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AMENDED--NOT PRINTED IN THE HOUSE

Amt. No. 1A (3444C001.BH.HB22.docx)

February 8, 2022

**H. 3444**

Introduced by Reps. Lucas, McGarry, Burns, Haddon, Pope, McCravy, Forrest, Hosey, Caskey, McGinnis, Hixon, Hewitt, Bailey, W. Newton, Herbkersman, J.E. Johnson, Brittain, Erickson, Bradley, B. Newton, Fry, Crawford, S. Williams, Taylor, Huggins, Bryant, Blackwell and M.M. Smith

S. Printed 3/10/21--H.

Read the first time January 12, 2021.

**A** **BILL**

TO AMEND SECTION 7‑3‑10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE CREATION, COMPOSITION, POWERS, AND DUTIES OF THE STATE ELECTION COMMISSION, SO AS TO RECONSTITUTE THE STATE ELECTION COMMISSION AND REVISE THE COMMISSION’S COMPOSITION, POWERS, AND DUTIES; AND TO AMEND SECTIONS 7‑17‑70 AND 7‑17‑220, BOTH RELATING TO MEETINGS OF THE STATE BOARD, SO AS TO MAKE CONFORMING CHANGES.

Amend Title To Conform

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

Part I

Powers and Duties of the State Election Commission

SECTION 1. A. Section 7-3-25 of the 1976 Code is amended to read:

“Section 7‑3‑25. (A) In the event that the State Election Commission, acting through its executive director, determines that a county board of elections and voter registration has failed to comply with applicable state or federal law or State Election Commission policies, ~~and~~ procedures, or standardized processes with regard to the conduct of the election or voter registration process, the State Election Commission, acting through its executive director or other designee, must supervise, pursuant to Section 7‑3‑20(C)(1) and (2), the county board to the extent necessary to:

(1) identify the failure to comply with state or federal law or State Election Commission policies, ~~and~~ procedures, or standardized processes;

(2) establish a plan to correct the failure; and

(3) implement the plan to correct the failure. The officials and employees of the State Election Commission and the county board must work together, in good faith, to remedy the failure of the county board to adhere to state or federal law or State Election Commission policies, procedures, or standardized processes. In the event of a difference of policy or opinion between a county election official or employee and the State Election Commission or its designee, pertaining to the manner in which particular functions must be performed, the policy or opinion of the State Election Commission shall control.

(B) If a county board of voter registration and elections does not or cannot determine and certify the results of an election or referendum for which it is responsible by the time set for certification by applicable law, the responsibility to determine and certify the results is devolved upon the State Election Commission.

(C) If the State Election Commission determines that an official or an employee of a county board of voter registration and elections has negligently failed to comply with applicable state or federal law or State Election Commission policies, ~~and~~ procedures, or standardized processes with regard to the election or voter registration process or fails to comply with or cooperate with the corrective plan established by the State Election Commission or its designee under the provisions of subsection (A) the commission may order the decertification of that official or employee and if decertified the commission shall require that official to participate in a retraining program approved by the commission prior to recertification. If the commission finds that the failure to comply with state or federal law or State Election Commission policies, ~~and~~ procedures, or standardized processes by an official is wilful, it shall recommend the termination of that official to the Governor or it shall recommend termination of a staff member to the director of the appropriate county board of voter registration and elections.”

B. 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 and the Attorney General 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.”

Part II

Ballot Drop Boxes

SECTION 2. Article 5, Chapter 15, Title 7 of the 1976 Code is amended by adding:

“Section 7‑15‑387. Notwithstanding another provision of law, a county board of voter registration and elections may not utilize absentee ballot drop boxes for receiving or collecting completed absentee ballots. Completed absentee ballots must be mailed or delivered personally to the county board of voter registration and elections. For purposes of this section, ‘absentee ballot drop box’ or ‘drop box’ means a secure receptacle established, provided, and operated by a county board of voter registration and elections, or another entity charged by law with conducting elections, for the purpose of receiving or collecting completed absentee ballots.”

Part III

Filing Fees and Party Certification Fees

SECTION 3. The first paragraph of Section 7‑11‑15(A) of the 1976 Code, as last amended by Act 142 of 2018, is further amended to read:

“(A) In order to qualify as a candidate to run in the general election, all candidates seeking nomination by political party primary or political party convention must file a statement of intention of candidacy and party pledge and submit any filing fees between noon on March sixteenth and noon on March thirtieth as provided in this section. If March thirtieth is on a Saturday or Sunday, the time for filing extends to the next regular business day. For purposes of this section and Section 7‑13‑45, ‘next regular business day’ means a day that is not a Saturday, Sunday, or legal holiday. Notwithstanding another provision of law, all candidates from each political party in this State shall pay a filing fee, including candidates from parties that are not required to conduct a primary election. In addition to the filing fee required pursuant to this subsection, political parties also may charge a certification fee not to exceed the sum of one hundred dollars to all candidates seeking nomination by political party primary or political party convention.”

Part IV

Audits

SECTION 4. Section 7‑3‑20(C) of the 1976 Code is amended to read:

“(C) The executive director shall:

(1) supervise the conduct of county board of elections and voter registration, as established pursuant to Article 1, Chapter 5, which administer elections and voter registration in the State and ensure those boards’ compliance with the requirements with applicable state or federal law or State Election Commission policies and procedures with regard to the conduct of elections or the voter registration process by all persons involved in the elections process;

(2) conduct reviews, audits, or other postelection analysis of county board of elections and voter registration, as established pursuant to Article 1, Chapter 5, to ensure those boards’ compliance with the requirements with applicable state or federal law or State Election Commission policies and procedures with regard to the conduct of elections or the voter registration process by all persons involved in the elections process;

(3) establish methods of auditing election results. These methods may include risk‑limiting audits, hand‑count audits, results verification through independent third‑party vendors that specialize in election auditing, ballot reconciliation, or any other method deemed appropriate by the executive director. Election result audits must be conducted in all statewide elections after the election concludes, but prior to certification by the State Board of Canvassers, and may be performed following any other election held in the State at the discretion of the executive director. Once completed, audit reports must be published on the commission’s website;

(4) maintain a complete master file of all qualified electors by county and by precincts;

~~(4)~~(5) delete the name of any elector:

(a) who is deceased;

(b) who is no longer qualified to vote in the precinct where currently registered;

(c) who has been convicted of a disqualifying crime;

(d) who is otherwise no longer qualified to vote as may be provided by law; or

(e) who requests in writing that his name be removed;

~~(5)~~(6) enter names on the master file as they are reported by the county boards of voter registration and elections;

~~(6)~~(7) furnish each county board of voter registration and elections with a master list of all registered voters in the county, together with a copy of all registered voters in each precinct of the county, at least ten days prior to each election. The precinct copies shall be used as the official list of voters;

~~(7)~~(8) maintain all information furnished his office relating to the inclusion or deletion of names from the master file for four years;

~~(8)~~(9) purchase, lease, or contract for the use of such equipment as may be necessary to properly execute the duties of his office, subject to the approval of the State Election Commission;

~~(9)~~(10) secure from the United States courts and federal and state agencies available information as to persons convicted of disqualifying crimes;

~~(10)~~(11) obtain information from any other source which may assist him in carrying out the purposes of this section;

~~(11)~~(12) perform such other duties relating to elections as may be assigned him by the State Election Commission;

~~(12)~~(13) furnish at reasonable price any precinct lists to a qualified elector requesting them;

~~(13)~~(14) serve as the chief state election official responsible for implementing and coordinating the state’s responsibilities under the National Voter Registration Act of 1993;

~~(14)~~(15) serve as the chief state election official responsible for implementing and enforcing the state’s responsibilities under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), as set forth in the U.S.C., Title 42, Section 1973ff, et seq.; ~~and~~

~~(15)~~(16) establish and maintain a statewide voter registration database that shall be administered by the commission and made continuously available to each county board of voter registration and elections and to other agencies as authorized by law; and

(17) report all suspected violations of the state’s election laws to the South Carolina Attorney General and to the appropriate law enforcement agency when, in the executive director’s professional capacity, he has received information that gives him reason to believe that an offense against the state’s election laws has occurred.”

PART V

Prohibition on Use of Private Funds

SECTION 5. Article 1, Chapter 5, Title 7 of the 1976 Code is amended by adding:

“Section 7‑5‑50. No county board of voter registration and elections may accept or expend any funds other than public funds to prepare for or to conduct elections.”

Part VI

Municipal Election Commissions

SECTION 6. A. On July 1, 2022, all municipal election commissions in this State are abolished and their duties, responsibilities, and functions are devolved upon the appropriate county boards of voter registration and elections.

B. Section 5‑15‑30 of the 1976 Code is amended to read:

“Section 5‑15‑30. If by action of a majority of council, or if fifteen percent of the registered municipal electors present to the ~~municipal election commission~~ county election board a duly executed petition on which none of the signatures is more than six months old, in which an election is sought to change the number of council members to a number authorized by the form of government under which the municipality is then operating or to change the method of election of council members, then the municipal governing body shall call a referendum not later than ninety days nor earlier than thirty days after the petition has been certified and delivered to the governing body by the ~~municipal election commission~~ county election board. A petition must be certified as valid or rejected by the ~~municipal election commission~~ county election board within sixty days after it has been delivered to the ~~commission~~ board. There may be only one question framed by the municipal governing body for the referendum in a format similar to that provided by Section 5‑5‑40, and no other election on the same question may be held for two years after that time. If more than one petition is received before publication of a notice of special election, the change sought in the petition bearing the highest number of qualified signatures must be submitted on the ballot. A change receiving a majority of the votes cast is effective at the next general election of the municipality.”

C. Section 5‑15‑70 of the 1976 Code is amended to read:

“Section 5‑15‑70. Each municipal governing body shall determine by ordinance the time for filing nominating petitions, holding primary elections or conventions, the time for entry of candidates for nominations in municipal party primary elections or conventions, the time for closing of entries, and the time and manner of filing by candidates in nonpartisan elections. The municipal governing body may determine by ordinance that either filing a statement of candidacy or a petition with the ~~municipal election commission~~ county election board is required to place the name of the candidate on the ballot in nonpartisan general elections. However, no candidate’s name may be placed on the ballot by petition in a general election conducted in accordance with the provisions of Section 5‑15‑63. If the municipal council determines that the petition method is used, the percentage of electors required on these petitions may not be less than five percent of the qualified electors of the geographical area of the office for which he offers as a candidate.

When a candidate’s name is to be placed on the ballot by virtue of a primary election or convention, the party concerned shall certify the candidacy to the ~~municipal election commission~~ county election board not later than sixty days prior to the election. When the filing by statement of candidacy is authorized, the individual candidate shall file the statement with the ~~commission~~ county election board not later than sixty days prior to the election and the ~~commission~~ county election board shall place the name of the candidate upon the ballot. If the petition method is authorized, the candidate shall file the necessary petition with the municipal clerk seventy‑five days prior to the general election concerned and the clerk shall deliver the petition to the ~~commission~~ county election board. The ~~commission~~ county election board shall examine the petition and determine its validity not later than sixty days prior to the general election concerned and when so validated, the ~~commission~~ county election board shall place the name of the petition candidate upon the ballot.

For nonpartisan special elections, if the petition method is authorized, the candidate shall file the petition with the municipal clerk not later than twelve o’clock noon, sixty days prior to the election. The ~~commission~~ county election board shall determine the validity of the petition not later than forty‑five days prior to the election and when so validated, shall place the candidate’s name on the ballot. If the statement of candidacy is authorized, these statements must be filed not later than twelve o’clock noon, forty‑five days prior to the election.

For partisan special elections, petitions must be submitted pursuant to Section 7‑13‑190(B).”

D. Section 5‑15‑90 of the 1976 Code is amended to read:

“Section 5‑15‑90. ~~(A)~~ All municipal elections held under the provisions of this chapter must be conducted by a ~~municipal election commission composed of three electors who must be residents of the municipality and who must be appointed by the municipal governing body. The terms of the members are six years except of those first appointed one shall serve a term of four years and one a term of two years~~ county board of voter registration and elections.

~~(B)(1)~~ ~~Each municipal election commissioner and each staff person designated by the commission, shall complete, within eighteen months after a commissioner’s initial appointment or his reappointment after a break in service, or within eighteen months after a staff person’s initial employment or reemployment following a break in service, a training and certification program conducted by the State Election Commission. When a commissioner or staff person has successfully completed the training and certification program, the State Election Commission shall issue the commissioner or staff person a certification, whether or not the commissioner or staff person applies for the certification.~~

~~(2)(a)~~ ~~The provisions of this section do not exempt a member or staff person from completing the training and certification program required in item (1).~~

~~(b)~~ ~~A member appointed or reappointed after a break in service before the effective date of this section or a staff person employed or reemployed after a break in service before the effective date of this section shall successfully complete a training and certification program by the latter of:~~

~~(i)~~  ~~eighteen months after the member’s appointment or reappointment after a break in service or the staff person’s employment or reemployment after a break in service; or~~

~~(ii)~~ ~~ninety days after the effective date of this section.~~

~~(c)~~ ~~On and after the effective date of this section, a member appointed or reappointed after a break in service or a staff person employed or reemployed after a break in service shall complete the training and certification program required in item (1) within eighteen months after the member’s appointment or reappointment after a break in service or staff person’s employment or reemployment after a break in service.~~

~~(3)~~ ~~If a member does not fulfill the training and certification program as provided in this section, the municipal governing body, upon notification, shall remove that member from the board unless the municipal governing body grants the member an extension to complete the training and certification program based upon exceptional circumstances.~~

~~(4)~~ ~~Following completion of the training and certification program required in item (1), each commission member, and staff person designated by the commission, shall take at least one training course each year.~~”

E. Section 5‑15‑110 of the 1976 Code is amended to read:

“Section 5‑15‑110. Candidates for municipal offices in any partisan or nonpartisan general election nominated by petition shall file the necessary petition with the ~~municipal election commission~~ county election board seventy‑five days before the general election concerned. The ~~commission~~ county election board shall examine the petition and determine its validity not later than sixty days before the general election concerned. A nomination petition must bear the signatures of not less than five percent of the qualified electors of the geographical area of the office for which he offers as a candidate.”

F. Section 5‑15‑120 of the 1976 Code is amended to read:

“Section 5‑15‑120. Immediately upon the closing of the polls at any municipal election, the managers shall count publicly the votes cast and make a statement of the whole number of votes cast in such election together with the number of votes cast for each candidate for mayor and councilman and transmit this information to the ~~municipal election commission~~ county election board. In partisan elections the person securing the highest number of votes for mayor shall be declared elected and the councilmen shall be selected by the following methods:

(a) When all councilmen are to be elected at large, the persons receiving the highest number of votes in number equal to the number to be chosen shall be declared elected.

(b) When the councilmen are to be elected from each ward and are required to be residents of that ward, the person receiving the highest number of votes in that ward shall be declared elected.

(c) When some councilmen are to be elected from each ward and required to be residents of that ward and the remainder of the councilmen to be elected at large, those persons receiving the highest number of votes in each ward shall be declared elected and those persons running at large who receive the highest number of votes in number equal to the number to be chosen at large shall be declared elected.

(d) When all councilmen are to be elected at large, but required to reside in a particular ward, the person receiving the highest number of votes for the seat to be filled shall be declared elected.

(e) When all councilmen are to be elected at large, but some are required to be residents of particular wards and other councilmen may not be so required, the person receiving the highest number of votes for the seat to be filled shall be declared elected.

Newly elected officers shall not be qualified until at least forty‑eight hours after the closing of the polls and in the case a contest is finally filed the incumbents shall hold over until the contest is finally determined.”

G. Section 5‑15‑125 of the 1976 Code is amended to read:

“Section 5‑15‑125. If any municipal election results in a tie, the ~~municipal election commission~~ county election board or the municipal party committee shall conduct a runoff election to break the tie two weeks following that election. In the tie‑breaking runoff, the laws of this State apply, mutatis mutandi. If the date for the tie‑breaking runoff election falls on a legal holiday, it must be set for the same day of the first week following which is not a legal holiday. If a tie‑breaking runoff election is required, any remaining municipal elections required are postponed for two weeks. If the date of a postponed election falls on a legal holiday, it must be set for the same day of the first week following which is not a legal holiday.”

H. Section 5‑15‑130 of the 1976 Code is amended to read:

“Section 5‑15‑130. Within forty‑eight hours after the closing of the polls, any candidate may contest the result of the election as reported by the managers by filing a written notice of such contest together with a concise statement of the grounds therefor with the ~~Municipal Election Commission~~ county election board. Within forty‑eight hours after the filing of such notice, the ~~Municipal Election Commission~~ county election board shall, after due notice to the parties concerned, conduct a hearing on the contest, decide the issues raised, file its report together with all recorded testimony and exhibits with the clerk of court of the county in which the municipality is situated, notify the parties concerned of the decisions made, and when the decision invalidates the election the council shall order a new election as to the parties concerned.

Neither the mayor nor any member of council shall be eligible to pass on the issues arising in any contest in which he is a party.”

I. Section 5‑15‑140 of the 1976 Code is amended to read:

“Section 5‑15‑140. Within ten days after notice of the decision of the ~~municipal election commission~~ county election board any party aggrieved thereby may appeal from such decision to the court of common pleas. Notice of appeal shall be served on the opposing parties or their attorneys and filed in the office of the clerk of court within ten days. The notice of appeal shall act as a stay of further proceedings pending the appeal.”

J. Sections 5‑15‑100 and 5‑15‑145 of the 1976 Code are repealed.

K. The Code Commissioner is directed to change any references to municipal election commissions to the appropriate county election board as may be necessary.

Part VII

Domicile for Voting Purposes

SECTION 7. Section 7‑1‑25 of the 1976 Code is amended to read:

“Section 7‑1‑25. (A) A person’s residence is his domicile. ‘Domicile’ means a person’s fixed home where he has an intention of returning when he is absent. A person has only one domicile.

(B)(1) For voting purposes, a person has changed his domicile if he:

~~(1)~~(a) has abandoned his prior home; and

~~(2)~~(b) has established a new home, has a present intention to make that place his home, and has no present intention to leave that place.

(2) For voting purposes, a person also has changed his domicile if he enters another state, or another county or municipality within this State, and while there exercises the right of a citizen by voting.

(C) A person who leaves his home for temporary purposes only with the intention of returning and enters another state, or another county or municipality within this State, is not considered to have changed his domicile unless the person registers to vote or performs other acts indicating a desire to change his domicile.

(D) For voting purposes, a spouse may establish a separate domicile.

~~(D)~~(E) For voting purposes, factors to consider in determining a person’s intention regarding his domicile include, but are not limited to:

(1) a voter’s address reported on income tax returns;

(2) a voter’s real estate interests, including the address for which the legal residence tax assessment ratio is claimed pursuant to Section 12‑43‑220(C);

(3) a voter’s physical mailing address;

(4) a voter’s address on driver’s license or other identification issued by the Department of Motor Vehicles;

(5) ~~a voter’s address on legal and financial documents;~~

~~(6)~~ a voter’s address utilized for educational purposes, such as public school assignment and determination of tuition at institutions of higher education;

~~(7)~~(6) a voter’s address on an automobile registration;

~~(8)~~ ~~a voter’s address utilized for membership in clubs and organizations;~~

~~(9)~~(7) the location of a voter’s personal property;

~~(10)~~(8) residence of a voter’s parents, spouse, and children~~; and~~

~~(11)~~ ~~whether a voter temporarily relocated due to medical care for the voter or for a member of the voter’s immediate family~~.”

Part VIII

Primary Protests

SECTION 8. A. Section 7‑17‑560 of the 1976 Code is amended to read:

“Section 7‑17‑560. The state executive committee must meet in Columbia at such place as may be designated by the chairman to hear and decide protests and contests that may arise in the case of federal officers, state officers, State Senate, State House of Representatives, ~~and~~ county officers, ~~involving more than one county~~ and less than county officers. Any protest or contest must be filed in writing with the chairman of the committee, together with a copy for each candidate in the race, not later than noon on Monday following the canvassing of the votes for these officers by the committee. However, service upon the chairman may be perfected by depositing at the office of the Chief of the State Law Enforcement Division a copy of the protest, together with a copy for each candidate in the race. The chief must take immediate steps to deliver these copies to the chairman. The protest must contain each ground thereof stated separately and concisely. The chairman of the committee must forthwith serve upon each candidate in the protested race a copy of the protest and serve a notice of the time and place of the meeting of the committee for the purposes of hearing the protest.”

B. Sections 7‑17‑520, 7‑17‑530, 7‑17‑540, and 7‑17‑550 are repealed.

Part IX

One Subject

SECTION 9. The General Assembly finds that the sections presented in this act constitute one subject as required by Section 17, Article III of the South Carolina Constitution, 1895, in particular finding that each change and each topic relates directly to or in conjunction with other sections to the subject of election reform as clearly enumerated in the title.

The General Assembly further finds that a common purpose or relationship exists among the sections, representing a potential plurality but not disunity of topics, notwithstanding that reasonable minds might differ in identifying more than one topic contained in the act.

Part X

Savings and Severability

SECTION 10. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 11. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, 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.

Part XI

Time Effective

SECTION 12. This act takes effect upon approval by the Governor.

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