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AS PASSED BY THE SENATE

May 27, 2010

**H. 3746**

Introduced by Reps. Clemmons and Viers

S. Printed 5/27/10--S.

Read the first time February 9, 2010.

## **A BILL**

TO AMEND SECTION 7-11-70, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE NOMINATION OF CANDIDATES BY A PETITION, SO AS TO PROVIDE THAT NO QUALIFIED ELECTOR WHO VOTED IN A PRIMARY ELECTION IS ELIGIBLE TO SIGN A PETITION FOR A CANDIDATE TO RUN FOR AN OFFICE TO BE FILLED AT THE GENERAL ELECTION FOLLOWING THAT PRIMARY AND TO PROVIDE THAT A QUALIFIED ELECTOR OTHERWISE ELIGIBLE TO SIGN A PETITION FOR A CANDIDATE TO APPEAR ON A GENERAL ELECTION BALLOT MAY NOT SIGN MORE THAN ONE PETITION PER GENERAL ELECTION PER OFFICE; BY ADDING SECTION 7-11-75 SO AS TO PROVIDE THAT A PERSON OFFERING FOR ELECTION AS A PETITION CANDIDATE IN ANY GENERAL ELECTION MUST HAVE FIRST NOTIFIED THE ENTITY TO WHICH THE PETITION IS REQUIRED TO BE FILED BY THE BEGINNING DATE OF THE PRIMARY ELECTION PRECEDING THAT GENERAL ELECTION OF HIS INTENTION TO FILE AS A PETITION CANDIDATE FOR THAT OFFICE, AND TO PROVIDE THAT FAILURE TO DO SO DISQUALIFIES HIM AS A PETITION CANDIDATE FOR THAT GENERAL ELECTION; TO AMEND SECTION 7-11-80, AS AMENDED, RELATING TO THE FORM OF NOMINATING PETITIONS, SO AS TO REQUIRE ALL THE SIGNATURES TO BE LEGIBLE SO THAT THE NAME OF THE VOTER CAN BE IDENTIFIED BEYOND A REASONABLE DOUBT; TO AMEND SECTION 7-11-85, RELATING TO VERIFICATION OF THE SIGNATURES ON PETITIONS, SO AS TO REVISE THE VERIFICATION PROCESS, TO PROVIDE THAT ALL QUALIFIED ELECTORS SIGNING A PETITION FOR A CANDIDATE TO APPEAR ON A GENERAL ELECTION BALLOT FOR ELECTION TO A PARTICULAR OFFICE MUST HAVE BEEN A QUALIFIED ELECTOR WHO REGISTERED TO VOTE AT LEAST THIRTY DAYS BEFORE SUBMISSION OF THE PETITION, AND TO REQUIRE THE REGISTRATION BOARD TO VERIFY THE VOTER IS A QUALIFIED ELECTOR IN THAT JURISDICTION; BY ADDING SECTION 7-11-95 SO AS TO PROVIDE THAT THE ENTITY TO WHICH A PETITION MUST BE FILED MAY REJECT THE PETITION IF, AFTER A HEARING, THE ENTITY FINDS THAT BY A PREPONDERANCE OF THE EVIDENCE FRAUD WAS COMMITTED IN THE EXECUTION OF THE PETITION, AND TO PROVIDE THAT THE VALIDATION OF THE SIGNATURES ON A PETITION AND THE DETERMINATION OF WHETHER OR NOT FRAUD WAS COMMITTED IN THE EXECUTION OF THE PETITION MUST BE CONDUCTED IN PUBLIC AFTER NOTICE; AND BY ADDING SECTION 7-11-100 SO AS TO PROVIDE THAT DECISIONS OF A LOCAL ENTITY TO WHICH A PETITION MUST BE

FILED MAY BE APPEALED TO THE STATE ELECTION COMMISSION AND THEREAFTER TO A COURT OF COMPETENT JURISDICTION IN THE MANNER IN WHICH APPEALS FROM THE STATE ELECTION COMMISSION MAY BE TAKEN.

#### Amend Title To Conform

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

SECTION 1. Article 1, Chapter 11, Title 7 of the 1976 Code is amended by adding:

"Section 7-11-75.(A) A person offering for election as a petition candidate in any general election must notify the entity to which the petition is required to be filed, in writing, by noon on the day of the primary election preceding that general election of his intention to file as a petition candidate for that office. This written notification is considered in the public domain and is not confidential. Failure to provide this notification disqualifies that person as a petition candidate for the office for that election. The petition, as required by Section 7-11-70, must be filed no later than noon on July fifteenth before the general election.

(B) A person offering for election as a petition candidate in any special election must meet the requirements established in Section 7-13-190."

SECTION 2. Section 7-11-80 of the 1976 Code, as last amended by Act 510 of 1984, is further amended to read:

"Section 7-11-80. (A) All nominating petitions for any political office or petition of any political party seeking certification ~~as such~~ in the State of South Carolina shall be standardized as follows:

- (1) shall be on good quality original bond paper sized eight and one-half by fourteen inches or eight and one-half by eleven inches;
- (2) shall contain a concise statement of purpose; ~~in the case of nomination of candidates, the name of the candidate, the office for which he offers, and the date of the election for such office shall be contained in such petition~~;
- (3) shall contain in separate columns from left to right the following:
  - (a) signature of voter and printed name of voter;
  - (b) address of residence where registered; and
  - (c) precinct of voter;
- (4) no single petition page shall contain the signatures of registered voters from different counties;
- (5) all signatures of registered voters shall be numbered consecutively; and
- (6) petitions with more than one page must have the pages consecutively numbered upon filing with the appropriate authority, and each subsequent page after the first must contain the statement of purpose that appears on the first page.

(B) A nominating petition for office must meet all the requirements pursuant to subsection (A) and the following:

- (1) the name of the candidate, the office for which he offers, and the date of the election for such office;
- (2) a statement in a conspicuous location and in bold on each page, that, by signing the petition, the voter attests, under penalty of perjury, that he manually signed his own name;
- (3) Each page of the petition must bear on the bottom or back the affidavit of the circulator of the

sheet, which affidavit must be subscribed and sworn by such circulator before a notary public and shall set forth:

(a) his residential address;

(b) that each signer manually signed his own name with full knowledge of the contents of the petition;

(c) that each signature was signed within one hundred eighty days of the last day on which such petition may be filed; and

(d) that, to the best of the affiant's knowledge and belief, the signers are registered electors of the State qualified to sign the petition, that their respective residences are correctly stated in the petition, and that they all reside in the county or municipality named in the affidavit.

(4) No notary public may sign the petition as an elector or serve as a circulator of any petition which he notarized. Any and all sheets of a petition that have the circulator's affidavit notarized by a notary public who also served as a circulator of one or more sheets of the petition or who signed one of the sheets of the petition as an elector shall be disqualified and rejected.

(5) No petition nominating a candidate shall be circulated prior to one hundred eighty days before the last day on which the petition may be filed, and no signature shall be counted unless it was signed within one hundred eighty days of the last day for filing the same.

(C) The State Election Commission may furnish petition forms to the county election officials and to interested persons."

SECTION 3. Section 7-11-85 of the 1976 Code, as added by Act 263 of 1984, is further amended to read:

"Section 7-11-85. (A) Every signature on a petition requiring five hundred or less signatures must be checked for validity by the respective county board of voter registration against the signatures of the voters on the original applications for registration on file in the registration board office. When a petition requires more than five hundred signatures, ~~every one of the first five hundred~~ consecutive signatures chosen randomly must be checked for validity, and at least one out of every other group of ten signatures thereafter beginning with the five hundred and first signature appearing before and after the five hundred signature block also must be chosen randomly and ~~must be~~ checked for validity. If the projected number of valid signatures, using this percentage method for the signatures over five hundred plus the number of valid signatures in the ~~first~~ five hundred signature block, total at least the number of signatures required by law on the petition, it must be certified as a valid petition. No petition, however, may be rejected if the number of signatures over five hundred checked using the percentage method plus the number of valid signatures in the ~~first~~ five hundred signature block does not total at least the number required by law. If insufficient signatures are found using the percentage method in order to certify as a valid petition, the board of voter registration must check every signature over five hundred separately, or ~~such~~ the number over five hundred until the required number of valid signatures is found.

(B) If it is a petition seeking to certify a new political party or if the office for which the petition has been submitted comprises more than one county, and using the percentage method of checking does not result in the required number of valid signatures, the executive director of the commission shall designate which counties must check additional signatures.

(C) No signatures on a petition may be rejected if the address of a voter, registration certificate number of a voter, or the precinct of a voter, as required by Section 7-11-80, is missing or incorrect if the signature is otherwise valid, and if the board can otherwise verify that the voter is currently a qualified elector in that jurisdiction who registered to vote at least thirty days before submission of the

petition, unless the elector meets the exception established in Section 7-5-150. The signature of a voter may ~~only~~ be rejected if it is illegible and cannot be found in the records of the board of voter registration, is missing from the petition, or is not that of the voter, or if the registration of the voter has been deleted for any of the reasons named in items (2) or (3) of subsection (C) of Section 7-3-20.

(D) The board of voter registration shall complete a summary form containing the results of checking any petition and must give the completed form to the requesting authority. The form used for this purpose must be prescribed and provided by the executive director.

(E) In addition to all other requirements, all qualified electors signing a petition for a candidate to appear on a ballot for election to a particular office must have been a qualified elector who registered to vote at least thirty days before submission of the petition, unless the elector meets the exception established in Section 7-5-150."

SECTION 4. Article 1, Chapter 11, Title 7 of the 1976 Code is amended by adding:

"Section 7-11-95. (A) The entity to which a petition nominating a candidate must be filed may reject an elector's signature if, after a hearing with notice to all parties, the entity finds that fraud of any kind or degree was committed in the execution of the petition. The entity must give all parties supporting and objecting to the petition an opportunity to be heard at the hearing.

(B) The State Election Commission shall establish a process to validate signatures on a petition which provides the greatest amount of transparency during the validation process without interfering with the election commission's other statutory duties."

SECTION 5. Article 1, Chapter 11, Title 7 of the 1976 Code is amended by adding:

"Section 7-11-100. Decisions of the local entity concerning a petition nominating a candidate may be appealed to the State Election Commission according to the provisions of this section. After a petition is certified, a protest against a petition must be made no later than noon on the fifth day following certification. The State Election Commission must hear the protest within seven days after the protest is filed. If the State Election Commission determines a petition candidate fails to meet the statutory requirements, it shall not place the petition candidate's name on the ballot. The State Election Commission's decision concerning the petition is the final decision in the matter."

SECTION 6. Section 7-11-15 of the 1976 Code is amended to read:

"Section 7-11-15. 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 each statement of intention of candidacy between noon on March sixteenth and noon on March thirtieth as provided in this section. However, if March thirtieth falls on Saturday, Sunday, or a legal holiday, the statement must be filed by noon the following business day.

(1) Candidates seeking nomination for a statewide, congressional, or district office that includes more than one county must file their statements of intention of candidacy with the state executive committee of their respective party.

(2) Candidates seeking nomination for the State Senate or House of Representatives must file their statements of intention of candidacy with the county executive committee of their respective party in the county of their residence. The county committees must, within five days of the receipt of the statements, transmit the statements along with the applicable filing fees to the respective state executive committees. However, the county committees must report all filings to the state committees no later than five p.m. on March thirtieth, unless March thirtieth falls on Saturday, Sunday, or a legal holiday, in which case the statement must be filed by noon the following business day. The state executive committees must certify candidates pursuant to Section 7-13-40.

(3) Candidates seeking nomination for a countywide or less than countywide office shall file their statements of intention of candidacy with the county executive committee of their respective party.

Except as provided herein, the county executive committee of any political party with whom statements of intention of candidacy are filed must file, in turn, all statements of intention of candidacy with the county election commission by noon on the ~~tenth~~ fifth day following the deadline for filing statements by candidates. If the ~~tenth~~ fifth day falls on Saturday, Sunday, or a legal holiday, the statements must be filed by noon the following business day. The state executive committee of any political party with whom statements of intention of candidacy are filed must file, in turn, all the statements of intention of candidacy with the State Election Commission by noon on the ~~tenth~~ fifth day following the deadline for filing statements by candidates. If the ~~tenth~~ fifth day falls on Saturday, Sunday, or a legal holiday, the statements must be filed by noon the following business day. No candidate's name may appear on a primary election ballot, convention slate of candidates, general election ballot, or special election ballot, except as otherwise provided by law, if (1) the candidate's statement of intention of candidacy has not been filed with the county election commission or State Election Commission, as the case may be, by the deadline and (2) the candidate has not been certified by the appropriate political party as required by Sections 7-13-40 and 7-13-350, as applicable. The candidate's name must appear if the candidate produces the signed and dated copy of his timely filed statement of intention of candidacy.

The statement of intention of candidacy required in this section and in Section 7-13-190(B) must be on a form designed and provided by the State Election Commission. This form, in addition to all other information, must contain an affirmation that the candidate meets, or will meet by the time of the general election, or as otherwise required by law, the qualifications for the office sought. It must be filed in triplicate by the candidate, and the political party committee with whom it is filed must stamp it with the date and time received, sign it, keep one copy, return one copy to the candidate, and send one copy to either the county election commission or the State Election Commission, as the case may be.

If, after the closing of the time for filing statements of intention of candidacy, there are not more than two candidates for any one office and one or more of the candidates dies, or withdraws, the state or county committee, as the case may be, if the nomination is by political party primary or political party convention only may, in its discretion, afford opportunity for the entry of other candidates for the office involved; however, for the office of State House of Representatives or State Senator, the discretion must be exercised by the state committee.

The provisions of this section do not apply to nonpartisan school trustee elections in any school district where local law provisions provide for other dates and procedures for filing statements of candidacy or petitions, and to the extent the provisions of this section and the local law provisions conflict, the local law provisions control."

SECTION 7. Section 7-13-45 of the 1976 Code is amended to read:

"Section 7-13-45. In every general election year, the county chairman shall:

- (1) designate a specified place other than a private residence where persons may file a statement of intention of candidacy;
- (2) designate a specified place other than a private residence where persons may file as candidates;
- (3) establish regular hours of not less than four hours a day during the final ~~seventy-two hours~~ three business days of the filing period in which he or some person he designates must be present at the designated place to accept filings;
- (4) place ~~an~~ a legal advertisement to appear two weeks before the filing period begins in a newspaper of general circulation in the county at least five by seven inches in size and on the county's website, if

applicable, and on the party's state website that notifies the public of the dates of the filing periods, the offices which may be filed for, the place and street address where filings may be made, and the hours that an authorized person will be present to receive filings."

SECTION 8. If any section, subsection, item, subitem, 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, item, subitem, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, items, subitems, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 9. This act takes effect on January 1, 2011.

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