**South Carolina General Assembly**

123rd Session, 2019-2020

**H. 3943**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. King, McDaniel and Henegan

Document Path: l:\council\bills\cc\15516vr19.docx

Introduced in the House on February 12, 2019

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

Summary: Family court judges

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/12/2019 House Introduced and read first time ([House Journal‑page 7](file:///h:\hj\20190212.docx))

2/12/2019 House Referred to Committee on **Judiciary** ([House Journal‑page 7](file:///h:\hj\20190212.docx))

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**VERSIONS OF THIS BILL**

[2/12/2019](file:///p:\pprever\2019-20\3943_20190212.docx)

**A** **BILL**

TO AMEND SECTIONS 2‑19‑20, 2‑19‑25, 2‑19‑35, AND 2‑19‑80, ALL RELATING TO THE JUDICIAL MERIT SELECTION COMMISSION, SO AS TO ELIMINATE THE ROLE OF THE COMMISSION WITH REGARD TO THE ELECTION OF FAMILY COURT JUDGES; TO AMEND SECTIONS 8‑13‑100 AND 8‑13‑1300, BOTH RELATING TO THE “ETHICS, GOVERNMENT ACCOUNTABILITY, AND CAMPAIGN REFORM ACT”, SO AS TO INCLUDE THE OFFICE OF FAMILY COURT JUDGE WITHIN THE DEFINITION OF “ELECTIVE OFFICE”; AND TO AMEND SECTIONS 63‑3‑30 AND 63‑3‑40, RELATING TO QUALIFICATIONS AND ELECTION OF FAMILY COURT JUDGES, RESPECTIVELY, SO AS TO PROVIDE FOR THE ELECTION OF FAMILY COURT JUDGES BY POPULAR VOTE IN NONPARTISAN ELECTIONS.

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

SECTION 1. 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 administrative law judge division 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. For purposes of this chapter, a vacancy is created in the administrative law judge division 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~~ reelection, 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 shall, 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 administrative law judge division, 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 utilize the services of any agency of state government. This agency shall, upon request, cooperate fully with the commission.”

SECTION 2. 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 ~~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 form as 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 3. Section 2‑19‑35(A) of the 1976 Code is amended to read:

“(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 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.”

SECTION 4. Section 2‑19‑80(A) of the 1976 Code is amended to read:

“(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.”

SECTION 5. Section 8‑13‑100(13) of the 1976 Code is amended to read:

“(13) ‘Elective office’ means an office at the state, county, municipal, or political subdivision level. For ~~the~~ purposes of Articles 1 through 11, the term ‘elective office’ does not include an office under the unified judicial system except that for purposes of campaign practices, campaign disclosure, and disclosure of economic interests, ‘elective office’ includes the office of family court judge and probate judge.”

SECTION 6. Section 8‑13‑1300(11) of the 1976 Code is amended to read:

“(11) ‘Elective office’ means an office at the state, county, municipal or political subdivision level. For ~~the~~ purposes of this article, the term ‘elective office’ does not include an office under the unified judicial system except for purposes of campaign practices, campaign disclosure, and disclosure of economic interests. ‘Elective office’ includes the office of family court judge and probate judge.”

SECTION 7. Section 63‑3‑30 of the 1976 Code is amended to read:

“Section 63‑3‑30. (A)(1) No person ~~shall be~~ is eligible ~~to~~ for the office of family court judge who is not at the time of his assuming the duties of ~~such~~ that 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 ~~wherein~~ where the family court of which he is a judge is located. Notwithstanding ~~any other~~ another provision of law, ~~any~~ a former member of the General Assembly may be elected to the office of family court judge.

(2) ~~Any~~ A 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~~ reelection to the office of family court judge.

(B) Family court judges must be elected ~~by the General Assembly for terms of six years and until their successors are elected and qualify~~ from the judicial circuits divided by the General Assembly. One or more judges must be elected from each judicial circuit by popular vote of the qualified electors of the circuit in accordance with Section 63‑3‑40. Election of family court judges must be on a nonpartisan basis and conducted at the same time as the general election. A person seeking election to a particular office shall file a statement of candidacy with the county election commissions of the circuit of residency. Results of the elections must be determined by the nonpartisan plurality method provided in Section 5‑15‑61. Persons elected as family court judges shall take office on the first day of January following their election.

(C) Each family court judge shall hold office for a term of six years and until his successor is elected and qualifies, and, except for a family court judge elected to an at‑large judicial seat pursuant to Section 63‑3‑40(D), at the time of his election he must be an elector of a county within his circuit and during his continuance in office, he shall reside in a county within his circuit. The terms of all family court judges expire on the ~~thirtieth day of June~~ thirty‑first day of December of the year in which their terms are scheduled to expire.

(D) ~~For the purpose of electing family court judges, if more than one judge is to be elected from a circuit, each judgeship in that circuit shall be serially numbered beginning with the number (1) and the General Assembly shall elect a judge for each such judgeship. Any candidate for the office of family court judge in a circuit shall specifically file and run for a serially‑numbered judgeship in that circuit.~~

~~(E)~~ When a vacancy occurs for an unexpired term in an office of family court judge, the Governor, upon recommendation of the Chief Justice, shall commission a temporary family court judge to fill ~~such~~ the vacancy until such time as ~~the General Assembly shall~~ a special election is held to elect a successor who shall serve for the remainder of the unexpired term. ~~Such~~ The temporary family court judge shall receive as compensation for his services the salary paid to a regular family court judge and in addition ~~thereto shall~~ also shall receive the subsistence and mileage as authorized by law for family court judges.

(E) The terms of all persons serving as family court judges whose terms expire in 2020 are extended to December 31, 2020. The terms of all persons serving as family court judges whose terms expire in 2021 or 2022 are extended to December 31, 2022. The terms of all persons serving as family court judges whose terms expire in 2023 or 2024 are extended until December 31, 2024. The terms of all persons serving as family court judges whose terms expire in 2025 are extended until December 31, 2026. The elections for family court judges as provided in this section shall begin in the year 2020 and continue every two years thereafter. A vacancy occurring prior to January 1, 2020, must be filled in the manner provided by law as of that date.”

SECTION 8. Section 63‑3‑40 of the 1976 Code is amended to read:

“Section 63‑3‑40. (A) ~~The General Assembly shall elect a number of~~ Family court judges must be elected in accordance with the provisions of Section 63‑3‑30(B) from each judicial circuit as follows:

First Circuit Three Judges

Second Circuit Two Judges

Third Circuit Three Judges

Fourth Circuit Three Judges

Fifth Circuit Four Judges

Sixth Circuit Two Judges

Seventh Circuit Three Judges

Eighth Circuit Three Judges

Ninth Circuit Six Judges

Tenth Circuit Three Judges

Eleventh Circuit Three Judges

Twelfth Circuit Three Judges

Thirteenth Circuit Six Judges

Fourteenth Circuit Three Judges

Fifteenth Circuit Three Judges

Sixteenth Circuit Two Judges

(B) In the following judicial circuits at least one family court judge must be a resident of each county in the circuit: fifth, seventh, tenth, twelfth, thirteenth, fifteenth, and sixteenth. In those judicial circuits made up of three or more counties, at least one family court judge must be a resident of one of the counties which does not have the largest population in the circuit. In the ninth circuit, both counties in the circuit must have at least two resident family court judges.

(C) No county in the sixth circuit shall have more than one resident family court judge.

(D) In addition to the judges authorized by this section, there must be eight additional family court judges elected ~~by the General Assembly~~ from the State at large by a popular vote of the qualified electors of the State in a nonpartisan election for terms of office of six years in which those persons seeking an at‑large judicial seat shall comply with the provisions for filing a statement of candidacy provided in Section 63‑3‑30(B) and in which those persons elected as family court judges pursuant to this subsection shall take office as provided in Section 63‑3‑30(B). These additional judges must be elected without regard to county or circuit of residence. ~~Each office of the at‑large judges is a separate office and is assigned numerical designations of Seat No. 1 through Seat No. 8, respectively.~~”

SECTION 9. This act takes effect upon approval by the Governor.

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