AMENDED

May 12, 2021

**H. 3444**

Introduced by Reps. Lucas, McGarry, Burns, Haddon, Pope, McCravy, Forrest, Hosey, Caskey, McGinnis, Hixon, Hewitt, Bailey, W. Newton, Herbkersman, J.E. Johnson, Brittain, Erickson, Bradley, B. Newton, Fry, Crawford, S. Williams, Taylor, Huggins, Bryant, Blackwell and M.M. Smith

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Read the first time March 11, 2021.

**A** **BILL**

TO AMEND SECTION 7‑3‑10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE CREATION, COMPOSITION, POWERS, AND DUTIES OF THE STATE ELECTION COMMISSION, SO AS TO RECONSTITUTE THE STATE ELECTION COMMISSION AND REVISE THE COMMISSION’S COMPOSITION, POWERS, AND DUTIES; AND TO AMEND SECTIONS 7‑17‑70 AND 7‑17‑220, BOTH RELATING TO MEETINGS OF THE STATE BOARD, SO AS TO MAKE CONFORMING CHANGES.

Amend Title To Conform

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

SECTION 1. Section 7-3-25 of the 1976 Code is amended to read:

“Section 7‑3‑25. (A) In the event that the State Election Commission, acting through its executive director, determines that a county board of elections and voter registration has failed to comply with applicable state or federal law or State Election Commission policies, ~~and~~ procedures, or standardized processes with regard to the conduct of the election or voter registration process, the State Election Commission, acting through its executive director or other designee, must supervise, pursuant to Section 7‑3‑20(C)(1) and (2), the county board to the extent necessary to:

(1) identify the failure to comply with state or federal law or State Election Commission policies, ~~and~~ procedures, or standardized processes;

(2) establish a plan to correct the failure; and

(3) implement the plan to correct the failure. The officials and employees of the State Election Commission and the county board must work together, in good faith, to remedy the failure of the county board to adhere to state or federal law or State Election Commission policies, procedures, or standardized processes. In the event of a difference of policy or opinion between a county election official or employee and the State Election Commission or its designee, pertaining to the manner in which particular functions must be performed, the policy or opinion of the State Election Commission shall control.

(B) If a county board of voter registration and elections does not or cannot determine and certify the results of an election or referendum for which it is responsible by the time set for certification by applicable law, the responsibility to determine and certify the results is devolved upon the State Election Commission.

(C) If the State Election Commission determines that an official or an employee of a county board of voter registration and elections has negligently failed to comply with applicable state or federal law or State Election Commission policies, ~~and~~ procedures, or standardized processes with regard to the election or voter registration process or fails to comply with or cooperate with the corrective plan established by the State Election Commission or its designee under the provisions of subsection (A) the commission may order the decertification of that official or employee and if decertified the commission shall require that official to participate in a retraining program approved by the commission prior to recertification. If the commission finds that the failure to comply with state or federal law or State Election Commission policies, ~~and~~ procedures, or standardized processes by an official is wilful, it shall recommend the termination of that official to the Governor or it shall recommend termination of a staff member to the director of the appropriate county board of voter registration and elections.”

SECTION 2. Chapter 1, Title 7 of the 1976 Code is amended by adding:

“Section 7‑1‑110. (A) The President of the Senate, on behalf of the Senate, and the Speaker of the House of Representatives, on behalf of the House of Representatives, have an unconditional right to intervene on behalf of their respective bodies in a state court action that challenges the validity of an election law, an election policy, or the manner in which an election is conducted.

(B) In a federal court action that challenges the validity of an election law, an election policy, or the manner in which an election is conducted, the President of the Senate, on behalf of the Senate, and the Speaker of the House of Representatives, on behalf of the House of Representatives, have standing to intervene as a party on behalf of their respective bodies, to file an amicus brief, or to provide evidence or argument, written or oral, in accordance with the federal rules of procedure, irrespective of whether any other officer of the State has appeared in the action.

(C) A federal court presiding over an action that challenges the validity of an election law, an election policy, or the manner in which an election is conducted is requested to allow the President, on behalf of the Senate, and the Speaker of the House of Representatives, on behalf of the House of Representatives, to intervene in any such action as a party.

(D) The State Election Commission and the Attorney General must notify the President of the Senate and the Speaker of the House of Representatives within twenty-four hours of the receipt of service of a complaint that challenges the validity of an election law, an election policy, or the manner in which an election is conducted.

(E) In any action in which the Senate or the House of Representatives intervenes or participates pursuant to this section, the Senate and the House of Representatives must function independently from each other in the representation of their respective bodies, unless otherwise agreed to by the President of the Senate and the Speaker of the House of Representatives.”

SECTION 3. A. Section 7-3-10 of the 1976 Code is amended to read:

“Section 7‑3‑10. ~~(a)~~(A) There is hereby created the State Election Commission composed of five members, to be appointed by the Governor upon the advice and consent of the Senate, at least one of whom shall be a member of the majority political party represented in the General Assembly, and at least one of whom shall be a member of the largest minority political party represented in the General Assembly~~, to be appointed by the Governor to serve terms of four years and until their successors have been elected and qualify, except of those first appointed three shall serve for terms of two years~~. In considering appointments to the commission, race, gender, and other geographic and demographic factors must be considered to assure nondiscrimination, inclusion, and representation to the greatest extent possible of all segments of the population of the State. The terms of the members of the State Election Commission shall be for four years and until their successors are appointed and qualify, provided, however, that a member may not serve in holdover status for more than one year. If a member who has been reappointed and who is serving in holdover status is not confirmed by the Senate on or before the sine die adjournment of the General Assembly following the expiration of the member’s term, then the member’s seat is vacated, and he is ineligible to serve on the State Election Commission as a recess or interim appointee. If a person appointed to serve as a commissioner is rejected by a vote of the Senate, then, if the appointment was an initial appointment, the person cannot take office and is ineligible to serve as an interim appointee to the State Election Commission and, if the appointment was a reappointment, the person may serve the remainder of his term in office, if any, his seat is vacated upon the expiration of his term, and the person is ineligible to serve as a recess or interim appointee to the State Election Commission. Any vacancy on the ~~Commission~~ commission shall be filled for the unexpired portion of the term in the same manner as the original appointment.

~~(b)~~(B) The Governor shall appoint one of the members to serve as chairman for a term of two years and until his successor has been appointed and qualifies. The Commission shall select such other officers from among its members as it may deem necessary.

~~(c)~~(C) The commission shall meet at its offices in Columbia at least once each month or at such times as considered necessary by the commission. However, the commission may change the location of the meeting if the change is more convenient for the commission or any parties scheduled to appear before the commission.

~~(d)~~(D) The Commission shall have the powers and duties as enumerated in this title.

~~(e)~~(E) No member of the commission may participate in political management or in a political campaign during the member's term of office. No member of the commission may make a contribution to a candidate or knowingly attend a fundraiser held for the benefit of a candidate. Violation of this subsection subjects the commissioner to removal by the Governor.

(F) The commission shall promulgate regulations to establish standardized processes for the administration of elections and voter registration, which must be followed by county boards of voter registration and elections, as established pursuant to Article 1, Chapter 5, Title 7. The standards established by the commission must comply with federal and state statutory, regulatory, and constitutional standards. The commission is prohibited from promulgating emergency regulations pursuant to Section 1-23-130. The standardized processes promulgated pursuant to this subsection must take into account unique circumstances around the State, including, but not limited to, population and geographic disparities among the various counties.

(G) The commission shall provide for the supervision of the conduct of county boards of voter registration and elections, as established pursuant to Article 1, Chapter 5, Title 7, which administer elections and voter registration in the State. The commission is ultimately responsible for ensuring those boards' compliance with the requirements of applicable state or federal law and State Election Commission policies, procedures, and standardized processes with regard to the conduct of elections or the voter registration process by all persons involved in the elections process.”

B. On the effective date of this act, the terms of the members of the State Election Commission are expired, and a new State Election Commission must be established pursuant to Section 7‑3‑10(a), as amended by this act. In order to stagger the terms of the members of the State Election Commission, the initial terms are as follows, regardless of when a member is appointed and qualifies:

(1) the initial appointment of one member of the majority political party represented in the General Assembly and the initial appointment of one member of the largest minority political party represented in the General Assembly are for terms expiring on July 1, 2023; and

(2) the initial appointments of three members are for terms expiring on July 1, 2025.

C. A member whose term expires on the effective date of this act may continue to serve in the seat in holdover status until a successor is appointed and qualifies, provided that if no successor has received the advice and consent of the Senate by May 13, 2021, or by the deadline for the confirmation of appointments in a sine die resolution that is passed in 2021, whichever is later, then the member’s seat is vacated on the later of the two dates and is ineligible to serve as an interim appointment to the State Election Commission. If a member who is serving in holdover status is rejected by a vote of the Senate, then the member’s seat is vacated on the date the member is rejected by a vote of the Senate and the member is ineligible to serve as an interim appointment to the State Election Commission.

SECTION 4. A. Section 7-3-20 of the 1976 Code is amended to read:

“Section 7‑3‑20. (A) The State Election Commission shall ~~elect~~ appoint an executive director, upon the advice and consent of the Senate, who shall be directly responsible to the commission and who shall serve at the pleasure of the commission. The executive director shall be the chief administrative officer for the State Election Commission. In the event of a vacancy in the position of executive director, an interim director must be appointed by the State Election Commission, and an appointment for a permanent executive director must submitted to the Senate as soon as practicable. If a person is appointed by the State Election Commission to be executive director and is not confirmed by the Senate by the date for the sine die adjournment of the General Assembly following the appointment, then the person must not serve as an interim or permanent executive director.

(B) The executive director shall receive such compensation and employ such staff, subject to the approval of the State Election Commission, as may be provided by law.

(C) The executive director shall:

(1) direct and supervise the implementation of the standardized processes established by the commission pursuant to Section 7-3-10(F);

(2) supervise the conduct of county board of elections and voter registration, as established pursuant to Article 1, Chapter 5, which administer elections and voter registration in the State and ensure those boards' compliance with the requirements with applicable state or federal law or State Election Commission policies and procedures with regard to the conduct of elections or the voter registration process by all persons involved in the elections process;

~~(2)~~(3) conduct reviews, audits, or other postelection analysis of county board of elections and voter registration, as established pursuant to Article 1, Chapter 5, to ensure those boards' compliance with the requirements with applicable state or federal law or State Election Commission policies and procedures with regard to the conduct of elections or the voter registration process by all persons involved in the elections process;

~~(3)~~(4) maintain a complete master file of all qualified electors by county and by precincts;

~~(4)~~(5) delete the name of any elector:

(a) who is deceased;

(b) who is no longer qualified to vote in the precinct where currently registered;

(c) who has been convicted of a disqualifying crime;

(d) who is otherwise no longer qualified to vote as may be provided by law; or

(e) who requests in writing that his name be removed;

~~(5)~~(6) enter names on the master file as they are reported by the county boards of voter registration and elections;

~~(6)~~(7) furnish each county board of voter registration and elections with a master list of all registered voters in the county, together with a copy of all registered voters in each precinct of the county, at least ten days prior to each election. The precinct copies shall be used as the official list of voters;

~~(7)~~(8) maintain all information furnished his office relating to the inclusion or deletion of names from the master file for four years;

~~(8)~~(9) purchase, lease, or contract for the use of such equipment as may be necessary to properly execute the duties of his office, subject to the approval of the State Election Commission;

~~(9)~~(10) secure from the United States courts and federal and state agencies available information as to persons convicted of disqualifying crimes;

~~(10)~~(11) obtain information from any other source which may assist him in carrying out the purposes of this section;

~~(11)~~(12) perform such other duties relating to elections as may be assigned him by the State Election Commission;

~~(12)~~(13) furnish at reasonable price any precinct lists to a qualified elector requesting them;

~~(13)~~(14) serve as the chief state election official responsible for implementing and coordinating the state's responsibilities under the National Voter Registration Act of 1993;

~~(14)~~(15) serve as the chief state election official responsible for implementing and enforcing the state's responsibilities under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), as set forth in the U.S.C., Title 42, Section 1973ff, et seq.; and

~~(15)~~(16) establish and maintain a statewide voter registration database that shall be administered by the commission and made continuously available to each county board of voter registration and elections and to other agencies as authorized by law.

(D) The State Election Commission shall publish on the commission's website each change to voting procedures enacted by state or local governments. State and local governments shall file notice of all changes in voting procedures, including, but not limited to, changes to precincts with the State Election Commission within five days after adoption of the change or thirty‑five days prior to the implementation, whichever is earlier. All voting procedure changes must remain on the commission's website at least through the date of the next general election. However, if changes are made within three months prior to the next general election, then the changes shall remain on the commission's website through the date of the following general election.”

B. The provisions of this SECTION apply to all vacancies that occur in the position of executive director on or after the effective date of this act.

C. The commission appointed and confirmed under the provisions of SECTION 3 must submit an appointment for executive director to the Senate for advice and consent no later than sixty days after three members of the commission have been appointed, qualified, and confirmed as provided in SECTION 3. An executive director serving on the effective date of this act may continue to serve as executive director until a successor is appointed and qualifies, provided that if no successor has received the advice and consent of the Senate by May 13, 2021, or by the deadline for the confirmation of appointments in a sine die resolution that is passed in 2021, whichever is later, then the executive director position is vacated on the later of the two dates and is ineligible to serve as an interim or permanent executive director. If an executive director who is serving in holdover status is rejected by a vote of the Senate, then the executive director position is vacated on the date the executive director is rejected by a vote of the Senate and the executive director is ineligible to serve as an interim or permanent executive director of the State Election Commission.

SECTION 5. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, then 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 6. This act shall take effect upon approval of the Governor.

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