**South Carolina General Assembly**

125th Session, 2023-2024

**S. 178**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Climer and Kimbrell

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Introduced in the Senate on January 10, 2023

Currently residing in the Senate

Summary: JMSC Reform

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 11/30/2022 Senate Prefiled

 11/30/2022 Senate Referred to Committee on **Judiciary**

 1/10/2023 Senate Introduced and read first time (Senate Journal‑page 96)

 1/10/2023 Senate Referred to Committee on **Judiciary** (Senate Journal‑page 96)

 2/8/2023 Scrivener's error corrected

 1/16/2024 Senate Referred to Subcommittee: Talley (ch), Malloy,
 Campsen, Sabb, Senn

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**VERSIONS OF THIS BILL**

[12/01/2022](https://www.scstatehouse.gov/sess125_2023-2024/prever/178_20221201.docx)

[02/08/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/178_20230208.docx)

A bill

to amend the South Carolina Code of Laws by amending Section 2‑19‑10, relating to THE Judicial Merit Selection Commission, appointment, qualifications, AND termS, so as to reduce the number of commissioners from ten to seven, and to provide that membership on the commission shall be the governor and six members of the public at large; by amending Section 2‑19‑40, relating to Exemption from hearing, so as to provide that four members of the commission may request that the requirement for A public hearing on the qualifications of a particular candidate may be waived under certain circumstances; by amending Section 2‑19‑60, relating to Powers of Commission, so as to provide subsection designations to currently undesignated paragraphs; by amending Section 2‑19‑70, relating to Prohibition against dual offices, privileges of the floor, and pledges, so as to remove a reference to certain commissioners; by amending Section 2‑19‑80, relating to Nomination of qualified candidates to the General Assembly, so as to provide that all candidates found qualified must be submitted to the General Assembly; by amending Section 2‑19‑90, relating to Approval of General Assembly in joint session, so as to provide that the Speaker of the House of Representatives shall announce the commission’s nominees for each judicial race at the joint assembly to elect judges; and by amending Section 8‑13‑745, relating to Paid representation of clients and contracting by member of General Assembly or associate in particular situations, so as to provide that members of the general assembly are prohibited from representing clients for a fee before a court in the unified judicial system or equity courts if the member voted in judicial elections or the confirmation of masters‑in‑equity during the preceding twelve months.

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 ten seven 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. Four members of the commission, which must include the chairman, constitute a quorum at all meetings. 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, the Judicial Merit Selection Commission shall consist of the Governor, or his designee, who shall serve as chairman and six members from the public at large appointed by the Governor. Members of the General Assembly, members of their immediate family as defined in Section 8‑13‑100(18), and individuals with whom a member of the General Assembly is associated as defined in Section 8‑13‑100(21) are prohibited from serving on the commission. 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, 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.

 (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 an appointed member of the commission who is not a member of the General Assembly shall be for four years subject to a right of removal at any time by the Governor person appointing him, 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 selectionby the Governor.

 (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 and appointment as a judge or justice of the state court system or administrative law judge division while serving on the commission and for a period of one yearfive years thereafter.

SECTION 2. Section 2‑19‑40 of the S.C. Code is amended to read:

 Section 2‑19‑40. Notwithstanding the provisions of this chapter, when there is no known opposition to a candidate, and there appears to be no substantial reason for having a public hearing, whether or not a candidate is an incumbent, and no request is made by at least six four members of the Judicial Merit Selection Commission for a public hearing, the commission chairman upon recommendation of the commission may determine that the public hearing is unnecessary and it may not be held.

SECTION 3. Section 2‑19‑60 of the S.C. Code is amended to read:

 Section 2‑19‑60. (A) The Judicial Merit Selection Commission in the discharge of its duties may administer oaths and affirmations, take depositions, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary in connection with the investigation of the candidate.

 (B) No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, or other records before the Judicial Merit Selection Commission on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no individual shall be prosecuted or subjected to any criminal penalty based upon testimony or evidence submitted or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self‑incrimination, to testify or produce evidence, documentary or otherwise, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury and false swearing committed in so testifying.

 (C) In case of contumacy by any person or refusal to obey a subpoena issued to any person, any circuit court of this State or circuit judge thereof within the jurisdiction of which the person guilty of contumacy or refusal to obey is found, resides, or transacts business, upon application by the Judicial Merit Selection Commission may issue to this person an order requiring him to appear before the commission to produce evidence if so ordered or to give testimony touching the matter under investigation. Any failure to obey an order of the court may be punished as a contempt hereof. Subpoenas shall be issued in the name of the Judicial Merit Selection Commission and shall be signed by the commission chairman. Subpoenas shall be issued to those persons as the commission may designate.

SECTION 4. Section 2‑19‑70(E) of the S.C. Code is amended to read:

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

 Section 2‑19‑80. (A) The commission shall make nominations to the General Assembly of candidates and their qualifications for election to the Supreme Court, court of appeals, circuit court, family court, and the administrative law judge division. 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. If only one qualified person applies to fill a vacancy, then the commission shall submit to the General Assembly the name of that person with a written explanation for submitting only one name.

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

 Section 2‑19‑90. 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 CommissionSpeaker of the House of Representatives shall announce the commission's nominees 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.

SECTION 7. Section 8‑13‑745 of the S.C. Code is amended to read:

 Section 8‑13‑745. (A) No member of the General Assembly or an individual with whom he is associated or business with which he is associated may represent a client for a fee in a contested case, as defined in Section 1‑23‑310, before an agency, a commission, board, department, or other entity if the member of the General Assembly has voted in the election, appointment, recommendation, or confirmation of a member of the governing body of the agency, board, department, or other entity within the twelve preceding months.

 (B) No member of the General Assembly, an individual with whom he is associated, or a law firm with which he is associated may represent a client for a fee before any court in the unified judicial system or before an equity court if the member of the General Assembly voted in the election of judges pursuant to Chapter 19, Title 2 within the twelve preceding months, voted to confirm a magistrate within the preceding twelve months, or voted in the confirmation of a master‑in‑equity pursuant to Section 14‑11‑20 within the preceding twelve months.

 (B)(C) Notwithstanding any other provision of law, after the effective date of this section, no member of the General Assembly or any individual with whom he is associated or business with which he is associated may represent a client for a fee in a contested case, as defined in Section 1‑23‑310, before an agency, a commission, board, department, or other entity elected, appointed, recommended, or confirmed by the House, the Senate, or the General Assembly if that member has voted on the section of that year's general appropriation bill or supplemental appropriation bill relating to that agency, commission, board, department, or other entity within one year from the date of the vote. This subsection does not prohibit a member from voting on other sections of the general appropriation bill or from voting on the general appropriation bill as a whole.

 (C)(D) Notwithstanding any other provision of law, after the effective date of this section, no member of the General Assembly or an individual with whom he is associated in partnership or a business, company, corporation, or partnership where his interest is greater than five percent may enter into any contract for goods or services with an agency, a commission, board, department, or other entity funded with general funds or other funds if the member has voted on the section of that year's appropriation bill relating to that agency, commission, board, department, or other entity within one year from the date of the vote. This subsection does not prohibit a member from voting on other sections of the appropriation bill or from voting on the general appropriation bill as a whole.

 (D) The provisions of this section do not apply to any court in the unified judicial system.

 (E) When a member of the General Assembly is required by law to appear because of his business interest as an owner or officer of the business or in his official capacity as a member of the General Assembly, this section does not apply.

 (F) The provisions of subsections (A), (B)(C), and (C)(D) do not apply in the case of any vote or action taken by a member of the General Assembly prior to January 1, 1992. The provisions in subsection (B) do not apply in the case of any vote or action taken by a member of the General Assembly prior to January 1, 2023.

SECTION 8. This act takes effect upon approval by the Governor.

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