**South Carolina General Assembly**

125th Session, 2023-2024

**H. 4487**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Ott, Cobb-Hunter, Kirby, Thayer, Felder, Hardee, Long, Guffey, Wooten, Sessions, Williams, Pedalino, Taylor, Carter, Hager, Willis, McGinnis, Burns, McDaniel, Rivers, Erickson, Yow, Gilliam, Oremus, Bailey, Chumley, B.L. Cox, Bauer, Haddon, W. Jones, Ballentine, Calhoon, Blackwell, Bustos, Dillard, Forrest, Gibson, Hartnett, Hixon and Nutt

Document Path: LC-0163AHB23.docx

Introduced in the House on May 16, 2023

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

Summary: Judicial Merit Selection Commission reform

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 5/16/2023 House Introduced and read first time (House Journal‑page 11)

 5/16/2023 House Referred to Committee on **Judiciary** (House Journal‑page 12)

View the latest  [legislative information](https://www.scstatehouse.gov/billsearch.php?billnumbers=4487&session=125&summary=B)  at the website

**VERSIONS OF THIS BILL**

[05/16/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/4487_20230516.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 2‑19‑10, RELATING TO THE MEMBERSHIP OF THE JUDICIAL MERIT SELECTION COMMISSION AND THEIR TERMS, SO AS TO REVISE THE MEMBERSHIP OF THE COMMISSION AND PROVIDE STAGGERED TERMS FOR THE NEW SEVEN‑MEMBER COMMISSION, AND TO DELETE MEMBERS OF THE GENERAL ASSEMBLY FROM THE COMMISSION; BY AMENDING SECTION 2‑19‑20, RELATING TO JUDICIAL VACANCIES, SO AS TO MAKE CONFORMING CHANGES; BY AMENDING SECTION 2‑19‑35, RELATING TO JUDICIAL CANDIDATE QUALIFICATIONS AND INVESTIGATION OF CANDIDATES, SO AS TO MAKE CONFORMING CHANGES; BY AMENDING SECTION 2‑19‑70, RELATING TO PRIVILEGES OF THE FLOOR AND PLEDGES, SO AS TO prohibit the canvassing of votes by a member of the general assembly for a candidate before formal release of the report, to provide that the formal release of the report is ninety‑six hours after the list of qualified candidates is initially released, and to MAKE CONFORMING CHANGES; BY AMENDING SECTION 2‑19‑80, RELATING TO THE NOMINATION OF QUALIFIED CANDIDATES TO THE GENERAL ASSEMBLY, SO AS TO CHANGE THE COMMISSION’S PROCESS FROM NOMINATION OF THREE QUALIFIED CANDIDATES TO THE RELEASE OF A LIST OF ALL QUALIFIED CANDIDATES TO THE GENERAL ASSEMBLY and to provide for three weeks between the release of the list of qualified candidates to the general assembly and election for the judgeships; BY AMENDING SECTION 2‑19‑90, RELATING TO THE ELECTION OF JUDICIAL CANDIDATES BY THE GENERAL ASSEMBLY IN JOINT SESSION, SO AS TO PROVIDE IT IS A CONFLICT OF INTEREST FOR CERTAIN MEMBERS OF THE GENERAL ASSEMBLY TO VOTE IN JUDICIAL ELECTIONS, to provide procedures for a member to recuse himself, to provide a member may request a written ethics committee opinion from the appropriate body regarding when recusal may be necessary, AND TO MAKE CONFORMING CHANGES; AND BY AMENDING SECTION 1‑3‑240, RELATING TO REMOVAL OF OFFICERS BY GOVERNOR, SO AS TO INCLUDE THE JUDICIAL MERIT SELECTION COMMISSION IN THE PURVIEW OF THE STATUTE REGARDING REMOVAL ONLY FOR CERTAIN SPECIFIED REASONS.

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

SECTION 1. Section 2‑19‑10 of the S.C. 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 tenseven members, shall 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 shall 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;

 (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. SixFour members of the commission constitute a quorum at all meetings.

 (B) Notwithstanding any other provision of law, the Judicial Merit Selection Commission shall consist of the following individuals:

 (1) fivetwo 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 membersGovernor who must be selected from the general public; and

 (2) threefive members, who must be former or retired judges of the South Carolina Supreme Court, Court of Appeals, circuit court, or family court appointed by the Chairman of the Senate Judiciary Committee, who must be serving members of the Senate; and

 (3) two members, appointed by the President of the Senate, who must be selected from the general public.as follows:

 (a) one member appointed by the South Carolina Chapter of the American Board of Trial Advocates (ABOTASC);

 (b) one member appointed by the South Carolina Victim Assistance Network (SCVAN);

 (c) one member appointed by the South Carolina Bar;

 (d) one member appointed by the South Carolina Association for Justice; and

 (e) one member appointed by the South Carolina Sheriffs’ Association.

 Of the initial appointments of the seven‑member commission, in order to stagger the membership one member appointed by the Governor pursuant to item (1) shall serve an initial term of two years as designated by the Governor and the two members appointed pursuant to item (2)(b) and (d) shall serve initial two year terms. Thereafter, all terms for the members will be four‑year terms as provided in this section.

 (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 for four years, except as provided in subsection (B) for initial appointments, subject to a right of removal at any time by the person appointing him as provided in Section 1‑3‑240(C)(1), 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 nominationelection and appointment as a judge or justice of the state court system or administrative law judge divisionAdministrative Law Court while serving on the commission and for a period of one year thereafter.

SECTION 2. Section 2‑19‑20 of the S.C. 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 divisionAdministrative Law 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 nominationelection. For purposes of this chapter, a vacancy is created in the administrative law judge divisionAdministrative Law 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 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 divisionAdministrative Law Court, on the family court, circuit court, court of appeals, and Supreme Court. A person who desires to be considered for nominationelection 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 3. Section 2‑19‑35 of the S.C. 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 the administrative law judge divisionAdministrative Law 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 nominationsdetermining 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 4. Section 2‑19‑70(B) and (C) of the S.C. Code is amended to read:

 (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 commissionhe is reported as qualified for election to a particular judicial office by the commission and that 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, enlist a member of the General Assembly in the canvassing of votes, 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 or canvass votes for any candidate 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 nomineesthe candidates to the General Assembly. The formal release of the report of qualifications shall occur no earlier than forty‑eightninety‑six hours after the nominees have beenlist 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 nominationsthe list of qualified candidates for that office areis 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.

SECTION 5. Section 2‑19‑80 of the S.C. Code is amended to read:

 Section 2‑19‑80. (A) The commission shall make nominationsrelease to the General Assembly of candidates and their qualifications a list of the names of all candidates found qualified and their qualifications for election to the Supreme Court, court of appeals, circuit court, family court, and the administrative law judge divisionAdministrative Law 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 nominationslist of qualified candidates of the commission for any judgeship areis binding on the General Assembly, and it shall not elect a person not nominatedfound qualified by the commission. Nothing shall prevent the General Assembly from rejecting all persons nominatedfound qualified. In this event, the commission shall submit another group of names and qualifications for that position. Further nominations releases of lists of qualified candidates 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 not be submitted to the General Assembly for re‑election 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 nominationslist of qualified candidates the names and qualifications of persons other than the incumbent judge it included in its previous nominationslist.

 (D) The commission shall accompany its nominationslist of qualified candidates to the General Assembly with reports or recommendations as to the qualifications of particular candidates.

 (E) A period of at least twothree weeks must elapse between the date of the commission's nominationsrelease of its list of qualified candidates to the General Assembly and the date the General Assembly conducts the election for these judgeships.

SECTION 6. Section 2‑19‑90 of the S.C. Code is amended to read:

 Section 2‑19‑90. (A) The General Assembly shall meet in joint session for the election of judges. The date and time for the joint session shall 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 nomineeslist 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.

 (B) It is a conflict of interest for a member of the General Assembly who regularly appears before, or has business before or involving, the courts of this State on a regular basis to vote in judicial elections pursuant to the provisions of this chapter including, but not limited to, a member who is a practicing attorney, paralegal, law clerk, social worker, or person who serves as a guardian ad litem. A member of the General Assembly so situated is deemed to affect an economic interest of himself and shall:

 (1) prepare a written statement describing the nature of the conflict of interest with respect to the judicial election; and

 (2) deliver a copy of the statement to the presiding officer of the appropriate body.

 The presiding officer shall have the statement printed in the appropriate journal and require that the member be excused from votes, deliberation, and any other action regarding judicial elections.

 (C) Failure to disclose a conflict of interest and recuse oneself from voting in a judicial election pursuant to subsection (B) is punishable as provided in Chapter 13, Title 8, for similar offenses provided in Section 8‑13‑700. A member may request a written opinion from the appropriate body’s ethics committee as to whether a conflict of interest exists pursuant to the provisions of subsection (B) requiring recusal.

SECTION 7. Section 1‑3‑240(C)(1) of the S.C. Code is amended to read:

 (C)(1) Persons appointed to the following offices of the State may be removed by the Governor for malfeasance, misfeasance, incompetency, absenteeism, conflicts of interest, misconduct, persistent neglect of duty in office, or incapacity:

 (a) Workers' Compensation Commission;

 (b) [Repealed]Judicial Merit Selection Commission;

 (c) Ethics Commission;

 (d) Election Commission;

 (e) Professional and Occupational Licensing Boards;

 (f) Juvenile Parole Board;

 (g) Probation, Parole and Pardon Board;

 (h) Director of the Department of Public Safety;

 (i) Board of the Department of Health and Environmental Control, excepting the chairman;

 (j) Chief of State Law Enforcement Division;

 (k) South Carolina Lottery Commission;

 (l) Executive Director of the Office of Regulatory Staff;

 (m) Directors of the South Carolina Public Service Authority appointed pursuant to Section 58‑31‑20;

 (n) State Ports Authority;

 (o) State Inspector General;

 (p) State Adjutant General;

 (q) South Carolina Retirement Investment Commission members appointed by the Governor or members of the General Assembly; and

 (r) South Carolina Public Benefit Authority members.

SECTION 8. Members of the Judicial Merit Selection Commission serving on the effective date of this act shall cease to serve as members of the commission on the effective date of this act, and their successors must be appointed pursuant to the provisions of this act.

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

‑‑‑‑XX‑‑‑‑