**South Carolina General Assembly**

125th Session, 2023-2024

**S. 248**

**STATUS INFORMATION**

General Bill

Sponsors: Senators M. Johnson 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 126](h:\sj\20230110.docx))

1/10/2023 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 126](h:\sj\20230110.docx))

2/9/2023 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**

[11/30/2022](https://www.scstatehouse.gov/sess125_2023-2024/prever/248_20221130.docx)

[02/09/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/248_20230209.docx)

A bill

to amend the South Carolina Code of Laws by amending Section 2‑19‑10, relating to Judicial Merit Selection Commission appointments, qualifications, and terms, so as to provide that the Judicial Merit Selection Commission shall consist of seven members appointed from the general public by the Speaker of the House of Representatives, and at least two of the members must not be licensed to practice law; by amending Section 2‑19‑20, relating to Investigation by Commission; publication of vacancies, so as to provide that an incUmbent judge shall notify the supreme court of his interest in continuing to serve on the bench rather than seeking re-election and make conforming changes; by amending Section 2‑19‑30, relating to Hearings; executive session, so as to provide that documents submitted at the hearing and findings of fact be made publicly availAble in electronic format and also provided to the governor; by amending Section 2‑19‑70, relating to Prohibition against dual offices, privileges of the floor, and pledges, so as to provide that caNdidates may be appointed, rather than elected; by amending Section 2‑19‑80, relating to Nomination of qualified candidates to the General Assembly, so as to make conforming changes; by amending Section 2‑19‑90, relating to Approval of General Assembly in joint session, so as to provide that the Governor shall transmit judicial appointments to the Senate for its advice and consent; and by amending Section 2‑19‑100, relating to Eligibility of retired judges for appointment, so as to make conforming changes.

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 a judiciary vacancy exists, a Judicial Merit Selection Commission, composed of ten 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 Speaker of the House of Representatives. 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 continue serving on the bench;

(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 be a committee comprised of members of the House of Representatives selected by the Speaker.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, 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 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 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 filledfor the remainder of the unexpired term in the same manner as provided for the original selection. by the Speaker of the House of Representatives.

(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 year thereafter.

SECTION 2. Section 2‑19‑20 (B) and (D) of the S.C. Code is amended to read:

(B) The commission, upon receiving notice of a judicial vacancy, ascertaining that a judicial vacancy shall occur, or receiving the decision of an incumbent judge regarding his seeking re‑electioninterest in continuing to serve on the bench, shall notify the Supreme Court of the vacancy for publication in the advance sheets provided by the Clerk of the Supreme Court at least thirty days prior to closing applications for the vacancy. The commission shall, if practicable, also notify the South Carolina Bar, other professional legal organizations it considers appropriate, and each newspaper of this State with daily circulation of the vacancy at least thirty days prior to closing applications for the vacancy. This notice must include, but not be limited to, the judicial office in which the vacancy occurs, the address to which, and the date by which interested candidates may apply.

(D) Any person wishing to seek a judicial office, which is elected by the General Assembly, shall file a notice of intention to seek the office with the Judicial Merit Selection Commission. Upon receipt of the notice of intention, the commission shall begin to conduct the investigation of the candidate as it considers appropriate and may in the investigation utilize the services of any agency of state government. This agency shall, upon request, cooperate fully with the commission.

SECTION 3. Section 2‑19‑30(D) of the S.C. Code is amended to read:

(D) As soon as possible after the completion of the hearing, a verbatim copy of the testimony, documents submitted at the hearing, and findings of fact must be transcribed and published or otherwise made publicly available in a reasonable number of copies to the members of both houses prior to the date of the scheduled election, and a in an electronic format on the General Assembly’s website. A copy thereof of the testimony, documents submitted at the hearing, and findings of fact shall be furnished to each candidate and anyone else upon request to the Governor. A charge for these copies may be made as authorized in the Freedom of Information Act.

SECTION 4. Section 2‑19‑70 of the S.C. 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 for election appointment to a particular judicial office is pending in the General Assembly with the Governor, or prior confirmation by the Senate.

(C)(1) No candidate for judicial office may seek directly or indirectly the pledge of a member of the General Assembly'sHouse of Representative’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 and the Governor. No member of the General AssemblyHouse of Representatives 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 to the General AssemblyHouse of Representatives. The formal release of the report of qualifications shall occur no earlier than forty‑eight hours after the nominees have been initially released to members of the General Assembly House of Representatives.

(2) No candidate for judicial office may seek directly or indirectly the pledge of the Governor to appoint him prior to the Governor receiving nominations from the House of Representatives.

(3) No candidate for judicial office may seek directly or indirectly the pledge of a Senator to confirm him prior to the Senate receiving the candidate’s appointment from the Governor.

(4) 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 for that office are 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 AssemblyHouse of Representatives 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. The Governor may not trade anything of value in exchange for appointing a nominated candidate. No member of the Senate may trade anything of value, including pledges to vote for legislation or for confirmation of other candidates, in exchange for another member’s vote in favor of confirming 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 the Governor 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 of the S.C. Code is amended to read:

Section 2‑19‑80. (A) The commission shall make nominations to the General Assembly full House of Representatives of candidates and their qualifications for election appointment to the Supreme Court, court of appeals, circuit court, family court, and the administrative law judge division. It The House of Representatives shall review the qualifications of all applicants for a judicial office and select therefrom and submit to the General Assembly Governor 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 Governor 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 of the commission for any judgeship are binding on the General Assembly Governor, and it he shall not elect appoint a person not nominated by the commission. Nothing shall prevent the General Assembly Governor from rejecting all persons nominated. In this event, the commission shall submit another group of names and qualifications for that position. 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 Governor for re‑election appointment 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 confirmation by the Senate, the election for the office may not be held at that scheduled time the process must stop, and the commission shall proceed in accordance with the provisions of this chapter to make other nominations to the House of Representatives 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 the names and qualifications of persons other than the incumbent judge it included in its previous nominations.

(D) The commission House of Representatives shall accompany its nominations to the General Assembly Governor 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 to the General Assembly and the date the General Assembly conducts the election for these judgeships.

The Governor shall have fourteen calendar days in which to appoint one of the nominees after receiving nominations from the commission for a particular judgeship. If the Governor does not appoint a nominee for a judgeship within fourteen days of receiving the nominations from the commission, then all of the nominees for that judgeship will be deemed to have been rejected.

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

Section 2‑19‑90.  The Governor shall transmit judicial appointments to the Senate for its advice and consent. No person may take office as a judge or justice in this State until he is confirmed by the Senate.

SECTION 7. Section 2‑19‑100 of the S.C. Code is amended to read:

Section 2‑19‑100. (A) In order to be eligible for appointment by the Chief Justice Governor to serve, any retired justice or judge of this State must behave been

reviewed by the Judicial Merit Selection Commission under procedures it shall establish to review retired judges'’ qualifications for continued judicial service; and

found by the commission Judicial Merit Selection Commission, under procedures it shall establish to review retired judges’ qualifications for continued judicial service, to be qualified to serve in these situations within four years of the date of his appointment to serve, except that if a justice or judge retired before the expiration of his then current term, no further review of that justice or judge is required until that term would have expired. The commission shall transmit its findings to the full House of Representatives for approval. Upon approval, the House of Representatives shall transmit its approval to the Senate for confirmation. No retired justice or judge may serve until he is confirmed by the Senate.

(B) The Senate shall transmit the names of retired judges confirmed to be eligible for appointment by the Chief Justice following confirmation.

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

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