CHAPTER 3

State Election Commission; Central Registration System

**SECTION 7‑3‑10.** State Election Commission created; appointment; term; composition; vacancies; chairman; meetings; powers and duties.

 (a) There is hereby created the State Election Commission composed of five members, 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. Any vacancy on the Commission shall be filled for the unexpired portion of the term in the same manner as the original appointment.

 (b) The Governor shall appoint one of the members to serve as chairman for a term of two years and until his successor has been appointed and qualifies. The Commission shall select such other officers from among its members as it may deem necessary.

 (c) The commission shall meet at its offices in Columbia at least once each month or at such times as considered necessary by the commission. However, the commission may change the location of the meeting if the change is more convenient for the commission or any parties scheduled to appear before the commission.

 (d) The Commission shall have the powers and duties as enumerated in this title.

 (e) No member of the commission may participate in political management or in a political campaign during the member’s term of office. No member of the commission may make a contribution to a candidate or knowingly attend a fundraiser held for the benefit of a candidate. Violation of this subsection subjects the commissioner to removal by the Governor.

HISTORY: 1962 Code Section 23‑30; 1968 (55) 2316; 1992 Act No. 276, Section 1, eff March 10, 1992; 1996 Act No. 423, Section 2, eff June 18, 1996; 1998 Act No. 293, Section 1, eff April 20, 1998.

Effect of Amendment

The 1992 amendment in subsection (c), deleted “at such times as it may determine” from the end of the first sentence, and added the second sentence.

The 1996 amendment added subsection (e).

The 1998 amendment in subsection (c) added “or at such times as considered necessary by the commission” to the end of the first sentence.

CROSS REFERENCES

Duty of the State Election Commission to prescribe and provide forms for registration of electors by mail, see Section 7‑5‑155.

Provisions of this section governing time and location of board meetings, see Sections 7‑17‑70, 7‑17‑220.

State Election Commission to conduct primary elections, see Sections 7‑13‑40, 7‑13‑50, 7‑13‑610.

LIBRARY REFERENCES

29 C.J.S., Elections Sections 5 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 7, Appointment.

S.C. Jur. Elections Section 9, Duties of the State Election Commission.

Attorney General’s Opinions

The executive director of the State Election Commission has implied authority to contract with a vendor for the purpose of marketing a voter registration system to other states. S.C. Op.Atty.Gen. (August 5, 2011) 2011 WL 3918167.

The Home Rule Act of 1975 [Chapter 9 of Title 4 and Chapters 1, 5, 7, 9, 11, 13, 15 and 17 of Title 5 of the 1976 Code] does not change the functioning or structure of the Commissioners of Elections. Terms of Commissioners end on date of General Election. 1974‑75 Op Atty Gen, No. 4196, p 246.

NOTES OF DECISIONS

In general 1

1. In general

Stated in Brisben v. Thornton (S.C. 1972) 258 S.C. 524, 189 S.E.2d 827.

**SECTION 7‑3‑20.** Executive director of State Election Commission.

 (A) The State Election Commission shall elect an executive director 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.

 (B) The executive director shall receive such compensation and employ such staff, subject to the approval of the State Election Commission, as may be provided by law.

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

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

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

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

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

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

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

 (13) 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) 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) 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.

 (D) The State Election Commission shall publish on the commission’s website each change to voting procedures enacted by state or local governments. State and local governments shall file notice of all changes in voting procedures, including, but not limited to, changes to precincts with the State Election Commission within five days after adoption of the change or thirty‑five days prior to the implementation, whichever is earlier. All voting procedure changes must remain on the commission’s website at least through the date of the next general election. However, if changes are made within three months prior to the next general election, then the changes shall remain on the commission’s website through the date of the following general election.

HISTORY: 1962 Code Section 23‑31; 1967 (55) 657; 1968 (55) 2316; 1996 Act No. 466, Section 2, eff August 21, 1996; 2006 Act No. 253, Section 1, eff March 24, 2006; 2012 Act No. 265, Section 4, eff upon preclearance approval or declaratory judgment; 2014 Act No. 196 (S.815), Sections 1, 10, eff June 2, 2014.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

Editor’s Note

2012 Act No. 265, Section 9, provides as follows:

“This act takes effect upon preclearance approval by the United States Department of Justice or approval by a declaratory judgment issued by the United States District Court for the District of Columbia, whichever occurs first.”

Preclearance approval for 2012 Act No. 265 was received on October 1, 2012.

Effect of Amendment

The 1996 amendment revised subsection (C).

The 2006 amendment added paragraph (C)(12) relating to implementation of the Uniformed and Overseas Citizens Absentee Voting Act.

The 2012 amendment added item (13) relating to a statewide voter registration database, and made other nonsubstantive changes.

2014 Act No. 196, Section 1, in subsection (C), added paragraphs (1) and (2), relating to county board of elections and voter registration, and redesignated the paragraphs accordingly.

2014 Act No. 196, Section 10, in subsection (C), added paragraph (16).

CROSS REFERENCES

Definition of “voter”, “registered voter”, “elector”, “registered elector”, “qualified elector” and “qualified registered elector” as including persons whose names have not been removed from roster under this section, see Section 7‑1‑20.

Noncompliant county boards of voter registration and elections, see Section 7‑3‑25.

Rejection of signatures on nominating petitions because signer’s registration has been deleted under certain provisions of this section, see Section 7‑11‑85.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 8, Executive Director of the State Election Commission.

S.C. Jur. Elections Section 9, Duties of the State Election Commission.

S.C. Jur. Elections Section 35, When Valid.

Attorney General’s Opinions

A reasonable price for precinct lists requested by a qualified elector must be set with the primary consideration of the cost of reproducing the lists in mind. SC Op.Atty.Gen. (November 13, 2015) 2015 WL 7573849.

Simultaneously serving as the Executive Director of the State Election Commission and on the South Carolina Coastal Council would most likely contravene the dual office holding prohibitions of the state Constitution. 1992 Op Atty Gen No. 92‑35.

Person who is in jail or pre‑trial facility and who has not been convicted of any crime is not disenfranchised and should be allowed to register and vote. 1993 Op Atty Gen No. 93‑23.

NOTES OF DECISIONS

In general 1

1. In general

1962 Code Section 23‑31 [1976 Code Section 7‑3‑20] is explicit, admitting of no construction or application other than that which it clearly demands with regard to furnishing of precinct lists; Election Commission must furnish to qualified elector, for a reasonable price, a reproduction of the computer tape containing names and addresses of all registered electors, despite Commission’s argument that it need only provide the identical information in the form of a computer printout or microfiche because the computer tape may be used for commercial exploitation; if the computer tape containing a precinct list of qualified electors was to be excluded from “any and all precinct lists,” the Legislature would have so provided. Martin v. Ellisor (S.C. 1976) 266 S.C. 377, 223 S.E.2d 415.

Applied in Brisben v. Thornton (S.C. 1972) 258 S.C. 524, 189 S.E.2d 827.

**SECTION 7‑3‑25.** Noncompliant county boards of voter registration and elections.

 (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 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), 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;

 (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. 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 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 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.

HISTORY: 2014 Act No. 196 (S.815), Section 2, eff June 2, 2014.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Elections Section 9, Duties of the State Election Commission.

**SECTION 7‑3‑30.** Notice of deletion of elector’s name from roster of electors; appeal by elector; restoration of name.

 (a) The executive director shall notify by mail each elector at the address last filed in the office, whose name has been deleted for the reasons of conviction or a change in the residence of a qualified voter. The notice shall state the reason for the deletion and inform the elector of his right to appeal to the county board of voter registration and elections and the time in which to perfect his appeal. A copy of the notice must be forwarded to the appropriate county board of voter registration and elections.

 (b) Each elector whose name has been deleted has twenty days from the date the notice is mailed to appeal. The appeal must be to the county board of voter registration and elections from whose master file the deletion has been made. If the board determines that the elector’s name should not have been deleted, it shall instruct the executive director to restore his name to the registration books; however, if the deletion is for conviction, the appeal must be to the Executive Director of the State Election Commission.

HISTORY: 1962 Code Section 23‑32; 1967 (55) 657; 1968 (55) 2316; 1996 Act No. 466, Section 3, eff August 21, 1996; 2012 Act No. 265, Section 5, eff upon preclearance approval or declaratory judgment.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

Editor’s Note

2012 Act No. 265, Section 9, provides as follows:

“This act takes effect upon preclearance approval by the United States Department of Justice or approval by a declaratory judgment issued by the United States District Court for the District of Columbia, whichever occurs first.”

Preclearance approval for 2012 Act No. 265 was received on October 1, 2012.

Effect of Amendment

The 1996 amendment revised subsection (b).

The 2012 amendment inserted “for the reasons of conviction or a change in the residence of a qualified voter” in subsection (a), substituted “executive director” for “central registration office” in subsection (b), and made other nonsubstantive changes.

NOTES OF DECISIONS

In general 1

1. In general

Applied in Brisben v. Thornton (S.C. 1972) 258 S.C. 524, 189 S.E.2d 827.

**SECTION 7‑3‑40.** Reports to be furnished by Bureau of Vital Statistics.

 The Bureau of Vital Statistics must furnish the executive director a monthly report of all persons eighteen years of age or older who have died in the State since making the previous report. All reports must contain the name of the deceased, county of residence, his social security or other identification number, and his date and place of birth. The bureau must provide this information at no charge.

HISTORY: 1962 Code Section 23‑33; 1967 (55) 657; 1968 (55) 2316; 1996 Act No. 434, Section 1, eff June 4, 1996; 2012 Act No. 265, Section 6, eff upon preclearance approval or declaratory judgment.

Editor’s Note

2012 Act No. 265, Section 9, provides as follows:

“This act takes effect upon preclearance approval by the United States Department of Justice or approval by a declaratory judgment issued by the United States District Court for the District of Columbia, whichever occurs first.”

Preclearance approval for 2012 Act No. 265 was received on October 1, 2012.

Effect of Amendment

The 1996 amendment revised this section.

The 2012 amendment substituted “this information at no charge” for “that this information be furnished to it by each county”.

CROSS REFERENCES

Establishment of the Bureau of Vital Statistics, see Section 44‑63‑20.

**SECTION 7‑3‑50.** Information to be furnished by boards.

 Each county board of voter registration and elections must furnish the executive director information as may be requested by him concerning each registered elector by the fifteenth day of each month and within five days after closing of the books prior to an election.

HISTORY: 1962 Code Section 23‑34; 1967 (55) 657; 1968 (55) 2316; 1984 Act No. 510, Section 1, eff June 28, 1984.

Code Commissioner’s Note

Pursuant to the directive in 2014 Act No. 196, Section 8, at the direction of the Code Commissioner, references in this section to county election commissions or commissioners or county boards of voter registration were changed to the “Board of Voter Registration and Elections” and board members as appropriate.

Effect of Amendment

The 1984 amendment changed “shall” to “must” and deleted “a duplicate copy of each certificate issued and such other” before “information.”

**SECTION 7‑3‑60.** Clerks and magistrates shall report persons convicted of certain offenses.

 The clerks of the courts of common pleas and general sessions and every magistrate in the State must, annually on or before June first, make out under their respective hands and seals and report to the executive director a complete list as shown by the records of their respective offices for the preceding calendar year of all persons convicted in that year of felonies or crimes against the election laws, together with the social security or identification numbers of these persons and the month of conviction. Where there is no person to be reported, the report shall so state. Any clerk of the court or magistrate who fails or neglects to make any report required by this section must forfeit and pay to the county in which he holds office the sum of fifty dollars for each failure or neglect to make the report.

HISTORY: 1962 Code Section 23‑92; 1952 Code Section 23‑92; 1950 (46) 2059; 1967 (55) 657; 1968 (55) 2316; 1984 Act No. 289, eff March 5, 1984.

Effect of Amendment

The 1984 amendment deleted references to specific offenses, added “felonies or” in lieu thereof, and also added the requirement that a report contain the month of conviction.

LIBRARY REFERENCES

29 C.J.S., Elections Section 33.

Attorney General’s Opinions

South Carolina courts will probably follow majority rule that one convicted of felony under federal law, which offense would have been misdemeanor under state law, will be disenfranchised under Section 7‑5‑120(b). 1984 Op Atty Gen, No. 84‑94, p. 222.

Person who is in jail or pre‑trial facility and who has not been convicted of any crime is not disenfranchised and should be allowed to register and vote. 1993 Op Atty Gen No. 93‑23.

**SECTION 7‑3‑70.** Reports furnished by Department of Motor Vehicles.

 (a) The Department of Motor Vehicles must furnish the executive director a monthly report of all persons eighteen years of age or older who have surrendered their driver’s license or identification card and obtained a driver’s license or identification card in another state. All reports must contain the name of the driver or identification cardholder, social security number, date of birth, South Carolina county where previously a resident, and the state in which the license or identification card was surrendered. The department must provide this information at no charge.

 (b) The Department of Motor Vehicles must furnish the executive director a monthly report of all persons eighteen years of age or older who were reported as deceased by Social Security Administration. All reports must contain the name, social security number, date of birth, and date of death. The department must provide this information at no charge.

HISTORY: 2012 Act No. 265, Section 7, eff upon preclearance approval or declaratory judgment.

Editor’s Note

2012 Act No. 265, Section 9, provides as follows:

“This act takes effect upon preclearance approval by the United States Department of Justice or approval by a declaratory judgment issued by the United States District Court for the District of Columbia, whichever occurs first.”

Preclearance approval for 2012 Act No. 265 was received on October 1, 2012.