**South Carolina General Assembly**

122nd Session, 2017-2018

**H. 4043**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Hill, Putnam and Thayer

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Companion/Similar bill(s): 96, 3184, 3204, 3206

Introduced in the House on March 22, 2017

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

Summary: Election of judges

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

3/22/2017 House Introduced and read first time ([House Journal‑page 81](file:///h:\hj\20170322.docx))

3/22/2017 House Referred to Committee on **Judiciary** ([House Journal‑page 81](file:///h:\hj\20170322.docx))

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**VERSIONS OF THIS BILL**

[3/22/2017](file:///p:\pprever\2017-18\4043_20170322.docx)

**A** **BILL**

TO AMEND SECTIONS 2‑19‑10, 2‑19‑70, AND 2‑19‑80, CODE OF LAWS OF SOUTH CAROLINA, 1976, 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.

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

SECTION 1. 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 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. Six members of the commission constitute a quorum at all meetings.

(B) Notwithstanding any other 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 while serving on the commission and for a period of one year thereafter.”

SECTION 2. 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 3. 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, pursuant to 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 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 ~~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 4. This act takes effect upon approval by the Governor.

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