**South Carolina General Assembly**

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**H. 4108**

**STATUS INFORMATION**

Joint Resolution

Sponsors: Reps. Gunn and Ballentine

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Introduced in the House on May 20, 2009

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

Summary: Amendments to Constitution

**HISTORY OF LEGISLATIVE ACTIONS**

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5/20/2009 House Referred to Committee on **Judiciary** [HJ](file:///h:\HJ%20Archive\2009\05-20-09.docx)‑268

1/13/2010 House Member(s) request name added as sponsor: Ballentine

**VERSIONS OF THIS BILL**

[5/20/2009](file:///p:\pprever\2009-10\4108_20090520.docx)

**A** **JOINT RESOLUTION**

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF SOUTH CAROLINA, 1895, BY ADDING SECTION 1B IN ARTICLE III SO AS TO ESTABLISH A SPECIFIED PROCEDURE FOR THE ENACTMENT OR REPEAL OF LAWS BY INITIATIVE PETITION AND REFERENDUM AND TO PROVIDE EXCEPTIONS; AND BY ADDING SECTION 4 IN ARTICLE XVI SO AS TO REQUIRE THE GENERAL ASSEMBLY BY LAW TO PROVIDE A PROCEDURE WHEREBY AMENDMENTS TO THIS CONSTITUTION MAY BE PROPOSED BY AN INITIATIVE PETITION SIGNED BY THE QUALIFIED ELECTORS OF THIS STATE AND ENACTED BY REFERENDUM; TO PROVIDE THE NUMBER OF SIGNATURES REQUIRED AND THE TIME PERIOD OVER WHICH THE SIGNATURES MUST BE COLLECTED; TO REQUIRE IN AN INITIATIVE THE AMOUNT AND SOURCE OF REVENUE FOR IMPLEMENTATION; TO PROVIDE THOSE MATTERS WHICH MAY NOT BE THE SUBJECT OF AN INITIATIVE PETITION; TO REQUIRE A CERTIFIED INITIATIVE TO BE FILED WITH EACH BRANCH OF THE GENERAL ASSEMBLY, WHICH BY MAJORITY VOTE MAY ADOPT, AMEND, OR REJECT THE INITIATIVE, WHICH THEN GOES ON THE BALLOT TOGETHER WITH ANY ALTERNATIVE PROPOSAL BY THE GENERAL ASSEMBLY; TO PROVIDE THAT THE INITIATIVE GOES ON THE BALLOT IF THE GENERAL ASSEMBLY TAKES NO ACTION WITHIN FOUR MONTHS OF FILING; TO PROVIDE THE FORMAT FOR SUBMITTING THE INITIATIVE AND ANY ALTERNATIVE TO THE QUALIFIED ELECTORS, THE MAJORITY REQUIRED, AND THE MEANS OF DEALING WITH CONFLICTING INITIATIVES OR ALTERNATIVES; TO LIMIT INITIATIVES SUBMITTED AT ONE ELECTION TO FIVE; TO PROVIDE THAT AN INITIATIVE APPROVED BY THE QUALIFIED ELECTOR TAKES EFFECT THIRTY DAYS AFTER THE VOTE IS CERTIFIED UNLESS THE INITIATIVE PROVIDES OTHERWISE; AND TO PROVIDE THAT THE LAW IMPLEMENTING THIS SECTION, ONCE ENACTED, MAY NOT BE AMENDED OR REPEALED EXCEPT BY AN AFFIRMATIVE VOTE OF AT LEAST TWO‑THIRDS OF THE MEMBERS OF EACH BRANCH OF THE GENERAL ASSEMBLY BUT NOT LESS THAN THREE‑FIFTHS OF THE TOTAL MEMBERSHIP IN EACH BRANCH.

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

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

“Section 1B. (A) In addition to the provisions of Section 1 of this article relating to the enactment of laws 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 by means of initiative petition. This amendment must be construed consistent with this Constitution and is an additional method 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.

(3) A petition concerning a general law must be signed by a number of qualified electors, not fewer than twelve percent of the total votes for all candidates for Governor in the last gubernatorial election as determined by the State Election Commission.

(4) A petition must contain qualified signatures geographically distributed so as to include a minimum of fifteen percent of its signatures from each congressional district 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 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. A proposition takes effect according to the terms of the proposition or upon proclamation by the Governor, which must 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) Propositions concerning the general law must be submitted to the voters in a statewide election to be conducted at the next regular general election for representatives. If a proposition is certified by the State Election Commission no later than August first of an even‑numbered year, the referendum on that proposition must be conducted in November of that year; otherwise, the referendum must be conducted in the next even‑numbered year.

(3) The veto power of the Governor does not extend to initiative and referendum measures enacted by the people pursuant to 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 general laws enacted by the initiative is, ‘Be It Enacted by the People of the State of South Carolina’.

(D)(1) An initiative and referendum is proposed by submitting an application containing the full text of the proposed measure to the State Election Commission. The application must be signed by five qualified electors as sponsors. The commission shall send a copy of the proposed measure to the Attorney General, Office of State Budget, 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 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, 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 may 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 must include an opinion as to whether the proposed measure complies with the single subject rule. The Office of State Budget shall prepare a fiscal analysis of the effect of the proposed measure on the state finances for use in the petition. If the Office of State Budget 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 Office of State Budget shall provide an opinion as to whether the proposed revenues will cover expenditures required by the terms of the initiative. The fiscal analysis and constitutional analysis may 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 names, and include street addresses, telephone numbers, voter registration numbers (if available), counties, and date of signatures. 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 must 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 even‑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 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 must remain valid during an 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 a 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 five propositions may be put on the ballot at each election. 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 indication of endorsement by an 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, a constitutional or technical process that limits the General Assembly also limits a measure proposed and enacted pursuant to this amendment. An 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, must provide the funding necessary to cover the cost required from the State.

(2) Initiative powers must 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 a person to hold a public office.

(H) A general law enacted by the initiative power pursuant to this section must 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 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 on the ballot:

“Must Article III of the Constitution of this State be amended by adding Section 1B so as to establish a specified procedure for the enactment or repeal of laws by initiative petition and referendum where qualified electors shall sign the petition for the proposed law 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 at the time of the general election 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’.”

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

“Section 4. (A) In addition to the provisions of Sections 1 and 3 of this article, the people reserve to themselves the power to propose constitutional amendments by initiative. All references in this section to initiative refer only to proposed constitutional amendments.

(B) The General Assembly by law shall provide for the initiative method of amending the Constitution of this State and that law must incorporate the following provisions:

(1) An initiative to amend the Constitution must be proposed by a petition signed over a twelve‑month period by qualified electors equal in number to at least fifteen percent of the votes for all candidates for governor in the last gubernatorial election. The signatures of the qualified electors from a single congressional district must not exceed fifteen percent of the total number of signatures required to qualify an initiative for the ballot. Signatures in excess of fifteen percent of the qualified electors for a single congressional district must not be considered in determining if the petition qualifies for the ballot.

(2) The sponsor of an initiative shall identify in the text of the initiative the amount and source of revenue required to implement the initiative. If the initiative requires a reduction in any source of government revenue, or a reallocation of funding from currently funded programs, the sponsor shall identify in the text of the initiative the program funding for which must be reduced or eliminated to implement the initiative. Compliance with this requirement is not a violation of the subject matter requirements of this section of the Constitution.

(3) The initiative process may not be used to:

(a) modify or repeal a provision of Article I of this Constitution, The Declaration of Rights, or to propose an addition to Article I;

(b) amend or repeal a provision of this Constitution affecting the operations of a retirement system or pension system supported in whole or in part by public funds; and

(c) modify the initiative process for proposing amendments to this Constitution.

(4) The manner in which initiative petitions must be designed, including framing of the title, text, and associated question, and the manner in which the initiative petitions must be circulated, presented, and certified.

(C)(1) The complete text of a qualifying initiative must be filed with each branch of the General Assembly on the first day on the next regular session of the General Assembly. A constitutional initiative may be adopted by majority vote of each branch of the General Assembly.

(2) If the initiative is adopted, amended, or rejected, or if no action is taken within four months of filing, the initiative must be placed on the ballot at the next regular general election for representatives.

(3) If the General Assembly amends the initiative, the amended version and the original initiative must be placed on the ballot. An initiative or the General Assembly’s alternative must receive a majority of the votes thereon and not less than forty percent of the total votes cast at the election at which the initiative was submitted for approval. If conflicting initiatives or General Assembly alternatives are approved at the same election, the initiative or alternative receiving the highest number of affirmative votes prevails.

(4) If an initiative measure proposed to the General Assembly has been rejected by the General Assembly and an alternative measure proposed by the General Assembly as provided in Section 1 of this article, in lieu thereof, the question for both measures must be printed on the official ballots so that a voter can express separately two preferences: First, by voting for the approval of either measure or against both measures, and secondly, by voting for one measure or the other measure. If the majority of those voting on the first question is against both measures, then both measures fail, but in that case the votes on the second question nevertheless must be counted and made public. If a majority voting on the first question is for the approval of either measure, then the measure receiving a majority of the votes on the question and also receiving not less than forty percent of the total votes cast at the election at which the measure was submitted for approval becomes part of this Constitution. A person who votes for either measure on the first issue must vote for one of the measures on the second issue for the ballot to be valid. A person who votes against both measures on the first issue may vote but is not required to vote for any of the measures on the second issue for the ballot to be valid. Substantially the following form is in compliance with this item:

INITIATED BY PETITION AND

ALTERNATIVE BY THE GENERAL ASSEMBLY

Initiative Question No. \_\_\_\_, entitled (here insert the question of the initiative measure).

Alternative Question No. \_\_\_ A, entitled (here insert the question of the alternative measure).

VOTE FOR APPROVAL OF EITHER,

OR AGAINST BOTH:

FOR APPROVAL OF EITHER Initiative No. \_\_\_

OR Alternative No. \_\_\_ A ( )

AGAINST Both Initiative No. \_\_\_

AND Alternative No. \_\_\_A ( )

AND VOTE FOR ONE

FOR Initiative Measure No. \_\_\_ ( )

FOR Alternative Measure No. \_\_\_ A ( )

(D) A fiscal analysis must be prepared of each initiative and each General Assembly alternative. A summary of that analysis must appear on the ballot.

(E) No more than five initiative proposals may be submitted to the voters on a single ballot, and the first five initiative proposals submitted with sufficient petitions must be the proposals which are submitted to the voters. The sufficiency of petitions must be decided in the first instance by the election authority designated by law, subject to review by the Supreme Court of this State, which has original and exclusive jurisdiction over all such cases.

(F) An initiative approved by the electors takes effect thirty days from the date of the certification of the vote unless the measure provides otherwise.

(G) The law implementing the provisions of this section may not restrict or impair the provisions of this section or the powers herein reserved to the people.”

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 or written on the ballot:

“Must Article XVI of the Constitution of this State be amended by adding a new Section 4 so as to require that the General Assembly by law shall provide a procedure whereby statutory law changes may be proposed by an initiative petition signed by the qualified electors of this state; to provide the number of signatures required and the time period over which the signatures must be collected; to require in an initiative the amount and sources of revenue for implementation; to provide those matters which may not be the subject of an initiative petition; to require a certified initiative to be filed with each branch of the general assembly, which by majority vote may adopt, amend, or reject the initiative, which then shall go on the ballot together with any alternative proposal by the General Assembly; to provide that the initiative shall go on the ballot if the General Assembly takes no action within four months of filing; to provide the format for submitting the initiative and any alternative to the qualified electors, the majority required, and the means of dealing with conflicting initiative or alternatives; to limit initiatives submitted at one election to five; and to provide that an initiative approved by the qualified elector takes effect thirty days after the vote is certified unless the initiative provides otherwise, and to provide that the law implementing this section, after enactment, may not be amended or repealed except pursuant to a special vote as defined in Section 7(c), Article X of this Constitution?

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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