~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 24, 2021

**S. 499**

Introduced by Senators Campsen, Rice, Talley, Loftis and Climer

S. Printed 3/24/21--S.

Read the first time January 28, 2021.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 499) to enact the “South Carolina Election Commission Restructuring Act”; to amend Chapter 1, Title 7 of the 1976 Code, relating to elections, by adding Section 7-1, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, page 4, line 1, in Section 7-3-20, as contained in SECTION 4.A., by striking the word /practical/ and inserting therein / practicable /.

Renumber sections to conform.

Amend title to conform.

LUKE A. RANKIN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**State Expenditure**

This bill outlines the rights of the Speaker of the House and the President of the Senate, on the behalf of their respective bodies, to intervene in a state court action that challenges the validity of election law or policy, or the manner in which an election is conducted. This bill also grants standing to the Speaker of the House and the President of the Senate, on the behalf of their respective bodies, to intervene in federal court actions that pertain to the validity of election law or policy, or the manner in which an election is conducted. SEC must notify the Speaker of the House and the President of the Senate within 24 hours of receipt of service of a complaint related to the validity of an election law, election policy, or the manner in which an election is conducted. Additionally, this bill modifies the language pertaining to the state election commission’s member appointment. This bill takes effect upon the signing of the Governor.

**House of Representatives and Senate.** This bill allows the Speaker of the House and the President of the Senate, on the behalf of their respective bodies, to participate in court cases pertaining to elections. This bill is permissive in nature, and therefore, their involvement in a case is at the discretion of the House and Senate. Revenue and Fiscal Affairs anticipates that if the Speaker of the House and the President of the Senate choose to participate in such court cases there may be a non-recurring increase in general fund expenditures to manage legal costs. Therefore, this bill may result in an undetermined increase in non-recurring general fund expenditures at the discretion of the House and Senate to participate in certain court proceedings.

**State Election Commission**. This bill requires SEC to notify the Speaker of the House and the President of the Senate within 24 hours or receipt of service of a complaint related to the validity of an election law, election policy, or the manner in which an election is conducted. SEC anticipates being able to manage this responsibility with current staff and within existing appropriations. Additionally, this bill, modifies the language pertaining to SEC’s member appointments. However, these modifications do not change the composition of SEC and therefore will have no expenditure impact for SEC. Therefore, this bill will have no expenditure impact for SEC.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO ENACT THE “SOUTH CAROLINA ELECTION COMMISSION RESTRUCTURING ACT”; TO AMEND CHAPTER 1, TITLE 7 OF THE 1976 CODE, RELATING TO ELECTIONS, BY ADDING SECTION 7-1-110, TO PROVIDE THAT THE PRESIDENT OF THE SENATE AND SPEAKER OF THE HOUSE OF REPRESENTATIVES HAVE THE RIGHT TO INTERVENE AND HAVE STANDING ON BEHALF OF THEIR RESPECTIVE BODIES IN ACTIONS THAT CHALLENGE THE VALIDITY OF AN ELECTION LAW, AN ELECTION POLICY, OR THE MANNER IN WHICH AN ELECTION IS CONDUCTED; TO AMEND SECTION 7-3-10(a) OF THE 1976 CODE, RELATING TO THE STATE ELECTION COMMISSION, TO PROVIDE THAT THE MEMBERSHIP OF THE COMMISSION CONSISTS OF FIVE MEMBERS APPOINTED BY THE GOVERNOR UPON THE ADVICE AND CONSENT OF THE SENATE; AND TO AMEND SECTION 7-3-20(A) OF THE 1976 CODE, RELATING TO THE EXECUTIVE DIRECTOR OF THE STATE ELECTION COMMISSION, TO REVISE HIS PROCEDURE OF APPOINTMENT.

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

SECTION 1. This act must be known and may be cited as the “South Carolina Election Commission Restructuring Act”.

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 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(a) of the 1976 Code is amended to read:

“Section 7‑3‑10. (a) There is hereby created the State Election Commission composed of five members~~, at~~ to be appointed by the Governor upon the advice and consent of the Senate. At least one ~~of whom~~ member shall be a member of the majority political party represented in the General Assembly, and at least one ~~of whom~~ member 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~~. The terms of the members of the commission shall be for four years and until their successors are appointed and qualify. 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. 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 person 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 person must vacate the seat on the later of the two dates and is ineligible to serve as an interim appointment to the State Election Commission. If a person who is serving in holdover status is rejected by the Senate, then the person must vacate the seat on the date the person is rejected by the Senate and is ineligible to serve as an interim appointment to the State Election Commission.

SECTION 4. A. Section 7-3-20(A) 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 commission and a formal appointment submitted to the Senate as soon as practical. If a person who is selected for formal appointment by the commission is rejected by the Senate, then the person must not serve as an interim director.”

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.

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 takes effect upon approval by the Governor.

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