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Indicates New Matter

COMMITTEE REPORT

March 6, 2013

**H. 3540**

Introduced by Reps. Harrell, J.E. Smith, Bales, Hosey, Cobb‑Hunter, Bannister, J.R. Smith, Patrick, Brannon, Erickson, Taylor, Huggins, Kennedy, Ballentine, Bernstein, Sellers, Williams, Jefferson, M.S. McLeod, Atwater, Bowers, R.L. Brown, Cole, Douglas, George, Hixon, Long, McCoy, Mitchell, Pitts, Pope, G.R. Smith, Tallon and Wood

S. Printed 3/6/13--H.

Read the first time February 19, 2013.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3540) to amend Section 1‑3‑240, as amended, Code of Laws of South Carolina, 1976, relating to the removal of officers by the governor, so as to add, etc., respectfully

**REPORT:**

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

F. GREGORY DELLENEY, JR. for Committee.

**A** **BILL**

TO AMEND SECTION 1‑3‑240, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE REMOVAL OF OFFICERS BY THE GOVERNOR, SO AS TO ADD THE ADJUTANT GENERAL TO THE LIST OF OFFICERS OR ENTITIES THE GOVERNING BOARD OF WHICH MAY BE REMOVED BY THE GOVERNOR ONLY FOR CERTAIN REASONS CONSTITUTING CAUSE; TO AMEND SECTION 25‑1‑320, RELATING TO THE STATE ADJUTANT GENERAL, SO AS TO PROVIDE THAT BEGINNING UPON THE EXPIRATION OF THE TERM OF THE ADJUTANT GENERAL SERVING IN OFFICE ON THE DATE OF THE 2014 GENERAL ELECTION, THE ADJUTANT GENERAL MUST BE APPOINTED BY THE GOVERNOR UPON THE ADVICE AND CONSENT OF THE SENATE FOR A FOUR‑YEAR TERM COMMENCING ON THE FIRST WEDNESDAY FOLLOWING THE SECOND TUESDAY IN JANUARY THAT FOLLOWS THE GENERAL ELECTION THAT MARKS THE MIDTERM OF THE GOVERNOR, EXCEPT THAT THE INITIAL TERM OF THE FIRST ADJUTANT GENERAL APPOINTED PURSUANT TO THIS ACT MUST BE FOR TWO YEARS SO AS TO ALLOW SUBSEQUENT TERMS TO BE STAGGERED WITH THAT OF THE GOVERNOR, AND TO ESTABLISH CERTAIN QUALIFICATIONS FOR THE OFFICE OF ADJUTANT GENERAL; TO AMEND SECTION 25‑1‑340, AS AMENDED, RELATING TO VACANCIES IN THE OFFICE OF ADJUTANT GENERAL, SO AS TO DELETE A REFERENCE TO THE ELIGIBILITY REQUIREMENTS OF CONSTITUTIONAL OFFICERS; AND TO PROVIDE THAT THE ABOVE PROVISIONS ARE EFFECTIVE UPON THE RATIFICATION OF AMENDMENTS TO SECTION 7, ARTICLE VI, AND SECTION 4, ARTICLE XIII OF THE CONSTITUTION OF THIS STATE DELETING THE REQUIREMENT THAT THE STATE ADJUTANT GENERAL BE ELECTED BY THE QUALIFIED ELECTORS OF THIS STATE.

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

SECTION 1. Section 1‑3‑240(C)(1) of the 1976 Code, as last amended by Act 105 of 2012, is further amended by adding at the end:

“(p) State Adjutant General.”

SECTION 2. Section 25‑1‑320 of the 1976 Code is amended to read:

“Section 25‑1‑320. (A) There ~~shall~~ must be an Adjutant General ~~elected by the qualified electors of this State at the same time and in the same manner and for the same term of office as other State officials~~ appointed by the Governor upon the advice and consent of the Senate for a four‑year term commencing on the first Wednesday following the second Tuesday in January that follows the general election that marks the midterm of the Governor, except that the initial term of the first Adjutant General appointed pursuant to this section must be for two years so as to allow subsequent terms to be staggered with that of the Governor. His rank ~~shall~~ must be that of major‑general. He shall hold office until his successor is ~~elected~~ appointed and ~~qualifies~~ confirmed. ~~He shall be ex officio chief of staff.~~ The Adjutant General is the commander of all military forces within the South Carolina Military Department, and he is responsible to the Governor in his role as and Commander in Chief for the proper performance of his duties. He shall receive ~~such~~ an annual salary as ~~may be~~ provided by the General Assembly and only may be removed for cause prior to the expiration of his term pursuant to the provisions of Section 1‑3‑240(C).

(B) The person appointed Adjutant General by the Governor must possess, at a minimum, the following qualifications:

(1) be a qualified elector of this State;

(2) be in an active National Guard status at the time of the appointment, except as provided in subsection (E);

(3) be a graduate of the Army War College, the Air War College, or the military education level equivalent;

(4) have ten or more years of federally recognized commissioned service in the South Carolina National Guard, at least five years of which must have been at the rank of Lieutenant Colonel (O‑5) or higher;

(5) have command experience at the battalion or squadron level or higher; and

(6) hold the rank of Colonel (O‑6) or higher and possess the necessary qualifications to serve as a federally recognized General Officer.

(C) In addition to the minimum qualifications for the office of Adjutant General specified in subsection (B), the Governor also may consider:

(1) the candidates’ military experience, including command experience or military service in an area where hostile‑fire pay or imminent‑danger pay was authorized pursuant to federal law or regulation; and

(2) the promotion criteria for the rank of major‑general or higher.

(D) In the event of a vacancy or impending vacancy in the Office of the Adjutant General, the South Carolina Military Department, upon request of the Governor, shall provide a list of candidates who satisfy the qualifications for office specified in subsection (B) and copies of the candidates’ military personnel records.

(E) Nothing in this section may be construed to prohibit the Governor’s ability to appoint a qualified retired officer who has not exceeded the maximum age to serve as a federally recognized general officer.”

SECTION 3. Section 25‑1‑340 of the 1976 Code, as last amended by Act 46 of 2011, is further amended to read:

“Section 25‑1‑340. If the Office of the Adjutant General is vacated because of the death, resignation, removal, or retirement of the Adjutant General prior to the normal expiration of his term of office, the Governor shall appoint an officer of the active South Carolina National Guard, who ~~is at least the rank of colonel,~~ meets the eligibility requirements ~~for a constitutional officer, and who has a minimum of fifteen years’ active commissioned service in the South Carolina National Guard,~~ provided in Section 25‑1‑320 to fill out the unexpired term of the former incumbent. The appointee, upon being duly qualified, is subject to all the duties and liabilities incident to the office and receives the compensation provided by law for the Adjutant General during his term of service.”

SECTION 4. This act takes effect upon the ratification of amendments to Section 7, Article VI, and Section 4, Article XIII of the Constitution of this State deleting the requirement that the Adjutant General be elected by the qualified electors of this State and providing that he be appointed by the Governor.

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