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COMMITTEE REPORT

April 26, 2017

**S. 213**

Introduced by Senators Peeler, Alexander and Scott

S. Printed 4/26/17--H.

Read the first time March 7, 2017.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 213) to amend Chapter 20, Title 2, Code of Laws of South Carolina, 1976, relating to Nonjudicial Screening and Election, so as to create the College and University Trustee, 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 CHAPTER 20, TITLE 2, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO NONJUDICIAL SCREENING AND ELECTION, SO AS TO CREATE THE COLLEGE AND UNIVERSITY TRUSTEE SCREENING COMMISSION TO CONSIDER THE QUALIFICATIONS OF CANDIDATES FOR TRUSTEES TO STATE‑SUPPORTED COLLEGES AND UNIVERSITIES, TO PROVIDE FOR THE MEMBERSHIP OF THE COMMISSION, AND TO PROVIDE FOR THE INVESTIGATIVE, NOMINATION, AND ELECTION PROCESSES.

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

SECTION 1. Chapter 20, Title 2 of the 1976 Code is amended to read:

“CHAPTER 20

Nonjudicial Screening and Election

Article 1

Nonjudicial Screening and Election Generally

Section 2‑20‑10. Except as otherwise provided in Sections 58‑3‑520 and 58‑3‑530, whenever an election is to be held by the General Assembly in joint session, except for members of the judiciary and for trustees elected pursuant to Article 3, a joint committee composed of eight members, four of whom must be members of the House of Representatives and four of whom must be members of the Senate, must be appointed to consider the qualifications of the candidates. Each body shall determine how its respective members are selected. Each joint committee shall meet as soon after its appointment as practicable and elect one of its members as chairman, one as secretary, and other officers as it considers desirable.

Section 2‑20‑15. For any office filled by election of the General Assembly for which screening is required pursuant to this chapter, except for judicial offices, the joint committee may not accept a notice of intention to seek the office from any candidate as provided by Section 2‑20‑10, until the clerk of the House or Senate, as appropriate, has certified that the proper notices required by this section have been published or provided or until the time for the publication of the notices has expired.

(1) If the office to be filled is from the State at large, a notice of the position vacancy must be forwarded to three newspapers of general circulation in the State with a request that it be published at least once a week for four consecutive weeks. If the office to be filled is from a congressional district, judicial circuit, or other area of this State less than the State at large, a notice of the position vacancy must be forwarded to three newspapers of general circulation in that district, circuit, or area with a request that it be published at least once a week for four consecutive weeks.

(2) Notices of the position vacancy also must be furnished, on or before the date of the first newspaper publication provided in item (1), in writing to any person who has informed the committee that he desires to be notified of the vacancy.

(3) If the office to be filled is from a congressional district, judicial circuit, or other area of the State but not from the State at large, notices of the position vacancy also must be provided to each member of the General Assembly representing a portion of that district, circuit, or area. If it is a position filled from the State at large, each member of the General Assembly shall receive the notice.

(4) The cost of the notification process required by this section must be absorbed and paid from the approved accounts of both houses as contained in the annual general appropriations act.

Nothing in this section prevents the joint committee from providing notices other than those required by this section, which the committee believes are appropriate.

Section 2‑20‑20. Any person wishing to seek an office, which is elected by the General Assembly, shall file a notice of intention to seek the office with the joint committee. Upon receipt of the notice of intention, the joint committee shall begin to conduct investigation of the candidate as it considers appropriate and may in the investigation utilize the services of any agency of state government. The agency shall, upon request, cooperate fully with the joint committee.

Section 2‑20‑25. A person serving in an office elected by the General Assembly who is not seeking reelection must give written notice to the joint committee to review candidates for that office of his decision not to seek reelection. The notice must be given not less than thirty days before the last date for filing for that office. If the notice is given less than thirty days before the last date for filing for that office or if the notice is withdrawn and the person seeks reelection, the joint committee may reopen or extend, as appropriate, the time period for filing for the office. For purposes of this subsection, ‘person serving in an office elected by the General Assembly’ includes a person serving in office as an appointee to an unexpired term.

Section 2‑20‑30. Upon completion of the investigation, the chairman of the joint committee shall schedule a public hearing concerning the qualifications of the candidates. The hearing shall be conducted no later than two weeks prior to the date set in the election resolution for the election. Any person who desires to testify at the hearing, including candidates, shall furnish a written statement of his proposed testimony to the chairman of the joint committee. These statements shall be furnished no later than forty‑eight hours prior to the date and time set for the hearing. The joint committee shall determine the persons who shall testify at the hearing. All testimony, including documents furnished to the joint committee, shall be submitted under oath and persons knowingly furnishing false information either orally or in writing shall be subject to the penalties provided by law for perjury and false swearing. During the course of the investigation, the joint committee may schedule an executive session at which each candidate, and other persons whom the committee wishes to interview, may be interviewed by the joint committee on matters pertinent to the candidate’s qualification for the office to be filled. A reasonable time thereafter the committee shall render its tentative findings as to whether the candidate is qualified for the office to be filled and its reasons therefor as to each candidate.

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 shall be transcribed and published in the journals of both houses or otherwise made available in a reasonable number of copies to the members of both houses prior to the date of the scheduled election, and a copy thereof shall be furnished to each candidate.

A candidate may withdraw at any stage of the proceedings, and in this event no further inquiry, report on, or consideration of his candidacy shall be made.

Section 2‑20‑40. 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 the candidate be an incumbent, and no request is made by at least ten members of the House of Representatives and five members of the Senate for a public hearing, the joint committee chairman upon recommendation of the joint committee may determine that a public hearing is unnecessary and shall not be held, but no election shall be held prior to this determination.

Section 2‑20‑50. All records, information, and other material that the joint committee has obtained or used to make its findings of fact, except materials, records, and information presented under oath at the public hearing, shall be kept strictly confidential. After the joint committee has reported its findings of fact, or after a candidate withdraws his name from consideration, all records, information, and material required to be kept confidential shall be destroyed.

Section 2‑20‑60. The joint committee 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 joint committee.

No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, or other records before the joint committee 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. However, 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.

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 joint committee may issue to the person an order requiring him to appear before the joint committee 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 joint committee and shall be signed by the joint committee chairman. Subpoenas shall be issued to those persons as the joint committee may designate.

Section 2‑20‑70. 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 joint committee and during the time his election is pending in the General Assembly.

Article 3

Joint Legislative Screening Commission

Section 2‑20‑310. (A) Whenever an election is to be held by the General Assembly in joint session, for trustees to state‑supported colleges and universities, Wil Lou Gray Opportunity School, and the Old Exchange Building Commission, a College and University Trustee Screening Commission, composed of eight members, shall be appointed to consider the qualifications of the candidates and make nominations to the General Assembly. The commission must be composed of four members of the House of Representatives appointed by the Speaker and four members of the Senate appointed by the President. The commission shall meet as soon after its appointment as practicable and elect one of its members as chairman and other officers as it considers desirable.

(B) The commission shall adopt rules necessary to fulfill the purposes of the commission. The rules shall address, among other things:

(1) the conduct of proceedings before the commission;

(2) receipt of public statements in support of or in opposition to any of the candidates;

(3) procedure to review the qualifications of the candidates; and

(4) procedure for determining the residency of the candidates when running for an office to be filled from a congressional district, judicial circuit, or other area of the State, but not from the State at large.

(C) Five members of the commission constitute a quorum.

(D) 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.

(E) The commission must use professional employees of the General Assembly for its staff, who must be made available to the commission. The costs and expenses of the commission and staff must be paid for by approved accounts of both the Senate and House of Representatives.

Section 2‑20‑320. (A) It is the responsibility of the commission to ascertain when vacancies are to occur on the following boards:

(1) The Citadel Board of Visitors

(2) Clemson University Board of Trustees

(3) Coastal Carolina University Board of Trustees

(4) College of Charleston Board of Trustees

(5) Francis Marion University Board of Trustees

(6) Lander University Board of Trustees

(7) The Medical University of South Carolina Board of Trustees

(8) South Carolina State University Board of Trustees

(9) The University of South Carolina Board of Trustees

(10) Winthrop University Board of Trustees

(11) Old Exchange Building Commission

(12) Wil Lou Gray Opportunity School Board of Trustees.

For purposes of this chapter, a vacancy is created when any of the following occurs: a term expires, a new seat is created, or a trustee can no longer serve due to resignation, retirement, disciplinary action, disability, or death.

(B) The commission shall announce and publicize vacancies and forthcoming vacancies. No person may concurrently seek more than one trustee seat.

Section 2‑20‑330. A person who desires to be considered for nomination as a trustee shall file a letter of intent to seek the office with the commission. Upon receipt of the letter of intent, the commission shall begin to conduct investigation of the candidate as it considers appropriate and may in the investigation utilize the services of any agency of state government. The agency must, upon request, cooperate fully with the commission. The commission shall announce the names of the persons who have filed a letter of intent.

Section 2‑20‑340. (A) Upon completion of the investigation, the chairman of the commission shall schedule a public hearing concerning the qualifications of the candidates. Any person other than the candidate who desires to testify at the hearing shall furnish a written statement of his proposed testimony to the chairman of the commission no later than two weeks prior to the date and time set for the hearing unless the commission determines that sufficient cause exists for allowing the submitting individual’s testimony after the deadline. The commission shall determine the persons who may testify at the hearing. All testimony, including documents furnished to the commission, must be submitted under oath and persons knowingly furnishing false information either orally or in writing are subject to the penalties provided by law for perjury and false swearing.

(B) During the course of the investigation, the commission may schedule an executive session at which each candidate, and other persons whom the commission wishes to interview, may be interviewed by the commission on matters pertinent to the candidate’s qualification for the office to be filled.

(C)(1) A reasonable time after the completion of the investigation and public hearing, the commission shall render its tentative findings as to whether the candidate is qualified for the office to be filled and its reasons therefore as to each candidate.

(2) 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 shall be transcribed and published or otherwise made available in a reasonable number of copies to members of the General Assembly prior to the date of the scheduled election. Also, a copy must be furnished to each candidate and anyone else upon request. A charge for these copies may be made as authorized in the Freedom of Information Act.

(D) A candidate may withdraw at any stage of the proceedings, and in this event, no further inquiry or consideration of his candidacy may be made.

Section 2‑20‑350. (A) Investigations and consideration of the commission shall include, but are not limited to, the following areas:

(1) knowledge of the institution;

(2) ethical fitness;

(3) professional and academic ability;

(4) character;

(5) reputation;

(6) physical health;

(7) mental stability;

(8) experience; and

(9) demonstrated support of and involvement in the institution.

(B) In making nominations, race, gender, national origin, and other demographic factors must be considered by the commission.

Section 2‑20‑360. Notwithstanding any other provision 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, and no request is made by at least ten members of the House of Representatives and five members of the Senate for a public hearing, the commission chairman upon recommendation of the commission may determine that a public hearing is unnecessary and shall not be held, but no election shall be held prior to this determination.

Section 2‑20‑370. All records, information, and other material that the commission has obtained or used to make its findings of fact, except materials, records, and information presented under oath at the public hearing, must be kept strictly confidential. After the commission has reported its findings of fact, or after a candidate withdraws his name from consideration, all records, information, and material must be kept confidential and may be retained by the commission for at least six years.

Section 2‑20‑380. (A) The 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 commission.

(B) No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, or other records before the 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. However, no individual may 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 testifying shall not be exempt from prosecution and punishment for perjury and false swearing committed in testifying.

(C) In the 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 within the jurisdiction of which the person guilty of contumacy or refusal to obey is found, resides, or transacts business, upon application by the commission may issue to the 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 of the commission. Subpoenas must be issued in the name of the commission and must be signed by the commission chairman. Subpoenas must be issued to those persons as the commission may designate.

Section 2‑20‑390. 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 election is pending in the General Assembly.

Section 2‑20‑400. (A) The commission shall make nominations to the General Assembly of candidates and their qualifications for election to the boards in Section 2‑20‑320. It shall review the qualifications of all applicants for each trustee seat, select from the applicants, and submit the names of the qualified candidates to the General Assembly.

(B) The nominations of the commission for trustee positions are binding on the General Assembly, and it shall not elect a person not nominated by the commission. Nothing shall prevent the General Assembly from rejecting all persons nominated. In this event, the commission shall reopen the nominating process. Further nominations in the manner required by this article must be made until the office is filled.

(C) The commission shall accompany its nominations to the General Assembly with the electronic link to the screening transcript.

(D) 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 the board of trustee offices.

Section 2‑20‑410. The General Assembly shall meet in joint session for the election to the boards in Section 2‑20‑320. The date and time for the joint session must be set by concurrent resolution upon the recommendation of the commission. The chairman of the commission shall announce the commission’s nominees for each trustee race, and no further nominating or seconding speeches may 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 present and voting in joint session.

Section 2‑20‑420. (A) No member of the General Assembly may be elected to any board in Section 2‑20‑320 while he is serving in the General Assembly nor shall that person be elected to any board in Section 2‑20‑320 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) No candidate for a seat on the board of any institution listed in Section 2‑20‑320 or any other person may seek, directly or indirectly, the pledge of a member of the General Assembly’s vote or, directly or indirectly, contact a member of the General Assembly regarding screening for the seat until the qualifications of all candidates for that office have been determined by the commission and the commission has formally released its report as to the qualifications of all candidates for the vacancy to the General Assembly. No member of the General Assembly may offer his pledge until the qualifications of all candidates for that office have been determined by the commission and until the commission has formally released its report as to the qualifications of its nominees to the General Assembly. The formal release of the report of qualifications shall occur no earlier than forty‑eight hours after the names of the nominees have been initially released to members of the General Assembly. 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.

(C) No member of the General Assembly 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 a seat on the board of any institution listed in Section 2‑20‑320.

(D) Violations of this section may be considered by the commission when it considers a candidate’s qualifications. Violations of this section by members of the General Assembly must be reported by the commission to the House or Senate Ethics Committee, as applicable. A violation of this section is a misdemeanor and, upon conviction, the person 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 2. This act takes effect upon approval by the Governor.

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