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CHAPTER 17.

 CANVASS OF VOTES; CERTIFICATES AND RECORDS OF RESULTS

ARTICLE 1.

 COUNTY BOARDS OF CANVASSERS

**SECTION 7‑17‑10.** Meeting and organization of county boards of canvassers.

The commissioners of election for Governor, Lieutenant Governor, state officers, circuit solicitors, members of the General Assembly, and county officers or any of these officers shall meet in some convenient place at the county seat on the Friday next following the election, before one o’clock in the afternoon of that day, and shall proceed to organize as the county board of canvassers. They may appoint some competent person as secretary. The chairman shall then proceed to administer the constitutional oath to each member of the board, as canvassers, and shall administer the constitutional oath to the secretary, and the secretary shall administer to the chairman the same oath that he has administered to the other members of the board. The commissioners of election for members of Congress and presidential electors or any of these officers shall likewise meet at the same time at the county seat and shall in the same manner proceed to organize as the county board of canvassers for the election of the federal officers.

**SECTION 7‑17‑20.** Canvass of votes.

The county board of canvassers, respectively, shall then proceed to canvass the votes of the county and make such statements of such votes as the nature of the election shall require no later than noon on the Saturday next following the election and at such time shall transmit to the State Board of Canvassers the results of their findings.

**SECTION 7‑17‑30.** Protests and contests.

The county boards shall decide all cases under protest or contest that arise in their respective counties in the case of county officers and less than county offices, except for primaries and municipal elections. Any protest or contest must be filed in writing with the chairman of the board, together with a copy for each candidate in the race, by noon Wednesday following the day of the declaration by the board of the result of the election. However, service upon the chairman may be perfected by depositing with the county sheriff one copy of the protest, together with a copy for each candidate in the race. The sheriff must take immediate steps to deliver the copies to the chairman. The protest must contain each ground concisely stated separately. The chairman of the board must 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 board for the purposes of hearing the protest.

**SECTION 7‑17‑40.** Poll lists shall accompany ballots in protests.

The poll list of each polling place in a general, special or primary election shall accompany the ballots, printouts or other form of voter tabulation in each proceeding in which the votes cast at such polling place are involved in a protest.

**SECTION 7‑17‑50.** Hearings on protests or contests.

The board shall hear the protest or contest on Monday next following the deadline for filing the protest or contest. Testimony at the hearing of the protest shall be limited to the grounds stated in the written protest.

The protestant and each other candidate in the protested race have the right to be present at the hearing, to be represented by counsel, to examine and cross‑examine witnesses, and to produce evidence relevant to the grounds of the protest.

The chairman of the board shall provide for and conduct the hearing as nearly as possible in accordance with the procedures and rules of evidence observed by the circuit courts of this State. The chairman shall have authority to administer oaths and subpoena witnesses. Upon the conclusion of the hearing of the protest, the board shall determine all issues by majority vote and forthwith certify the results of the election.

The board shall remain in session until a conclusion has been reached. All candidates in the protested or contested race and the chairman of the State Board of Canvassers shall be immediately notified of the board’s decision.

The county board must submit the written transcript of the record of the hearing on the protest to the State Board of Canvassers not later than noon Monday, following the protest hearing before the county board.

**SECTION 7‑17‑60.** Right to and notice of appeal from decision of county board.

The decision of the county board may be appealed to the State Board of Canvassers by any candidate adversely affected thereby. Notices of such appeal and the grounds thereof shall be made not later than noon Monday next following such decision by serving such notices on the chairman of the State Board. Provided, that service may be perfected by depositing at the office of the Chief of the State Law‑Enforcement Division a copy of the grounds of appeal. A sufficient number of copies to be served upon all candidates in the protested race shall also be delivered to the county sheriff. Such officers shall take all steps necessary to deliver the notices to the respective parties.

**SECTION 7‑17‑70.** Hearing of appeals.

Unless otherwise provided in Section 7‑3‑10(c), the state board must meet in Columbia not later than noon on Monday fourteen days following the filing of any notice perfected under Section 7‑17‑60 for the purpose of hearing appeals. The appellant and each other candidate in the protested race have the right to be present at the hearing, to be represented by counsel, and to be heard on the merits of the appeal. The state board is bound by the facts as determined by the county board. However, if in the opinion of at least two members of the state board the facts should be reviewed, then a hearing de novo must be held by the state board. In the event of a review of the facts, the state board may receive any new evidence or exhibits as it in its discretion considers necessary to determine the appeal. The state board must remain in session until all appeals have been disposed of.

**SECTION 7‑17‑80.** Statements and returns.

The boards of county canvassers shall make such statements of the votes of the precincts of each county as the nature of the election shall require, within ten days from their first meeting, and shall transmit to the Board of State Canvassers any protest and all papers relating to the election.

**SECTION 7‑17‑90.** Duplicate statements shall be filed with clerk of county.

Except in the case of the election for electors for President and Vice‑President, duplicate statements shall be made and filed in the office of the clerk of the county or, if there be no such clerk duly qualified according to law, in the office of the State Election Commission.

**SECTION 7‑17‑100.** Separate statements of votes given for each candidate.

The board of county canvassers shall make separate statements of the whole number of votes given in the precincts of each county for representatives in Congress and separate statements of all other votes given for other officers. Such statements shall contain the names of the persons for whom such votes were given and the number of votes given for each, which shall be written out in words at full length.

ARTICLE 3.

 BOARD OF STATE CANVASSERS; DUTIES OF SECRETARY OF STATE

**SECTION 7‑17‑210.** State Election Commission constitutes Board.

The State Election Commission shall, ex officio, constitute the Board of State Canvassers.

**SECTION 7‑17‑220.** Meeting of Board.

Unless otherwise provided in Section 7‑3‑10(c), the Board of State Canvassers shall meet at the office of the Election Commission within ten days after any general election for the purpose of canvassing the vote for all officers voted for at such election, including the vote for the electors for President and Vice‑President, and for the purpose of canvassing the vote on all Constitutional Amendments and questions and other issues.

**SECTION 7‑17‑230.** Power to adjourn; procedure when all certified statements have not been received.

The Board shall have power to adjourn from day to day for a term not exceeding fifteen days. In case all the certified statements for the election of electors for President and Vice‑President shall not have been received on the day set for the meeting of the Board, the Board may adjourn from day to day until the same shall have been received, not exceeding five days; and if at the expiration of four days certified copies of the statements of the county canvassers shall not have been received from any county, the Board shall proceed to canvass upon such of the statements as shall have been received.

**SECTION 7‑17‑240.** Board shall make certified statement of all votes cast.

The Board when thus formed shall, upon the certified copies of the statements made by the boards of county canvassers, proceed to make a statement of the whole number of votes given at such election for and against constitutional amendments and other questions and issues and for the various officers, including electors for President and Vice‑President and for each of them voted for, distinguishing the several counties in which they were given. They shall certify such statements to be correct and subscribe the same with their proper names.

**SECTION 7‑17‑250.** Board shall declare persons elected and decide contested or protested cases; appeals.

Upon such statements the Board shall then proceed to determine and declare what persons have been duly elected to such offices. The Board shall act in an appellate judicial capacity in all cases contested or protested that come before it on appeals from county boards of canvassers.

Appeals from decisions of the State Board shall be taken directly to the Supreme Court on petition for a writ of certiorari only based on the record of the State Board hearing and shall be granted first priority of consideration by the Court. Notice of appeals shall be served within ten days of the Board’s decision. Provided, however, that when a contest or protest concerns the election of a State Senator, appeals from decisions of the State Board shall be only to the Senate and when the election of a member of the House of Representatives is concerned, the appeal shall be only to the House of Representatives.

**SECTION 7‑17‑260.** Cases decided by State Board; filing and service.

The state board shall decide all cases under protest or contest that may arise in the case of federal officers, state officers, members of the State Senate and the State House of Representatives, and offices involving more than one county. Any such protest or contest shall be filed in writing with the chairman of the board, together with a copy for each candidate in the race, not later than noon five days following the canvassing of the votes for such offices by the board; provided, however, that service upon the board 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 shall take immediate steps to deliver such copies to the chairman. The protest shall contain each ground thereof concisely stated separately. The chairman of the board shall 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 board for the purposes of hearing the protest. A protest or contested case heard by the state board pursuant to Chapter 17 of Title 7 shall be considered an “administrative action” pursuant to Section 15‑36‑10.

**SECTION 7‑17‑270.** Hearing of protest or contest; procedure at hearing; notice of decision; appeals.

The board, acting in a judicial capacity, shall hear the protest or contest not earlier than the fifth nor later than the twenty‑fifth day following receipt of the protest. Testimony at the hearing of the protest shall be limited to the grounds stated in the written protest.

The protestant and each other candidate in the protested race shall have the right to be present at the hearing, to be represented by counsel, to examine and cross‑examine witnesses, and to produce evidence relevant to the grounds of the protest. The chairman of the board shall provide for and conduct the hearing as nearly as possible in accordance with the procedures and rules of evidence observed by the circuit courts of this State. The chairman shall have authority to administer oaths and subpoena witnesses. Upon the conclusion of the hearing of the protest, the board shall determine all issues by majority vote and forthwith certify the results of the election.

The board shall remain in session until a conclusion has been reached. All candidates in the protested or contested race shall be immediately notified of the board’s decisions.

Appeals from decisions of the State Board shall be taken directly to the Supreme Court on petition for a writ of certiorari only based on the record of the State Board hearing and shall be granted first priority of consideration by the Court.

**SECTION 7‑17‑275.** Petitioning Supreme Court for costs and attorney’s fees associated with election protest.

(A) A party opposing an election protest that prevails at the hearing before the board may petition the circuit court for reasonable costs and attorney’s fees associated with the defense of the protest if the protestant does not appeal the board’s decision to the Supreme Court. The board may also petition the circuit court for reasonable costs and expenses associated with hearing the protest. For appeals filed pursuant to Section 7‑17‑70, the petition must be filed and heard in the county where the protest was originally filed. For protests filed pursuant to Section 7‑17‑260, involving officers elected on a statewide basis, the petition must be filed and heard in Richland County. For all other protests filed pursuant to Section 7‑17‑260, the petition may be filed in any county where voting precincts comprising the election district for the office under protest are located. In order to award costs and attorney’s fees pursuant to this section, the court must find that the protestant brought the protest for an improper purpose, such as to harass or to cause unnecessary delay, or that the protest was not warranted by existing law, the facts of the case, or that it was frivolous in nature.

(B) Upon appeal from a decision of the board, the Supreme Court may award costs and attorney’s fees associated with the appeal to the party prevailing on appeal when the Supreme Court finds that there were no reasonable grounds to appeal the decision of the board. In cases where the prevailing party is the party opposing the protest, the Supreme Court may award costs and attorney’s fees associated with the entire defense of the protest if it finds that the protestant brought the protest for an improper purpose, such as to harass or to cause unnecessary delay, or that the protest was not warranted by existing law, the facts of the case, or that it was frivolous in nature.

**SECTION 7‑17‑280.** Mandatory recounts.

Whenever the difference between the number of votes received by a candidate who has been declared nominated for an office in a primary election or who has been declared elected to an office in a general election and the number of votes received by any other candidate or candidate not declared so nominated or elected or whenever the difference between the number of votes received by a candidate who received the least number of votes to qualify for a runoff election and a candidate or candidates who did not so qualify shall be not more than one percent of the total votes which were cast for such office therein, the committee or board charged by law with canvassing such votes shall order a recount of such votes to be made forthwith unless such other candidate or candidates shall waive a recount in writing.

Whenever the difference between the number of votes cast in favor of and opposed to any constitutional amendment, question or other issue is not more than one percent of the total cast thereon, the Board of State Canvassers shall order a recount of such votes to be made forthwith.

**SECTION 7‑17‑290.** Certificate of determination shall be delivered to Secretary of State.

The Board shall make and subscribe, on the proper statement, a certificate of their determination and shall deliver the same to the Secretary of State.

**SECTION 7‑17‑300.** Secretary of State shall record result of canvass.

The Secretary of State shall record in his office, in a book to be kept by him for that purpose, each certified statement and determination which shall be delivered to him by the Board of State Canvassers and every dissent or protest that shall have been delivered to him by a canvasser.

**SECTION 7‑17‑310.** Copies of determinations transmitted to persons elected and Governor.

The Secretary of State shall, without delay, transmit a copy, under the seal of his office, of such certified determination to each person thereby declared to be elected and a like copy to the Governor.

**SECTION 7‑17‑320.** Statements shall be printed in public newspapers.

The Secretary of State shall cause a copy of such certified statements and determinations to be printed in one or more public newspapers of this State.

**SECTION 7‑17‑330.** Certain certificates of election shall be sent to Congress.

The Secretary of State shall prepare a general certificate, under the seal of the State and attested by him as Secretary thereof, addressed to the House of Representatives of the United States in that Congress for which any person shall have been chosen, of the due election of such person as Representative of this State in Congress and shall transmit the same to such House of Representatives at their first meeting.

**SECTION 7‑17‑340.** Record of elected county officers.

The Secretary of State shall enter in a book to be kept in his office the names of the respective county officers elected in this State, specifying the counties for which they were severally elected, their place of residence, the office for which they were respectively elected and their term of office.

ARTICLE 5.

 PROVISIONS APPLICABLE TO PRIMARY ELECTIONS

**SECTION 7‑17‑510.** Convening of county commissioners of election as county boards of canvassers; canvass and certification of primary results; canvass and declaration of results by Board of State Canvassers.

The commissioners of election for the counties shall meet in a convenient place in the county seat on the Thursday next following the primary, before one o’clock p.m. of that day and shall organize as the county board of canvassers for primaries. They may appoint a competent person as secretary. The chairman shall administer the constitutional oath to each member of the board and to the secretary. The secretary shall administer to the chairman the same oath. Each county board of canvassers for primaries shall canvass the votes of the county and declare the results. The county board of canvassers for primaries shall make statements of the votes of the precincts of its county as the nature of the primary requires not later than twelve o’clock noon on the Saturday next following the primary and at that time transmit and certify to the Board of State Canvassers the results of its findings. This procedure must be repeated following every primary runoff. The Board of State Canvassers shall meet at the office of the State Election Commission and shall canvass the vote and declare the results of the primaries and the runoffs no later than twelve o’ clock noon on the Saturday next following the primary in the State for state offices, federal offices, and offices involving more than one county.

**SECTION 7‑17‑520.** Protests and contests generally; filing and service.

The protests and contests in the case of county officers and less than county officers shall be filed in writing with the chairman of the county party executive committee, together with a copy for each candidate in the race not later than noon Monday following the day of the declaration by the county committee of the result of the election. Service may be perfected by depositing with the county sheriff a copy of the protest for the chairman together with a sufficient number of copies to be served upon all candidates in the protested or contested race. The sheriff must take immediate steps to deliver these copies to the chairman. The protest must contain each ground for the protest stated separately and concisely. The chairman 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 executive committee for the purpose of hearing the protest.

**SECTION 7‑17‑530.** Hearing by county executive committee.

The executive committee shall hear the protest or contest on Thursday following the deadline for filing the protest or contest. Testimony at the hearing of the protest shall be limited to the grounds stated in the written protest.

The protestant and each other candidate in the protested race have the right to be present at the hearing set by the committee, to be represented by counsel, to examine and cross‑examine witnesses, and to produce evidence relevant to the grounds of protest.

The chairman of the committee must conduct the hearing as nearly as possible in accordance with the procedures and rules of evidence observed by the circuit courts of this State. The chairman has authority to administer oaths and subpoena witnesses. Upon the conclusion of the hearing on the protests, the committee shall determine all issues by majority vote and forthwith certify the results of the election. The State Election Commission shall pay for the costs of the court reporter and the transcript of the hearing. This transcript must be filed with the appropriate state executive committee no later than 10:00 a.m. Saturday next following the decision of the county executive committee.

The committee must remain in session until a conclusion has been reached. All candidates in the protested or contested race and the chairman of the state executive committee must be immediately notified of the decision.

**SECTION 7‑17‑540.** Right to and notice of appeal from decision of county executive committee.

The decision of the county executive committee may be appealed to the State executive committee by any candidate adversely affected thereby. Notice of such appeal and the grounds thereof shall be made not later than three o’clock P.M., Friday next following such decision by serving such notice on the chairman of the State committee. Provided, that service may be perfected by depositing at the office of the Chief of the State Law‑Enforcement Division a copy of the notice and grounds of appeal. A sufficient number of copies to be served upon all candidates in the protested race shall also be delivered to the county sheriff. Such officers shall take all steps necessary to deliver the notices to the respective parties.

**SECTION 7‑17‑550.** Hearing of appeals by state executive committee.

The state executive committee must meet in Columbia not later than twelve noon on Saturday next following the filing of any notice perfected under Section 7‑17‑540 for the purpose of hearing appeals. The appellant and each other candidate in the protested race have the right to be present at the hearing, to be represented by counsel, and to be heard on the merits of the appeal. The state committee is bound by the facts as determined by the county committee. However, if in the opinion of at least eighteen members of the state committee the facts should be reviewed, then a hearing de novo must be held by the state committee. In the event of a review of the facts, the state committee may receive any new evidence or exhibits as it in its discretion considers necessary to determine the appeal. The state committee must remain in session until all appeals have been disposed of. The State Election Commission shall pay for the costs of the court reporter and the transcript of the hearing.

**SECTION 7‑17‑560.** State executive committee to hear certain protests and contests; place of hearing; filing; notice and service.

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 officers involving more than one county. 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.

**SECTION 7‑17‑570.** Procedure for hearing protest or contest; notice of decision.

The executive committee shall hear the protest or contest on Thursday following the deadline for filing the same. Testimony at the hearing shall be limited to the grounds stated in the written protest.

The protestant and each other candidate in the protested race shall have the right to be present at the hearing, to be represented by counsel, to examine and cross‑examine witnesses and to produce evidence relevant to the grounds of the protest. The chairman of the committee shall provide for and conduct the hearing as nearly as possible in accordance with the procedures and rules of evidence observed by the circuit courts of this State. The chairman shall have authority to administer oaths and subpoena witnesses. Upon the conclusion of the hearing of the protest the committee shall determine all issues by majority vote and forthwith certify the results of the election. The State Election Commission shall pay for the costs of the court reporter and the transcript of the hearing.

The committee shall remain in session until a conclusion has been reached. All candidates in the protested or contested race shall be immediately notified of the committee’s decision.

**SECTION 7‑17‑580.** Appeal of protests and contests in municipal primaries.

In every political primary election held by any political party, organization or association in any of the cities or towns of this State for the purpose of choosing candidates for offices therein or the election of delegates to conventions thereof, the decision of any protest or contest that may arise shall be subject to appeal to the Board of State Canvassers of Municipal Primaries of this State herein provided for, and upon such appeal it shall be the duty of the committee or canvassing officers from whose decision such appeal may be made to transmit to said Board any protest and all papers relating to the election, with a copy of any evidence taken before them within ten days from their first meeting to canvass the returns of managers of such election.

**SECTION 7‑17‑590.** Board of State Canvassers for Municipal Primaries.

The State executive committee of every political party in this State which may have such a committee shall immediately after its appointment elect from its body a committee of one from each congressional district which shall constitute the Board of State Canvassers for Municipal Primaries, each of whom, before hearing any appeal, shall take and subscribe an oath that he will fairly, impartially and honestly decide such an appeal. The Board shall, upon collection by their chairman of the estimated amount of the expenses of such appeal from the person or persons making it, decide as judicial officers all cases under protest or contest that may come before them on appeal from any decision of such committees or canvassing officers from whose decisions appeal is made upon the papers transmitted to them by such committees or canvassing officers, and the person or persons declared by the Board to be nominated at such election shall be the nominee or nominees of such political party in the respective elections for which such nominations were made. Any vacancies in said Board shall be filled by the State executive committee or, in case it should not be in session, by the chairman of the State executive committee. The members of said board shall serve until the meeting of the next State executive committee. A majority of the members of the Board shall constitute a quorum at any meeting.

**SECTION 7‑17‑600.** No candidate shall be declared nominated in first primary without majority vote.

No candidate shall be declared nominated in a first primary election unless he received a majority of the votes cast for the office for which he was a candidate. The question of a majority vote shall be determined by the number of votes cast for any particular office and not by the whole number of votes cast in the primary.

**SECTION 7‑17‑610.** What constitutes majority vote.

It is the intent of the South Carolina General Assembly that the following method be used in determining what candidates have received a majority vote for a particular office and are thereby entitled to be nominated on the first ballot according to the terms of Sections 7‑17‑600 and 7‑13‑50.

(1) If a candidate for a single office is to be selected, and there is more than one person seeking nomination, the majority shall be ascertained by dividing the total vote cast for all candidates by two. Any excess of the sum so ascertained shall be a majority, and the candidate who obtains a majority shall be declared the nominee.

(2) If nominees for two or more offices (constituting a group) are to be selected, and there are more persons seeking nomination than there are offices, the majority shall be ascertained by dividing the total vote cast for all candidates by the number of positions to be filled, and by dividing the result by two. Any excess of the sum so ascertained shall be a majority, and the candidates who obtain a majority shall be declared the nominees in the first primary. If more candidates obtain a majority than there are positions to be filled, those having the highest vote (equal to the number of positions to be filled) shall be declared the nominees.

**SECTION 7‑17‑620.** Unopposed candidates declared nominees.

All unopposed candidates in primary elections shall be declared the nominees of the party by the respective State or county committees.

ARTICLE 7.

 CONTINUATION OF PROTESTS

**SECTION 7‑17‑700.** Continuation of protest in event of death of candidate in primary or nonpartisan election.

If any candidate in a primary or nonpartisan election dies after the election but before the time for filing a protest or dies after a protest has been timely filed, his political party or a representative duly appointed by the court may file or continue the protest on his behalf. The authority reviewing the protest may then certify the results and deny the protest or uphold the protest in which case it must order a new election. In this event, additional filings of candidacy will be allowed and a new election held in the manner the authority responsible for conducting the election provides.

**SECTION 7‑17‑710.** Continuation of protest in event of death of candidate in special or general election.

If any candidate in a special or general election dies after the election but before the time for filing a protest or dies after a protest has been timely filed, his political party or a representative duly appointed by the court may file or continue the protest on his behalf. The authority reviewing the protest may then certify the results and deny the protest or uphold the protest in which case it must order a new election. In this event, additional filings of candidacy are allowed and a new election held in the manner the authority responsible for conducting the election provides.