections.

(c) The county election commission may not retain any portion of a petition for more than thirty days following the receipt of that portion. At the expiration of the thirty‑day period, the commission clerk shall certify the valid signatures on that portion of the petition and deliver it to the person with whom the petition is required to be filed.

(12) Upon filing the petition or a portion of the petition containing the number of valid signatures required under item (5), the official with whom it is filed immediately shall give written notice to the officer named in the petition. The notice must state that a recall petition has been filed, must set forth the reasons contained in it, and must notify the officer named in the recall petition that he has the right to prepare and have printed on the ballot a statement containing not more than two hundred words giving reasons why he should not be recalled. No statement of justification may be printed on the ballot unless it is delivered to the filing official within ten days of the date notice is given.

(13)(a) If the officer named in the petition for recall submits his resignation in writing, it must be accepted and becomes effective the day it is offered. The vacancy created by the resignation must be filled as provided by law, provided that the officer named in the petition for recall may not be appointed to fill the vacancy. If the officer named in the petition for recall refuses to resign or does not resign within five days after the petition is filed, a special election must be called unless the filing is within ninety days of a general election, in which case the question must be placed on a separate ballot at the same time as the general election.

(b) The call of a special election must be made by the Governor in the case of a state or state‑district officer or by the board or officer empowered by law to call special elections for a political subdivision in the case of an officer of a political subdivision of the State.

(14) The notice of a recall election must be in substantially the following form:

‘NOTICE OF RECALL ELECTION

Notice is hereby given pursuant to law that a recall election will be held on \_\_\_\_\_\_\_\_ (Date) for the purpose of voting upon the recall of who holds the office of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ dated at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_ (Date)’.

(15) A special election for recall must be conducted and the results canvassed and certified in the same manner that the law in effect at the time of the election for recall requires for an election to fill the office that is the subject of the recall petition, except as otherwise provided in this section. The powers and duties conferred or imposed by law upon election commissioners, registration officers, canvassing boards, and other public officials who conduct general elections are conferred and imposed upon similar officers conducting recall elections under the provisions of this section together with the penalties prescribed for breach.

(16)(a) The ballot at a recall election shall set forth the statement contained in the recall petition stating the reasons for demanding the recall of the officer and the officer’s statement of reasons why he should not be recalled. The question of whether the officer should be recalled must be placed on the ballot in a form similar to the following:

‘Should \_\_\_\_\_\_\_\_\_\_ who holds the office of \_\_\_\_\_\_\_\_\_ be recalled?

Yes 

No ’

Those voting in favor of the question shall deposit a ballot with a check or cross mark in the square after the word ‘Yes’ and those voting against the question shall deposit a ballot with a check or cross mark in the square after the word ‘No’.’

(b) The form of the ballot must be approved as provided in the election laws of this State.

(17) Expenses of a recall election must be paid in the same manner as the expenses for any other election. If a recall election is held for a state or state‑district officer, the General Assembly shall appropriate funds to reimburse the counties involved for costs incurred in conducting the election.

(18) The officer named in the recall petition continues in office until he resigns or the results of the recall election are officially declared. If a majority of those voting on the question vote to remove the officer, the office becomes vacant and the vacancy must be filled as provided by law, provided that the officer recalled may not be appointed to fill the vacancy.”

SECTION 2. The proposed amendment must be submitted to the qualified electors at the next general election for representatives. Ballots must be provided at the various voting precincts with the following words printed or written thereon: “Shall Article XV of the Constitution of this State be amended to add Section 4 so as to provide that a person holding a public office of the State or any of its political subdivisions who is elected by a vote of the qualified electors for a definite term fixed by law must be recalled and removed from office if at least fifteen percent of the qualified electors of this State, in the case of a state‑elected officer, or at least twenty‑five percent of the qualified electors of a state‑district office in the case of a state‑district officer, or twenty‑five percent of the qualified electors of a county, municipal corporation, school district, or special purpose district or twenty‑five percent of an election district thereof in the case of single member districts in the case of an officer of any of those entities, by petition request a special election to determine whether or not the qualified electors of the State or political subdivision desire to recall and remove the official and if a majority of those persons voting in the special election vote in favor of recalling and removing the official?

Yes 

No 

Those voting in favor of the question shall deposit a ballot with a check or cross mark in the square after the word ‘Yes’ and those voting against the question shall deposit a ballot with a check or cross mark in the square after the word ‘No’.”

SECTION 3. It is proposed that Article XVII of the Constitution of this State be amended by adding:

“Section 15. (A) In addition to the provisions of Article III and Article XVI of this Constitution, relating to the enactment of laws and constitutional amendments and in order to give meaning to the right of the people to petition their government for redress of grievances as guaranteed by Article I, Section 2 of this Constitution, there is reserved in the people the power to repeal and enact laws and constitutional amendments by means of initiative petition. This amendment must be construed consistent with this Constitution and is an additional method of amending this Constitution, and of enacting general laws of the State.

(B)(1) Initiative and referendum powers may be invoked by presenting a petition to the State Election Commission.

(2) An initiative petition must contain a full and correct copy of the title and text of the proposed law or constitutional amendment.

(3) A petition concerning a constitutional amendment or a general law must be signed by a number of qualified electors, not fewer than ten percent of the qualified electors for the last statewide general election as determined by the State Election Commission.

(4) A petition must contain qualified signatures geographically distributed so as to include a minimum of two percent of its signatures from each of at least two‑thirds of the counties, rounded to the next higher number, based on the number of qualified electors in each county for the last statewide general election.

(C)(1) A proposition submitted to the voters becomes law or part of the Constitution, when a majority of the votes cast on it are cast in favor of the proposition. A proposition enacted by the General Assembly as provided for in item (3) of subsection (E) becomes law upon delivery to the Secretary of State. All propositions take effect according to the terms of the proposition or upon proclamation by the Governor, which shall take place within thirty days after the votes have been canvassed. If provisions of two or more propositions approved at the same election conflict, the provisions of the proposition receiving the highest affirmative votes prevail to the extent of the conflict.

(2) All propositions concerning constitutional amendments or the general law must be submitted to the voters in a statewide election to be conducted on the first Tuesday following the first Monday of November of the odd‑numbered year. If a proposition is certified by the State Election Commission no later than August first of an odd‑numbered year, the referendum on that proposition must be conducted in November of that year; otherwise, the referendum must be conducted in the next odd‑numbered year.

(3) The veto power of the Governor does not extend to initiative and referendum measures enacted by the people pursuant to the provisions of this section. Initiative and referendum measures must not be sent to the Governor for his signature and become law without his signature.

(4) The style of all general laws enacted by the initiative is, ‘Be It Enacted by the People of the State of South Carolina’. The style of all constitutional amendments enacted by the initiative is, ‘Be It Resolved by the People of the State of South Carolina that the Constitution of South Carolina be Amended’.

(D)(1) An initiative and referendum is proposed by submitting an application containing the full text of the proposed measure with a one‑time fee of fifty dollars. The State Election Commission may periodically adjust this fee in an amount not to exceed increases in the consumer price index as calculated by the Bureau of Labor Statistics of the United States Department of Commerce, or its successor agency. The application must be signed by five qualified electors as sponsors and filed with the commission. The commission shall send a copy of the proposed measure to the Attorney General, State Budget Office, and the Legislative Council for review and comment. Review and comment shall include suggestions about compliance with the single subject rule, preventing conflicts with existing law, language or drafting problems, and any other relevant comments. No later than four weeks after submission of the application, the State Election Commission shall present the official comments to the sponsors and to the public. Neither the General Assembly, nor its committees or agencies, has the power to require amendment or modification of the proposed measure. After review and comment, the sponsors may withdraw the application, or modify and refile the application, or request that the State Election Commission prepare the final petition form. Upon request by the sponsors, the State Election Commission shall prepare the standard petition form within seven days of notification, as provided by law, and send the petition to the sponsors for signature collection.

(2) The Legislative Council shall formulate a concise ballot title and official summary of the proposed measure for use in the petition. The ballot title may not exceed ten words and the official summary may not exceed seventy words. Both the title and summary must be true and impartial statements of the purpose of the proposed measure and shall not contain editorial comment likely to create bias for or against the measure. The Attorney General shall prepare a constitutional analysis of the proposed measure for use in the petition. The constitutional analysis shall include an opinion as to whether the proposed measure complies with the single subject rule. The State Budget Office shall prepare a fiscal analysis of the effect of the proposed measure on the state finances for use in the petition. If the State Budget Office projects that the proposed measure will require substantial expenditure of state funds in excess of general administrative expenses, the fiscal analysis shall include projected total increases or decreases in state revenues or expenditures. If an initiative measure reduces state revenues, the measure must provide specifically how the reduction in revenue will be implemented. The State Budget Office shall provide an opinion as to whether the proposed revenues will cover any expenditures required by the terms of the initiative. The fiscal analysis and constitutional analysis shall not exceed fifty words each. The constitutional and fiscal analysis must be a fair and impartial statement concerning the effect of the proposed measure.

(3) The petition must be signed by qualified electors in their own name, and include street address, telephone number, voter registration number (if available), county, and date of signature. Each petition shall include an affidavit signed by a qualified elector stating that, to the best knowledge and belief of the affiant, each signature is a valid signature of the person whose name it purports to be and that each person signing the petition is a registered voter. Signatures on petitions with completed affidavits are presumed valid. Except as provided for in item (2) of subsection (E), signatures over two years old at the date of filing are invalid. Signatures may not be removed from petitions.

(E)(1) Initiative and referendum petitions may be submitted with the State Election Commission at any time; however, a petition must be submitted to the commission no later than June first of an odd‑numbered year to be certified and submitted to the voters in a referendum conducted in November of that year. The commission shall verify the signatures of the petition using a method provided by law. Within sixty days of the filing of the petition, the commission shall either certify the proposed measure as a ballot proposition or deny certification. Upon certification, the commission shall submit the proposition to the voters as provided in item (2) of subsection (C), unless the General Assembly adopts a proposed general law as provided for in item (3) of this subsection. Upon certification of the proposition for ballot, the Attorney General shall defend the proposed law in the courts on behalf of the people of South Carolina.

(2) The State Election Commission shall notify the sponsors of the reasons for denying certification. If certification is denied due to insufficient valid signatures, the commission shall grant the sponsors a one‑time thirty‑day period to file supplemental petitions needed to meet the signature requirements. Verified valid signatures shall remain valid during any extension period. Denial of certification for the ballot is subject to review by the courts.

(3) When a legislative session convenes more than thirty days before a ballot proposition is voted on, the State Election Commission shall send ballot propositions proposing general laws to the General Assembly for consideration at that legislative session. If there is a prefiling procedure, the clerk of each House shall prefile the proposition in their respective House. On the first day of the session the proposition must be introduced by the President Pro Tempore of the Senate and the Speaker of the House. The proposition must be presented in bill form and treated as any other bill for a general law except as otherwise provided by this amendment. The General Assembly may not amend or alter the proposition. Upon enactment of the proposition by the General Assembly, the act must be delivered to the Secretary of State within ten days. ‘Enact’ as used in this section means the joint resolution or bill has received three readings in each body and is voted upon by each house of the General Assembly, in its original form as proposed, before adjournment. Ballot propositions submitted to special legislative sessions may be enacted by majority vote. If the General Assembly does not enact the proposition, the State Election Commission shall put the proposition on the ballot as provided in item (2) of subsection (C). Legislative enactment waives any defect in the signature or petition requirements.

(F) Propositions must be numbered consecutively and put on the ballot in the order of the petition certification with the State Election Commission. No more than fifteen propositions may be put on the ballot at each election. Any remaining propositions must be put on the ballot at the next election as provided in item (2) of subsection (C). Propositions must be put on the ballot in a nonpartisan manner and without any indication of endorsement by any organization. Only the ballot title and the official summary may be printed on the ballot. Each ballot question must be worded so that a ‘yes’ vote on the proposition is a vote to enact the proposed law and a ‘no’ vote would result in no change to current law. Referendum ballot questions that seek only to repeal a general law must be worded so that a ‘yes’ vote is a vote to repeal the law and a ‘no’ vote would result in the law remaining in effect.

(G)(1) Except as provided by this section, any constitutional or technical processes which limit the General Assembly also shall limit any measure proposed and enacted pursuant to this amendment. Any initiative measure that requires expenditure of an amount greater than two‑tenths of one percent of the general fund budget in the immediately preceding fiscal year, shall provide the funding necessary to cover the cost required from the State.

(2) Initiative powers may not be used to enact laws relating to the following:

(a) creating courts, prescribing court rules, or altering the tenure, qualifications of, compensation for, or removal from judicial office;

(b) naming or designating any person to hold a public office.

(H) Any general law or constitutional amendment enacted by the initiative power under this section may not be repealed or amended except by a vote of the people, unless the measure provides otherwise.

(I) The initiative and referendum provisions are self‑executing and mandatory. The General Assembly may enact legislation to facilitate operation of the measure enacted.”

SECTION 4. The proposed amendment must be submitted to the qualified electors at the next general election for representatives. Ballots must be provided at the various voting precincts with the following words printed on the ballot:

“Must Article XVII of the Constitution of this State be amended by adding Section 15 so as to establish a specified procedure for the enactment or repeal of laws and constitutional amendments by initiative petition and referendum where qualified electors must sign the petition for the proposed law or constitutional amendment to be considered by the General Assembly, and if the General Assembly does not act on the initiative, it is placed on the ballot in a statewide election to be conducted in the odd‑numbered year and takes effect if a majority of the qualified electors vote in favor of it, and provide exceptions?

Yes 

No 

Those voting in favor of the question shall deposit a ballot with a check or cross mark in the square after the word ‘Yes’, and those voting against the question shall deposit a ballot with a check or cross mark in the square after the word ‘No’.”

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