

**South Carolina General Assembly**  
124th Session, 2021-2022

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**Bill 499**

~~Indicates Matter Stricken~~

Indicates New Matter

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~~Indicates Matter Stricken~~

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AMENDED

March 31, 2021

**S. 499**

Introduced by Senators Campsen, Rice, Talley, Loftis, Kimbrell and Climer

S. Printed 3/31/21--S. [SEC 4/1/21 3:21 PM]

Read the first time January 28, 2021.

**A BILL**

TO ENACT THE "SOUTH CAROLINA ELECTION COMMISSION RESTRUCTURING ACT"; TO AMEND CHAPTER 1, TITLE 7 OF THE 1976 CODE, RELATING TO ELECTIONS, BY ADDING SECTION 7-1-110, TO PROVIDE THAT THE PRESIDENT OF THE SENATE AND SPEAKER OF THE HOUSE OF REPRESENTATIVES HAVE THE RIGHT TO INTERVENE AND HAVE STANDING ON BEHALF OF THEIR RESPECTIVE BODIES IN ACTIONS THAT CHALLENGE THE VALIDITY OF AN ELECTION LAW, AN ELECTION POLICY, OR THE MANNER IN WHICH AN ELECTION IS CONDUCTED; TO AMEND SECTION 7-3-10(a) OF THE 1976 CODE, RELATING TO THE STATE ELECTION COMMISSION, TO PROVIDE THAT THE MEMBERSHIP OF THE COMMISSION CONSISTS OF FIVE MEMBERS APPOINTED BY THE GOVERNOR UPON THE ADVICE AND CONSENT OF THE SENATE; AND TO AMEND SECTION 7-3-20(A) OF THE 1976 CODE, RELATING TO THE EXECUTIVE DIRECTOR OF THE STATE ELECTION COMMISSION, TO REVISE HIS PROCEDURE OF APPOINTMENT.

Amend Title To Conform

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

SECTION 1. This act must be known and may be cited as the "South Carolina Election Commission Restructuring Act".

SECTION 2. 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."

SECTION 3. A. Section 7-3-10(a) of the 1976 Code is amended to read:

"Section 7-3-10. (a) There is hereby created the State Election Commission composed of five members, to be appointed by the Governor upon the advice and consent of the Senate, at least one of whom shall be a member of the majority political party represented in the General Assembly, and at least one of whom shall be a member of the largest minority political party represented in the General Assembly, ~~to be appointed by the Governor to serve terms of four years and until their successors have been elected and qualify, except of those first appointed three shall serve for terms of two years.~~ In considering appointments to the commission, race, gender, and other geographic and demographic factors must be considered to assure nondiscrimination, inclusion, and representation to the greatest extent possible of all segments of the population of the State. The terms of the members of the State Election Commission shall be for four years and until their successors are appointed and qualify, provided, however, that a member may not serve in holdover status for more than one year. If a member who has been reappointed and who is serving in holdover status is not confirmed by the Senate on or before the sine die adjournment of the General Assembly following the expiration of the member's term, then the member's seat is vacated, and he is ineligible to serve on the State Election Commission as a recess or interim appointee. If a person appointed to serve as a commissioner is rejected by a vote of the Senate, then, if the appointment was an initial appointment, the person cannot take office and is ineligible to serve as an interim appointee to the State Election Commission and, if the appointment was a reappointment, the person may serve the remainder of his term in office, if any, his seat is vacated upon the expiration of his term, and the person is ineligible to serve as a recess or interim appointee to the State Election Commission. Any vacancy on the ~~Commission~~ commission shall be filled for the unexpired portion of the term in the same manner as the original appointment."

B. On the effective date of this act, the terms of the members of the State Election Commission are expired, and a new State Election Commission must be established pursuant to Section 7-3-10(a), as amended by this act. In order to stagger the terms of the members of the State Election Commission, the initial terms are as follows, regardless of when a member is appointed and qualifies:

(1) the initial appointment of one member of the majority political party represented in the General Assembly and the initial appointment of one member of the largest minority political party represented in the General

Assembly are for terms expiring on July 1, 2023; and

(2) the initial appointments of three members are for terms expiring on July 1, 2025.

C. A member whose term expires on the effective date of this act may continue to serve in the seat in holdover status until a successor is appointed and qualifies, provided that if no successor has received the advice and consent of the Senate by May 13, 2021, or by the deadline for the confirmation of appointments in a sine die resolution that is passed in 2021, whichever is later, then the member's seat is vacated on the later of the two dates and is ineligible to serve as an interim appointment to the State Election Commission. If a member who is serving in holdover status is rejected by a vote of the Senate, then the member's seat is vacated on the date the member is rejected by a vote of the Senate and the member is ineligible to serve as an interim appointment to the State Election Commission.

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

"Section 7-3-20. (A) The State Election Commission shall ~~elect~~ appoint an executive director, upon the advice and consent of the Senate, who shall be directly responsible to the commission and who shall serve at the pleasure of the commission. The executive director shall be the chief administrative officer for the State Election Commission. In the event of a vacancy in the position of executive director, an interim director must be appointed by the State Election Commission, and an appointment for a permanent executive director must be submitted to the Senate as soon as practicable. If a person is appointed by the State Election Commission to be executive director and is not confirmed by the Senate by the date for the sine die adjournment of the General Assembly following the appointment, then the person must not serve as an interim or permanent executive director."

B. The provisions of this SECTION apply to all vacancies that occur in the position of executive director on or after the effective date of this act.

C. The commission appointed and confirmed under the provisions of SECTION 3 must submit an appointment for executive director to the Senate for advice and consent no later than sixty days after three members of the commission have been appointed, qualified, and confirmed as provided in SECTION 3. An executive director serving on the effective date of this act may continue to serve as executive director until a successor is appointed and qualifies, provided that if no successor has received the advice and consent of the Senate by May 13, 2021, or by the deadline for the confirmation of appointments in a sine die resolution that is passed in 2021, whichever is later, then the executive director position is vacated on the later of the two dates and is ineligible to serve as an interim or permanent executive director. If an executive director who is serving in holdover status is rejected by a vote of the Senate, then the executive director position is vacated on the date the executive director is rejected by a vote of the Senate and the executive director is ineligible to serve as an interim or permanent executive director of the State Election Commission.

SECTION 5. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, then 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.

SECTION 6. This act takes effect upon approval by the Governor.

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