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**H. 3302**

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Summary: Candidates for Magistrate's Court

**HISTORY OF LEGISLATIVE ACTIONS**

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**VERSIONS OF THIS BILL**

[12/15/2016](file:///p:\pprever\2017-18\3302_20161215.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 2‑19‑115 SO AS TO REQUIRE CANDIDATES FOR MAGISTRATES COURT TO BE SCREENED BY THE JUDICIAL MERIT SELECTION COMMISSION BEFORE THEY MAY BE APPOINTED, TO PROVIDE HOW A VACANCY MAY OCCUR, AND TO ESTABLISH THAT THE SCREENING PROCESS MAY BEGIN BEFORE THE ACTUAL DATE OF A VACANCY; TO AMEND SECTIONS 2‑19‑10, 2‑19‑20, 2‑19‑35, 2‑19‑70, 2‑19‑80, AND 2‑19‑90, ALL RELATING TO THE JUDICIAL MERIT SELECTION COMMISSION, SO AS TO ALTER THE MEMBERSHIP OF THE COMMISSION AND TO REQUIRE THE COMMISSION TO RELEASE A LIST OF ALL QUALIFIED CANDIDATES TO THE GENERAL ASSEMBLY RATHER THAN NOMINATING CANDIDATES; AND TO AMEND SECTION 22‑1‑10, AS AMENDED, RELATING TO THE APPOINTMENT AND JURISDICTION OF MAGISTRATES, SO AS TO PROVIDE THAT MAGISTRATES MUST BE SCREENED BY THE JUDICIAL MERIT SELECTION COMMISSION AND TO DELETE LANGUAGE ALLOWING A MAGISTRATES’ TERM TO CONTINUE UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIED.

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

SECTION 1. Chapter 19, Title 2 of the 1976 Code is amended by adding:

“Section 2‑19‑115. (A) Upon a vacancy in the office of magistrate in each county of this State, candidates for this office shall submit an application to the Judicial Merit Selection Commission and be screened in the same manner and in accordance with the provisions of this chapter, as applicable. Upon completion of the commission’s reports, the commission shall submit these reports on magistrate candidates to the appropriate Senate delegation. The Senate delegation then shall submit the name of the magistrate candidate of choice for appointment by the Governor, by and with the advice and consent of the Senate, pursuant to the provisions of Section 22‑1‑10. A person found not qualified by the commission may not be submitted to the Governor for appointment.

(B) For purposes of this section, a vacancy occurs in the office of magistrate in a county when any of the following occurs, a:

(1) magistrate’s term expires;

(2) new magistrate’s office is created; or

(3) magistrate is no longer able to serve due to resignation, retirement, disciplinary action, disability, or death.

(C) The commission may begin the screening process of a magistrate before the actual date of a vacancy in the case of an expiration of a term, resignation, or retirement when written notice is received by the commission.”

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

“Section 2‑19‑10. (A) Whenever an election is to be held by the General Assembly in Joint Session, for members of the judiciary, a Judicial Merit Selection Commission, composed of ten members, ~~shall~~ must be appointed, in the manner prescribed by this section, to consider the qualifications of the candidates. The Judicial Merit Selection Commission shall meet at least once annually and at other times as may be designated by the chairman. The commission, at its first meeting and then annually, shall elect a chairman and a vice chairman who shall serve for a term of one year and until their successors are elected and qualified, and adopt rules necessary to the purposes of the commission. These rules must address, among other things:

(1) the confidentiality of records and other information received concerning candidates for judicial office;

(2) the conduct of proceedings before the commission;

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

(4) procedures to review the qualifications of retired judges for continued judicial service;

(5) contacting incumbent judges regarding their desire to seek ~~re‑election~~ reelection;

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

A member may succeed himself as chairman or vice chairman. Six members of the commission constitute a quorum at all meetings.

(B) Notwithstanding ~~any other~~ another provision of law, beginning on July 1, 2017, the Judicial Merit Selection Commission shall consist of ~~the following individuals:~~

~~(1)~~ ~~five members appointed by the Speaker of the House of Representatives and of these appointments:~~

~~(a)~~ ~~three members must be serving members of the General Assembly; and~~

~~(b)~~ ~~two members must be selected from the general public;~~

~~(2)~~ ~~three members appointed by the Chairman of the Senate Judiciary Committee and two members appointed by the President Pro Tempore of the Senate and of these appointments:~~

~~(a)~~ ~~three members must be serving members of the General Assembly; and~~

~~(b)~~ ~~two members must be selected from the general public.~~

ten members appointed by the Governor, no more than six of whom are associated with the appointing Governor’s political party. No member of the General Assembly is eligible to serve on the Judicial Merit Selection Commission.

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

(D) The term of office of a member of the commission ~~who is not a member of the General Assembly shall be~~ is for four years subject to a right of removal at any time by the ~~person appointing him~~ Governor, 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.~~

(E) A vacancy on the Judicial Merit Selection Commission must be filled for the remainder of the unexpired term in the same manner as provided for the original selection.

(F) No member of the commission shall receive any compensation for commission services, except those set by law for travel, board, and lodging expenses incurred in the performance of commission duties.

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

SECTION 3. 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 occur in the magistrate court, 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~~ election. 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 also shall notify, 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 magistrate court, 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~~ election 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 utilize the services of any agency of state government. This agency shall cooperate, upon request, ~~cooperate~~ fully with the commission.”

SECTION 4. 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 magistrate court, 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~~ determining qualifications, 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 5. Section 2‑19‑70 of the 1976 Code is amended to read:

“Section 2‑19‑70. (A) No member of the General Assembly may 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 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 application is pending before the commission and during the time ~~his nomination by the commission~~ he is listed as qualified for election to a particular judicial office by the commission and the election is pending in the General Assembly.

(C) No candidate for judicial office may seek directly or indirectly 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 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 member of the General Assembly may 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~~ the candidates to the General Assembly. The formal release of the report of qualifications shall occur no earlier than forty‑eight hours after the ~~nominees have been~~ list of qualified candidates is 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 a person to contact a member of the General Assembly on behalf of the candidate before ~~nominations~~ the list of qualified candidates for that office ~~are~~ is 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 member of the General Assembly 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 candidate for judicial office.

(E) Violations of this section may 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 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 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 not be transferred from general sessions court pursuant to Section 22‑3‑545.”

SECTION 6. Section 2‑19‑80 of the 1976 Code is amended to read:

“Section 2‑19‑80. (A) The commission shall ~~make nominations~~ release to the General Assembly ~~of candidates and their qualifications~~ a list of the names of all candidates that are qualified, as provided in Sections 15 and 27, Article V of the Constitution of this State and Section 2‑19‑35 for election to the Supreme Court, court of appeals, circuit court, family court, ~~and~~ the administrative law ~~judge division~~ court. ~~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~~ list of qualified candidates of the commission for any judgeship ~~are~~ is binding on the General Assembly, and it shall not elect a person not ~~nominated~~ found to be qualified by the commission. Nothing shall prevent the General Assembly from rejecting ~~all persons nominated~~ the entire list of qualified candidates. In this event, the commission shall submit another ~~group of names and qualifications for that position~~ list of qualified candidates and proceed accordingly until the office is filled. ~~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~~ must not be submitted to the General Assembly for ~~re‑election~~ reelection 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~~ list of qualified candidates the names and qualifications of persons other than the incumbent judge it included in its previous ~~nominations~~ list.

(D) The commission shall accompany its ~~nominations~~ list of qualified candidates 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~~ release of its list of qualified candidates to the General Assembly and the date the General Assembly conducts the election for these judgeships.”

SECTION 7. Section 2‑19‑90 of the 1976 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~~ must 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~~ list of qualified candidates 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 Assembly voting in joint session. The individual vote of each member of the General Assembly present and voting must be recorded for each election. A member of the General Assembly who is a licensed attorney who practices law in the courts of this State shall recuse himself from voting in all judicial elections.”

SECTION 8. Section 22‑1‑10(A) of the 1976 Code, as last amended by Act 70 of 2011, is further amended to read:

“(A) The Governor, by and with the advice and consent of the Senate, may appoint magistrates in each county of the State for a term of four years ~~and until their successors are appointed and qualified,~~ and until the term ends or their positions are terminated as provided in subsection (B), Section 22‑1‑30, or Section 22‑2‑40. When the term of magistrates serving as of July 1, 2016 ends, candidates for the office, including those seeking reelection, must be screened as provided in Section 2‑19‑115 and the relevant provisions of Chapter 19, Title 2.

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 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 9. If any section, subsection, 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, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, 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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