

June 2023

A LIMITED REVIEW OF THE BOARD OF
VOTER REGISTRATION AND ELECTIONS OF
BERKELEY COUNTY

The mission of the South Carolina State Election Commission (SEC) is to ensure every eligible citizen can register to vote and participate in fair and impartial elections, knowing that every vote counts and every vote matters.

Pursuant to S.C. Code §7-3-20(D)(3), the SEC is authorized to conduct audits of county boards of voter registration and elections to ensure those boards' compliance with applicable state or federal laws or SEC policies, procedures, or standardized processes regarding the conduct of elections or the voter registration process by all persons involved. These audits are conducted by the SEC's Audit Division.

Additionally, S.C. Code §7-3-25(A) authorizes the SEC to identify any compliance failures and establish and implement a corrective action to remedy such failures. Recommendations in this report will require implementation of a corrective action plan that is developed by the county and approved by the SEC's Audit Division.

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Table of Contents

Chapter 1

Introduction and Background

Audit Objectives	1
Scope and Methodology	1
Background.....	2

Chapter 2

Board of Voter Registration and Elections

Meetings and the Freedom of Information Act.....	3
Certification of its Elections	10
Status of Board Members' Training and Certification.....	12

Chapter 3

Qualifications and Training

Director's Qualifications and Performance.....	14
Status of Director's and Staff's Training and Certification	18

Chapter 4

Pre- and Post-Election Processes

Notices of Candidate Filing, Election, and Hand-Count Audits	20
Poll Worker Training	24
Hand-Count Audit Issue	26

Chapter 5

Election Day Issues

Campaigning at Polling Locations	28
Record of Election Watchers	30
Use of Seals.....	32
Voting Equipment Issues	35
Curbside Voting	38
Opening and Closing Procedures	41

Appendices

A. Recommendations	45
B. Berkeley County Office Comments	47
C. Board of Voter Registration and Elections Comments	48
D. Governor's Office Comments	49

Figures

Figure 2.1: Process for Changing and Agenda Once a Meeting has Begun	7
Figure 2.2: Comparison of County Council District 5 Primary Results Versus Primary Recount Results, June 2022	11
Figure 3.1: Actual and Required Education and Experience for Directors in Similarly Sized Counties.....	16
Figure 4.1: Assigned Poll Workers by Training and Pay Status, November 2022 General Election.....	25

Figure 5.1: SEC’s Seal Envelope Fields	33
Figure 5.2: Curbside Voting Process	39
Figure 5.3: SEC’s Ballot Reconciliation Worksheet.....	43

Abbreviations

SEC	State Election Commission
SLED	State Law Enforcement Division
PLT	Polling Location Technician
IT	Information Technology
PW	Poll Worker
EPB	Electronic Pollbook
BMD	Ballot-Marking Device

Introduction and Background

Audit Objectives

The State Election Commission (SEC) was asked by a member of the South Carolina General Assembly to conduct an audit of the Board of Voter Registration and Elections of Berkeley County. The requestor asked us to conduct this audit pursuant to S.C. Code §7-3-20(D)(3).

This audit was requested in order to ensure the county office and board were compliant with the requirements of applicable state or federal law or SEC policies, procedures, or standardized processes regarding the conduct of elections or the voter registration process by all persons involved in the elections process.

AUDIT OBJECTIVES

- Evaluate whether the current county director met the position's qualifications upon hiring and continues to meet the board's expectations thereafter.
- Determine if poll clerk/manager training content was comprehensive and accurate and whether it was completed as required.
- Determine whether public notice requirements for candidate filing and elections were adhered to in accordance with the law.
- Assess the adequacy of the county's response regarding equipment failures.
- Evaluate whether the use of security seals on election equipment and supplies met established requirements.
- Evaluate the curbside voting process to ensure compliance with requirements.
- Review the county's process for certifying its elections to determine if it is compliant with state law.
- Review the county's procedures for opening and closing polls to ensure compliance with requirements.
- Reperform hand-count audits for past election to determine whether reported results were accurate.
- Evaluate the board's compliance with state law, with regard to the Freedom of Information Act and SC Code §7-5-10.

This audit of Berkeley County was the first audit conducted by the SEC's Audit Division.

Scope and Methodology

The period of our review was generally calendar year 2022 with consideration of earlier and later periods, when relevant. To conduct this audit, we used a variety of sources of evidence, including:

- Federal and state laws.
- SEC policies and procedures.
- SEC guides and checklists.
- SEC training material.
- Interviews with current and former Berkeley County staff and board members.

- Interviews and job descriptions from other South Carolina county offices of voter registration and elections.
- Interested parties.
- Board of Voter Registration and Elections of Berkeley County agendas and minutes.
- Berkeley County Board of Canvassers minutes.
- Berkeley County office budget.
- Berkeley County human resources files.
- Notices of candidate filing and elections.
- Voting equipment inspection and incident reports.
- Ballots and hand-count audit reports.

Criteria was based on federal and state law and SEC policies, procedures, and recommended best practices. Throughout the report, references to a year represent the calendar year, unless otherwise noted. Also, references to poll worker refer to both poll clerks and poll managers.

Background

Berkeley County is in eastern South Carolina bordered by Dorchester, Charleston, Georgetown, Williamsburg, Clarendon, and Orangeburg counties. The county seat is Moncks Corner and major municipalities include Bonneau, Charleston, Goose Creek, Hanahan, North Charleston, Jamestown, St. Stephen, and Summerville. According to data from the 2022 General Election, there were 149,011 registered voters in the county. The county has 96 precincts, which the county office consolidated into 59 polling locations for the last General Election.

The county office has six full-time and two part-time employees. For the last General Election, the county office used 440 poll clerks and managers and 16 polling location technicians. In 2022, the county office oversaw seven elections, including:

- State House District 97 Primary.
- State House District 97 Special Election.
- Statewide Primary.
- City of Goose Creek General Election.
- City of Hanahan General Election.
- Town of St. Stephen General Election.
- Statewide General Election.

For FY 22–23, the county office had a budget of \$359,200.

The Board of Voter Registration and Elections of Berkeley County is a nine-member body, with eight of the nine seats currently filled. The body also serves as the county's Board of Canvassers to certify elections. In 2022, the Board of Voter Registration and Elections of Berkeley County convened six times and, as the Board of Canvassers, seven times.

Board of Voter Registration and Elections

In this chapter, we report on the Board of Voter Registration and Elections of Berkeley County's meetings and the status of board member training. We also report on the Board of Canvassers certification process.

WE REVIEWED:

- ❖ The board's notices, agendas, and minutes.
- ❖ Board member training and certification records.

WE FOUND:

- ❖ Not all board minutes are in written form or available on the county office website.
- ❖ Meeting notices were not published for all meetings and, for published notices, not all were done in accordance with state law.
- ❖ The board and county office, at times, refer to the board with an incorrect and/or obsolete title.
- ❖ All but one board member is compliant with training and meeting attendance requirements.

Meetings and the Freedom of Information Act

We reviewed the board and county office's approach to public meetings and found for 2022:

- The board has not provided advance written public notice of its regular meetings at the beginning of the calendar year.
- The county office did not post complete notices for its seven special meetings.
- The board has not transcribed from audio to written format all its special meeting minutes.
- The county office has not posted all regular meeting minutes to its website. It also has not posted any of its special meeting minutes.
- The board discussed items during two of its six meetings that were not included in its agenda.
- The board did not follow or note in its minutes the statutory requirements for entering executive session.

- The board has not adopted a procedural guide or consistently noted its informal procedure for taking action during its meetings.
- The board and the county office have not always referenced themselves using the appropriate titles.

No Advanced Notice of Regularly Scheduled Meetings

The board has not provided advanced written public notice of its regular meetings at the beginning of the calendar year, as required by law.

Per S.C. Code §30-4-80(A), public bodies must give written public notice of their regular meetings—including date, time, and location—at the beginning of each calendar year. The board generally holds meetings every other month and schedules its subsequent meeting during the preceding meeting. For example, in June 2022 the board scheduled its subsequent meeting in September 2022.

County office staff were unaware that there was a requirement to provide written notice of its meetings for a full calendar year. A board member stated that advance notice was provided in the past, but it has drifted from this requirement.

The lack of advanced written notice of regular meetings may have reduced the public’s potential to access and participate in these meetings.

Inadequate Special Meeting Notices

While the county office posted most of its special meeting notices on its website in 2022, the notices were not complete to include an agenda, as required by law.

S.C. Code §30-4-80(A) requires that special meeting notices—including agenda, date, time, and place—be posted as early as practicable but no later than 24 hours in advance on a bulletin board and website. For 2022, the board convened seven special meetings: six Board of Canvassers meetings and one Board of the Voter Registration and Elections of Berkeley County meeting to hear voter residency challenges in October 2022. For the six Board of Canvassers meetings:

- Notices for 4 were posted on the county office’s website 24 hours in advance.
- Notice for 1 meeting—June 16, 2022—was posted the day of.
- Inadequate documentation was provided to discern if notice was posted for the Board of Canvassers meeting on March 10, 2022.

However, none of these notices contained a meeting agenda, as the county office does not create agendas for these meetings. A board member thought agendas for these meetings were not necessary since the meeting outline and intent is the same each time. It is important to note that the date, time, and location for Board of Canvassers meetings are included in notices of election—albeit without an agenda—which must be published in a

newspaper approximately 60 days prior to an election. Therefore, complete website notice for these meetings as early as practicable would be similar to the publication of these notices.

For the voter residency challenge meeting, the county office also did not provide adequate documentation that a meeting notice was posted 24 hours in advance. It did, however, provide an agenda, but it is unclear if or when the agenda was posted on the website.

Like the notices for regular meetings, public notice for special meetings can improve accessibility and participation in these meetings.

Availability of Written Minutes

The county office has not created written minutes of all its regular and special board meeting minutes and made them available on its website.

S.C. Code §30-4-90(a) requires public bodies to maintain written minutes of its meetings. While statute does not require that minutes be posted to its website, it is best practice and appears to be the general practice of the county office. Additionally, public comments during board meetings note a preference that the county office post meeting minutes.

In 2022, there were six regular board meetings: one in January, March, May, June, September, and December. As of December 2022, the:

- Approved January and March minutes were posted.
- Approved May and June minutes were not posted.
- September minutes were pending approval and not yet posted.

Additionally, the county office has not posted any of its special meeting minutes. In 2022, there were six Board of Canvasser meetings: one in March, May, July, and November and two in June. As of March 2023, none of these minutes have been posted, and the November Board of Canvassers meeting had not been transcribed into written format as of March 2023. In October 2022, there was a voter residency challenge hearing; minutes for this meeting were transcribed into written format in March 2023 but have yet to be posted on the county office's website. Board turnover and time constraints have caused delays transcribing the minutes into written format.

Written minutes posted to the county office's website improves transparency by providing access to content to which the public is entitled.

Issues With Executive Session

The board's minutes do not adequately describe that executive session requirements were adhered to, as required by S.C. Code §3-4-70(b).

State law permits closed meetings, known as executive session, for six reasons, including employment matters. Prior to entering executive session, however, state law requires a public body to vote in public to enter executive session and, when favorable, announce the specific reason for said session. It also stipulates that no action may be taken except to return to

public session or adjourn. During the board's regular meetings in 2022, the minutes noted that executive session occurred in May, June, and September. For the minutes of those meetings:

- None noted a favorable vote to enter executive session.
 - The May minutes did not note a favorable vote.
 - The June minutes noted a motion but not a favorable vote.
 - The September minutes noted a motion and a second but not a favorable vote.
- Only one noted the reason for executive session, albeit two reasons were provided, but only one was permitted under statute.
- Two did not adequately state no action was taken.
 - The May minutes made no statement whatsoever regarding action.
 - The June minutes made a qualified statement regarding action taken, specifically “[n]o action was taken in executive session *that would have made an impact on public information.*” [Emphasis added.]

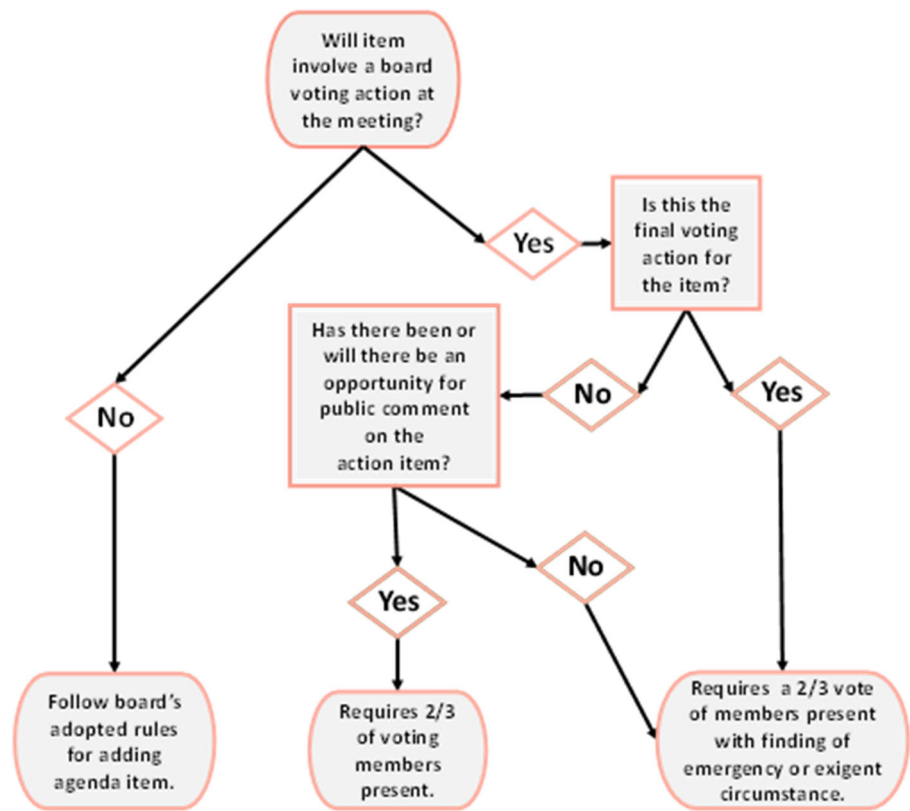
Adhering to executive session statutory requirements during a meeting and notating these requirements in the minutes may improve public confidence that not only was the session permitted by law but no actions were taken during the non-public portion of a public meeting.

Prohibited Agenda Changes

The board has discussed items in its meetings that were not listed on its agendas.

S.C. Code §30-4-80(A) generally prohibits public bodies from adding items to an agenda 24 hours prior to a meeting unless an additional 24 hours of notice is given for the changes. Changes to an agenda may occur after a meeting begins, but only under certain circumstances that adhere to a certain process. Figure 2.1 details this process.

Figure 2.1: Process for Changing an Agenda Once a Meeting has Begun



Source: S.C. Freedom of Information Act

In May and September 2022, the board held executive session, however, agendas for these meetings did not note the board’s intent to include these closed sessions. Minutes also did not note votes regarding agenda changes. A board member stated that meetings follow the agendas and did not recall these changes.

While the information discussed in the abovementioned meetings would not have been public due to the nature of the content, the public was entitled to know that executive session was scheduled and the purpose of said session.

Ad hoc additions, unrelated to executive session, without 24-hour public notice can limit information a board plans to discuss publicly and to which the public is entitled to know.

Procedural Issues

Board minutes do not always note whether a consistent procedural process is followed when board action is taken.

Generally, boards adhere to a procedural process when acting, such as Robert’s Rule of Order. While the board’s bylaws do not specify adoption of a particular procedural guide, in practice, it generally adheres to the process of making a motion, a second, and then a vote for approval or rejection.

While the board minutes consistently noted the formal three-step procedure for concluding a meeting, we found that this was either not consistently done or recorded when it:

- Approved minutes.
- Entered into executive session.
- Approved policy actions, such as use of inmates during elections audits.

According to a board member, the board has not adopted a particular procedural guide, but it does seek a motion, second, an opportunity to discuss, and then a vote. These actions, however, may not always be noted in the minutes.

Adopting a formal procedure, following said procedure during meetings, and recording the adopted, followed procedure during the meeting will likely improve the public's confidence that board actions regarding voter registration and elections were equitably handled.

Minor Formality Issue

During our review, we noted a minor formality issue regarding the board's title. S.C. Code §7-5-10(A)(1) requires voter registration and election boards across the state to be referred to as "Board of Voter Registration and Elections of _____ County;" in this case, Berkeley County.

Berkeley County agendas used the appropriate title, however, meeting minutes invert the order of various words in the title to read: Berkeley County Board of Elections and Voter Registration. Separate from the minutes, we found other documentation—a job description, an invoice, and watcher logs—that referred to the board and the county office as the election commission and board members as commissioners: an obsolete title for county boards and county offices.

Naming inconsistencies may confuse for the public, specifically whether the same or different entities are being discussed. Furthermore, using obsolete titles can leave the public uncertain as to how current is such information.

Recommendations

1. The Board of Voter Registration and Elections of Berkeley County should provide advance written public notice of its regular meetings as soon as possible for the remaining meetings for 2023 and at the beginning of each calendar year thereafter.
2. The Berkeley County Office of Voter Registration and Elections should post complete notices—including agenda, date, time, and location—for its special meetings.
3. The Board of Voter Registration and Elections of Berkeley County should ensure its meeting minutes—regular and special—are available in written format and in a timely manner after the meeting.

4. The Berkeley County Office of Voter Registration and Elections should ensure all its regular and special meeting minutes are posted to its website.
5. The Board of Voter Registration and Elections of Berkeley County should ensure a motion, second, and favorable vote occurs and is noted in its minutes when entering executive session.
6. The Board of Voter Registration and Elections of Berkeley County should limit meeting content to items listed on the agenda unless statutory requirements are followed to amend an agenda once a meeting has begun.
7. The Board of Voter Registration and Elections of Berkeley County should adopt a procedural guide for taking action in its meetings and ensure its minutes reflect that these procedures were followed.
8. The Board of Voter Registration and Elections of Berkeley County and the Berkeley County Voter Registration and Election County office should ensure the board is referred to as the Board of Voter Registration and Elections of Berkeley County in all board and county office documents.

Certification of its Elections

The county office and the Board of Canvassers appear to follow an acceptable process for certifying its elections. However, the June 2022 Primary and Primary Recount for County Council District 5 resulted in different totals overall and by candidate, and there is no clear explanation for the difference.

State Law

S.C. Code §7-17-20 requires a county board of canvassers to canvass the votes of the county and make such statements of such votes as the nature of the election. Canvassing is the act of examining and counting the returns of votes cast in an election.

In Berkeley County, as in all counties, the Board of Voter Registration and Elections organizes as the Board of Canvassers to canvass the vote. Once the canvass is complete, the board may then certify the election.

Canvassing Process

Canvassing occurs after the polls close through the end of a board of canvassers meeting, when the election is certified. During this process, county staff ensure ballots are accounted and tabulated for the following ballot types: absentee, early voting, election day, and emergency.

A fifth type of ballot—provisional ballot—requires county office staff to conduct research and provide recommendations to its board of canvassers. On election day, these ballots are placed in a provisional ballot envelope and inserted into the provisional compartment of a scanner's equipment for later review. Note, provisional voting is limited to federal, statewide, countywide, and municipal-wide offices. An individual may vote a provisional ballot in the precinct if the:

- Voter has moved <30 days prior to an election.
- Voter has moved from one precinct to another in the same county.
- Voter's qualification to vote is challenged.
- Voter did not bring photo ID.
- Voter has no photo ID. An individual who does not have a photo ID because he has a reasonable impediment and signs an affidavit attesting to this, may vote.

Generally, county staff present recommendations for provisional ballots to their board of canvassers based on research conducted. Note, there may also be recommendations for absentee ballots based on whether witness signatures and other information was provided or the dates the ballots arrived at the county office. Ballots accepted by the board, via vote, are then opened from the provisional ballot enveloped, scanned, and tabulated in the election totals. Unaccepted ballots remain sealed in the provisional ballot envelope.

In Berkeley County, the Board of Canvassers 2022 minutes indicated that county office staff presented recommendations, based on earlier research, to the board. Recommendations for ballots were then voted upon and either accepted or denied. After all accepted ballots were scanned and tabulated, the elections were certified. It appears county staff and the Board of Canvassers in Berkeley County follow an acceptable canvass process to certify its elections.

June Primary Certification Issue

The county office tabulated different results for a county council contest from the primary to the primary recount.

For the 2022 June Primary, there was a difference in total votes between the two candidates for County Council District 5 of <1%, which triggered a mandatory recount per S.C. Code §7-17-280. Recounts are conducted after an election but prior to certification, in which ballots are recounted. In the primary and the primary recount, the elected candidate had 12 and then 19 more votes, respectively, than the unelected candidate. Figure 2.2 shows the breakdown of votes by candidate during the primary and the primary recount.

Figure 2.2: Comparison of County Council District 5 Primary Results Versus Primary Recount Results, June 2022

CANDIDATES	PRIMARY	RECOUNT	DIFFERENCE
CANDIDATE 1	1,249	1,235	14
CANDIDATE 2	1,261	1,254	7
TOTAL VOTES	2510	2489	21

Sources:
June 2022 Primary and Primary Recount
ElectionWare Results

The reason for the difference in ballots between the primary and primary recount is unclear. The unelected candidate filed a protest, as permitted under S.C. Code §7-17-520. The Berkeley County Republican Party, which is responsible for hearing protests involving county or less than countywide contests, heard the protest and confirmed and certified the outcome of the election.

Status of Board Members' Training and Certification

State Law and SEC Requirements

All but one board member is compliant with statutory training and certification requirements. The noncompliant member exceeded the deadline by 17 months with 1 course lacking, as of March 2023. And, as of February 2023, this member also had not attended three consecutive board meetings, which contradicts the requirements of state law.

S.C. Code §§7-5-10(D)(1) and (3) requires board members to complete, within 18 months after the member's initial appointment, a training and certification program conducted by the State Election Commission (SEC). In terms of board size, S.C. Code §7-5-10(A)(1) states board membership may be as few as five to as many as nine members, thus the size of a board depends on legislative delegation appointments and can vary from county to county.

The SEC's board member training and certification program requirements include various core components, election electives, and professional development electives. Members who began serving their appointment in October 2022 are required to complete all four of the following core components:

- Board Member Orientation.
- Duties of Voter Registration and Elections.
- Duties of the Board.
- Minutes and Meetings.

Additionally, they must complete three election electives and one professional development elective. Thereafter, board members must maintain certification by completing one course each year.

Board Member Noncompliance

All but one board member is compliant with statutory training and certification requirements.

Currently, the Board of Voter Registration and Elections of Berkeley County has eight members; its bylaws permit nine. The training and certification status for the serving eight members are as follows:

- 6 completed the program in a timely manner.
- 1 exceeded the program deadline by 17 months, with 1 election elective still needed as of March 2023.
- 1 has yet to complete the program but has time remaining. As of March 2023, this member needed 1 more core component, 2 election electives, and 2 professional development electives by the end of September 2023.

In October 2022, the SEC notified the Governor's Office regarding the abovementioned member's training noncompliance. As for the certified board members, all have met annual post-certification training requirements.

The board member who is noncompliant with training requirements also has missed the last three consecutive board meetings: September and December 2022 and February 2023.

S.C. Code §7-5-10(A)(3) states the board chairman or designee must immediately notify the Governor if a member misses three consecutive meetings. The statute also states that the Governor must then remove the member from office. While the SEC notified the Governor's Office regarding this member's training noncompliance, a second notice to the Governor's Office for attendance noncompliance has not been provided.

Individuals who have adequate election training and are regularly present at board meetings are likely the most optimal candidates to oversee and certify elections.

Recommendations

9. The Board of Voter Registration and Elections of Berkeley County should notify the Governor's Office of its board member's noncompliance with meeting attendance.
10. The Governor should consider removing the noncompliant board member from the Board of Voter Registration and Elections of Berkeley County once notified by its chair or his designee.

Qualifications and Training

In this chapter, we report on the county office director's qualifications and performance. We also report on the status of the training and certification of the director and the county office staff.

WE REVIEWED:

- ❖ The director's job description, application, and performance evaluation.
- ❖ Required and actual education and experience of directors in counties similarly sized to Berkeley.
- ❖ The director's and staff's training and certification records.

WE FOUND:

- ❖ The director was qualified based on a combination of education and experience.
- ❖ The director was formerly the county office's assistant director, but for 15 years fewer than stated on her application.
- ❖ The director satisfied board expectations, but improvements were needed.
- ❖ Generally, the director and county office staff met training and certification requirements, but annual continuing education lacks diverse coursework.

Director's Qualifications and Performance

We reviewed the county office of voter registration and elections director's qualifications at hire and her performance thereafter and found:

- The director satisfied the position's minimum education and experience requirement, with less than a bachelor's degree but approximately 20 more years' experience than required.
- Directors in similarly sized counties to Berkeley had similar education and experience requirements, requiring a bachelor's degree and 5–10 years' experience.
- Directors in similarly sized counties had either an associate, bachelor's, or master's degree and an average of 14 years of experience.

- 58% of election directors had less than 1 year of experience, as of December 2022, limiting the number of election directors with previous elections director experience.
- The director applied for the position, referring to her experience with an internal, but recognized title of assistant director of voter registration and elections. However, she alleged holding this title for approximately 20 years when employment records listed her in the role for approximately 5 years.
- The director's initial and only performance evaluation noted a pass rating with various areas needing improvement.

Position Requirements

At hire, the current director met the equivalent education and experience requirements of the position. The job description for the director includes the following minimum requirements:

- A bachelor's degree in a related field.
- Six years of related experience.
- Equivalent education and/or experience.

Upon application, the current director did not meet the educational requirement outright, as she did not have a bachelor's degree. However, with more than 30 years of election experience, she exceeded the experience requirement by more than 20 years. As such, she satisfied the equivalent education or experience requirement for the position.

Comparison of Required and Actual Education and Experience of Election Directors

We compared education and experience requirements for director's positions in 7 counties with more than 100,000 registered voters against the requirements for the director's position in Berkeley County. It is important to note, there is no statewide minimum education or experience requirements; directors are employees of the county, and each county establishes these minimum requirements. Based on our review, all but 1 county required a bachelor's degree with 5–10 years' experience, ranging from general experience to experience in elections, supervision, and information technology. As such, the educational and experience requirements for the Berkeley County director's job description aligned with those in other similarly sized counties.

Additionally, we compared the actual education and experience of the directors in the same counties against that of the director in Berkeley County. Four had an associate degree, two had a bachelor's degree, and one had a master's degree. In terms of experience, these directors had 7–20 years of election experience, averaging 14 years overall. The Berkeley County's director's actual education and experience also aligns with directors in similarly sized counties. Figure 3.1 provides a breakdown of the required and actual education and experience for Berkeley and comparison counties.

Figure 3.1: Required and Actual Education and Experience for Directors in Similarly Sized Counties

COUNTY	REQUIRED EDUCATION	REQUIRED EXPERIENCE	COMBINATION OF EDUCATION & EXPERIENCE	ACTUAL EDUCATION	ACTUAL EXPERIENCE
COUNTY A	Bachelor's	5 years' supervisory or IT experience	no	Associate	14
COUNTY B	Bachelor's	5 years' experience as election supervisor	yes	Associate	16
COUNTY C	Unspecified	Considerable registration and election experience	yes	Bachelor's	14
COUNTY D	Bachelor's	5 years' experience	yes	Associate	17
BERKELEY	Bachelor's	6 years' experience	yes	Less than Bachelor's	30
COUNTY E	Bachelor's	7 years' supervisory experience & extensive IT experience	yes	Associate	13
COUNTY F	Bachelor's	10 years' related experience, including management experience	no	Master's	20
COUNTY G	Bachelor's	7–10 years' administrative and supervisory experience	no	Bachelor's	7

IT=information technology

Source: Job descriptions and survey responses from various county directors with 100,000+ registered voters.

Statewide Director Turnover

Over the past two years, there has been significant turnover in the election director position in counties across the state. Since January 2021, there has been 24 election director vacancies; Newberry and Clarendon counties had more than one vacancy in the director's position and the other 19 counties have had a single vacancy for that position during that period. Director turnover can be correlated to the experience of election directors. As of the end of 2022:

- 58% of directors had <1 year of experience.
- 24% of directors had >1–10 years' experience.
- 18% of directors had >10 years' experience.

Consequently, hiring an election director with previous election experience has likely been more difficult since January 2021 than prior to January 2021.

Application for Director

During the audit, we became aware of allegations that the current election director was dishonest in her application for the director's position. Specifically, that the current director had previously held the position of assistant director of voter registration and elections, but that no such title is recognized by the county. Per her application, the current director listed the role of assistant director of elections from 1998–2019.

According to FY 14–15 county budget records, there was a budget request recommending the promotion of the current director from administrative specialist 3 to assistant director. The county approved the promotion but referred to the new position as administrator rather than assistant director. According to current and former county employees, however, the administrator position was internally referred to as the assistant director. According to employment records, the time frame the current director held this position was from August 2014– March 2019, which was approximately 15 fewer years in this role than stated on her application.

Director's Hiring

The board did not violate state law for not allowing public comments during its meetings in which it interviewed candidates for the director's position and hired a director.

The S.C. Freedom of Information Act does not require a public body to include public comments in its meetings. Between April and May 2021, the board held four special meetings to review and interview applicants for the director's position and then hired the current director. None of the agendas for these meetings listed public comments as a component of the meeting. In the final May 2021 meeting, during which the current director was selected to be the director, the minutes noted public comments from two members of the public. A board member noted that if members of the public are present and wish to speak at a meeting, this privilege is granted.

Allowing public comments during this meeting, when a public comment period was not noted on the agenda may have prevented other members of the public from attending and speaking (further addressed in Chapter 2, section *Prohibited Agenda Changes*).

Performance Evaluation

The current director met performance expectations in her initial year.

The Board of Voter Registration and Elections of Berkeley County is required to hire and oversee the elections director. The current director was hired June 2021 and received a performance evaluation in July 2022. The evaluation included a pass rating with areas noted for improvement. According to a board member, the board expects to evaluate the director again after the November 2023 municipal elections in Berkeley. Based on the current evaluation, the director continues to satisfy the expectations of the board.

Status of Director's and Staff's Training and Certification

Director's Training

The director met the State Election Commission's (SEC) training and certification requirements within the 18-month time frame required by law. All except one county office staff also met training requirements in a timely manner. This employee was hired by and completed training under a former director. Among county staff, however, continuing education coursework lacks diversity.

The current director has met the election training requirements as established in state law.

S.C. Code §7-5-10(D)(1) requires the director to complete a training and certification program within 18 months after initial employment. The current director's date of hire was June 2021, giving her until December 2022 to complete the required courses. At the time of the director's hire, the SEC required directors to complete a total of 11 courses, including the following 4 core components:

- Directors: Duties and Responsibilities.
- Duties of Voter Registration and Elections.
- Election Administration (Budgeting/Human Resources/Reimbursement).
- Introduction to the Voter Registration and Election Management System.

Additionally, directors must complete 3 of the 6 course options in the management/leadership category and 2 of the 25 course options in the election electives category. Directors must maintain certification by completing two courses each year thereafter.

Training records show that the current director completed the training and certification program in December 2022 and, therefore, met statutory and agency training requirements.

County Office Staff Training

The county office's staff also completed the training and certification program in a timely manner, with the exception of one.

The SEC's staff training requirements include various core components, election electives, and professional development electives. The number and types of courses required depends on an employee's date of hire, as the requirements have changed over time. Staff must maintain certification by completing one course each year thereafter.

The county office has five full-time employees in addition to the director. Of the 5 employees:

- 2 met the 18-month deadline.
- 2 did not complete the training within the 18-month deadline, but their training period overlapped with the COVID-19 pandemic. During that time, the SEC paused in-person training for 19 months and required election electives were not available. Both employees completed the required training within 1 year after in-person training classes resumed.
- 1 employee did not complete the training requirement within the 18-month deadline and did not have a mitigating circumstance. This employee was hired by and completed the training under a former director.

While training requirements have been met, the post-certification continuing education courses completed by county office staff lack diversity. In 2022, three of the six employees completed the in-person poll manager training course, and one completed the online version. Aside from this course, the SEC offered 29 other courses that year. In 2021, two of the six employees completed the same in-person poll manager training course, and one completed the online version. Again, aside from this course, the SEC offered 27 other courses that year.

Completing the same course work by the majority year after year may limit the skill set of employees as well as their effectiveness in other election areas.

Recommendation

11. The Berkeley County Office of Voter Registration and Elections should ensure annual post-certification continuing education training courses are varied among staff members.

Pre- and Post-Election Processes

In this chapter, we report on notices of candidate filing and elections. We also report on issues with pre-election day poll worker training and hand-count audits.

WE REVIEWED:

- ❖ Notices of candidate filing and elections.
- ❖ Poll worker training records, polling location assignments, and pay records.
- ❖ Hand-count audit ballots and reports.

WE FOUND:

- ❖ Three of four notices of election for the House District 97 special and primary elections were not published in a newspaper.
- ❖ Not all poll workers who were assigned to polling locations and paid attended pre-election day training.
- ❖ Inmates of the Berkeley County jail assisted in the hand-count audits.

Notices of Candidate Filing, Election, and Hand-Count Audits

The county office met statutory publication requirements regarding notices of candidate filing—a notice that provides instruction on how to file as a candidate in an election—for all its 2022 elections, including municipal elections.

The county office, however, was not compliant with statutory requirements for notices of election in two of its elections during the period. Specifically, the county office did not provide adequate documentation that various notices of election for the House District 97 primary and special elections were published in a newspaper. Independent research failed to uncover three of the four newspaper-published notices. Failing to provide public notice may limit communication between the county office and the public and consequently may disenfranchise qualified voters from participating in an election.

The county office also did not provide documentation of its public notice for the 2022 General Election hand-count audits; these audits compare the results from the paper ballots to those recorded by the voting equipment. Public notice is not legally required but is recommended by the State Election Commission (SEC). Providing public notice may improve awareness and access to a process intended to enhance public confidence in the outcome of an election.

Notices of Candidate Filing Deadlines

The county office met statutory requirements regarding deadlines for public notices of filing for its three municipal elections in 2022 as well as the other four elections that year. A notice of candidate filing is a public notice that provides instructions to candidates seeking a political party's nomination on how to file. The request for this audit noted, in part, the following:

[Whereas], [t]he first public notification of the municipal elections for Berkeley County appeared in the Post and Courier July 27, 2022, just a few days before filing opened on August 1. The second notification appeared August 10th just five days before filing closed...

Title 7, Chapter 13 of the S.C. Code of Laws applies to general elections for *federal, state, and county contests*, unless otherwise noted. S.C. Code §7-13-45 requires a public notice of candidate filing two weeks prior to the opening of the filing period. Since there is no specific reference to municipalities in this section, the notice of filing deadline requirement does not apply to these elections. No other section of state election laws refers to notice of filing newspaper advertisement requirements. Furthermore, the municipal ordinances for Goose Creek, Hanahan, and St. Stephen do not contain filing notice deadlines. As such, there is no legal requirement to provide public notice for candidate filing for municipal elections.

SEC-recommended best practice is to publish notice of candidate filing for all elections before filing begins. A notice of filing for these elections was published in the Post and Courier on July 27th and August 10th, with filing open between August 1st through 15th. Since there is no legal requirement to publish municipal notices of candidate filing, there was no violation of state law. The public notice was provided in accordance with SEC best practice.

Additionally, we reviewed all other Berkeley County elections for 2022 and found that all other notices of candidate filing were published in accordance with state law.

Notices of Election Deadlines

The county office met statutory requirements regarding deadlines for public notices of election for its three municipal elections in 2022. It did not, however, publish newspaper notices for two of its other four elections that year. A notice of election is a public notice that contains the name and date of the election as well as a list of precincts involved and the polling locations.

S.C. Code §7-13-35 requires that public notice for any election must be given at least 60 days prior to an election and a second notice given 2 weeks after the first. The following sections discuss notices of elections specifically for municipal elections and then for all the other elections that occurred in Berkeley County in 2022.

2022 Municipal Elections

Berkeley oversaw three municipal elections in 2022: the cities of Goose Creek and Hanahan and the town of St. Stephen. These elections occurred on November 8, 2022. As such, public notice for these elections was required to occur by September 9th and September 23rd. Public notice for

these elections was published in the Post and Courier on September 7th and September 21st. As such, both public notices of election for these elections met statutory deadline requirements.

Other 2022 Elections

Excluding municipal elections, the county office oversaw four elections in 2022: House District 97 primary and special election, the statewide Primary, and the statewide General Election. For the statewide Primary and General Election, notices of election were published in a newspaper in accordance with state law.

However, for the House District 97 primary and special elections—which occurred on March 8th and May 17th, respectively—the county office did not provide newspaper-published notices of election. House District 97 is primarily located in Dorchester County, but there are also two precincts in Colleton County and a one precinct in Berkeley County. Colleton and Dorchester County notices of election for these elections were limited to the affected precincts in each of its respective counties. Through the S.C. Press Association’s Public Notices website, we found Berkeley County’s first notice of election for the House District 97 primary. We could not, however, locate the:

- Second notice of election for the House District 97 Primary.
- First and second notices of election for the House District 97 Special Election.

Failing to provide the public with notices of an election may disenfranchise qualified voters from participating in such an election.

Hand-Count Audit Public Notice

The county office could not provide documentation of its public notice for the November 2022 hand-count audit. A hand-count audit is a process that compares the total votes on paper ballots for a particular contest in a particular precinct against the total votes on the results tape produced by the voting equipment for the same contest and precinct.

Per S.C. Code §7-3-20(D)(19), these audits are required during statewide general elections and occur after an election ends but prior to a county’s certification of its results. State law does not require a public notice for hand-count audits, but the SEC recommends that, as soon as is practicable, counties notify the public when these audits will occur. The county office’s hand-count audits occurred over a two-day period from November 9th –10th. According to county office staff, a notice was posted on the office’s bulletin board on November 9, 2022, but they were unable to provide the notice itself or documentation as to when it was posted.

Providing public notice may improve access to a process intended to enhance public confidence in the outcome of an election.

Recommendations

12. The Berkeley County Office of Voter Registration and Elections should ensure it publishes all notices of election in a newspaper according to requirements in state law.
13. The Berkeley County Office of Voter Registration and Elections should retain documentation of its public notices, including date and location posted.

Poll Worker Training

State Law and SEC Requirements

Not all poll workers assigned to polling locations completed pre-election day training despite a statutory requirement to do so. Completing pre-election day poll worker training provides greater assurance that these workers will be knowledgeable of all election day processes as well as potential issues that may arise and subsequent resolutions.

S.C. Code §7-13-72 requires poll workers of general, primary, or special elections to complete a training program approved by the SEC and delivered by county offices concerning their duties and responsibilities as a poll worker.

The SEC provides training material to county offices for poll workers. County offices are encouraged to edit slides where appropriate, including content regarding additional pay provided by the county as well as voting equipment and supply pickup and return protocols.

Training Content

Based on the presentations provided, the county office delivered adequate training material to its poll managers and clerks. Content included:

- Election day preparations and arrival time.
- Opening procedures, such as equipment setup and use of seals.
- Processing voters.
- Curbside voting.
- Election day issues, including provisional voting.
- Closing procedures, reconciliation worksheets, sealing equipment and containers, and returning supplies.

The material also covered new policies such as placement of campaign material as well as records of watchers and observers. The trainings both included approximately 100 pages of content.

The county office held eight poll manager training sessions over four days and six poll clerk sessions over two days in October 2022. Overall, 420 individuals signed attendance sheets or adequately completed online training.

Not All Poll Workers Trained

Not all poll workers assigned to polling locations completed pre-election day training. Additionally, untrained poll workers, who were not assigned to polling locations, were paid.

For the November 2022 General Election, the county office assigned 440 poll workers across 59 polling locations, including early voting centers, for an average of 7 poll workers per location. Of the 440 assigned poll workers, 25 were paid but not trained. Training payments for these untrained workers

totaled \$1,500. Figure 4.1 provides a breakdown of assigned poll workers by training and payment status for the past General Election.

Figure 4.1: Assigned Poll Workers by Training and Pay Status, November 2022 General Election

STATUS	PAID	NOT PAID	TOTAL
TRAINED	219	157	376
NOT TRAINED	25	38	63
TOTAL	244	195	439*

*The county office director served as a poll worker during early voting; she was not trained or paid. This brings the total to 440.

Source: SEC Audit Division's analysis of poll worker assignment, training, and payment data.

Additionally, the county office paid 85 poll workers who were unassigned to a polling location. Of these, 61 did not attend pre-election day training. Training payments for these untrained workers totaled \$3,660.

Ensuring poll workers attend pre-election day training may alleviate potential election day issues, including those alleged in the audit request.

Recommendation

14. The Berkeley County Office of Voter Registration and Elections should ensure only poll workers who attended pre-election day training are used on election day and then paid.

Hand-Count Audit Issue

The county office allowed county jail inmates to assist in the performance of its hand-count audits. While there is no requirement regarding who may perform these audits, individuals with perceived and actual independence and integrity are optimal candidates.

We reformed the hand-count audits assigned to the county for the 2022 General Election and found the same results as county office auditors found during the original hand-count audit.

Photographs of voted ballots, which occurred during the county office's hand-count audits, likely violate the state constitution and state law. These violations are required to be reported to the State Law Enforcement Division (SLED) for review and appropriate action.

State Law and SEC Requirements

S.C. Code §7-3-20(D)(19) requires election audits to be conducted for all statewide General Elections. These audits may include hand-count audits and occur after an election ends but prior to a county's certification of its results.

A hand-count audit is a process that compares the total votes on paper ballots for a particular contest in a particular precinct against the total votes on the results tape produced by the voting equipment for the same contest and precinct. The number of audits required for each county is determined by the SEC and is dependent on a county's number of registered voters. The SEC randomly selects the precincts and the contests for the audits.

Assignments and Process

For the 2022 General Election, the county office was assigned four hand-count audits for the following contests and precincts:

- State Treasurer | Foxbank.
- Commissioner of Agriculture | Devon Forest 2.
- Comptroller General | Betheria.
- Secretary of State | Yellow House.

According to county office staff, audits occurred over a two-day period from November 9th –10th. County office auditors used a sort and stack method in which ballots were organized and stacked according to the voter selection for a particular contest. For example, ballots for the precinct Devon Forest 2 were divided and stacked for the three Commissioner of Agriculture candidates: Hugh Weathers, David Edmond, and Chris Nelums. The ballots in each stack were then counted for totals which were then compared to the results tape totals for each candidate.

County office hand-count audit reports for all four of the audits showed the number of ballots cast and votes by candidates matched the totals on the results tapes.

Use of Inmates During the Hand-Count Audits

County office staff allowed individuals who may lack the perception of integrity to assist in the performance of its hand-count audits. Specifically, inmates from the county jail provided some degree of assistance to county office auditors. While there is no specific requirement as to who may perform these audits, generally individuals with perceived and actual independence and integrity may be the most appropriate candidates.

According to staff, the county office did not have adequate staff to perform these audits and, therefore, employed the use of inmates, or trustees, from the county jail for assistance. Board minutes note these individuals were detained in the jail due to failure to make child support payments but had obtained the privilege to participate in work parties.

Staff stated these inmates were used primarily to lift heavy containers, such as those filled with voted ballots pulled for the hand-count audits. However, an observer at the hand-count audit photographed two inmates sitting at the table where the audits were being conducted by county office auditors and, one had a stack of ballots arranged in front of him. According to board minutes, the Berkeley County Delegation requested that the county office no longer use inmates.

While inmates, individuals jailed for violating the law, may have the capability to assist or even conduct these audits, they likely lack the perceived integrity necessary to conduct any type of post-election audit—a process designed to garner public confidence in the outcome of an election.

Reperformed Hand-Count Audit

The results from the hand-count performed by county office auditors on November 9th –10th were accurate.

Due to the concern regarding the use of inmates during the audit, we reperformed these audits and verified that the ballots and votes by precinct and contest equaled those reported on respective results tapes. Our results matched the results from the original audit performed by county office auditors.

Hand-Count Audit Photograph

The photograph taken by the observer at the hand-count audit mentioned above is likely a violation of the law.

Article III, Section I of the S.C. Constitution requires elections to be by secret ballot. Ballot secrecy is protected at all times after a vote is cast. It is important to note, the way a voter votes may reveal his identity. Therefore, photographs of voted ballots also have the potential to reveal the identity of a voter.

Pursuant to S.C. Code §7-25-30, violations of election laws must be reported to SLED for its review and action as deemed necessary. Photographs of voted ballots is a violation that is reported to SLED.

Recommendation

15. The Berkeley County Office of Voter Registration and Elections should no longer use inmates to perform or assist during post-election audits.

Election Day Issues

In this chapter, we report on campaigning at polling locations, records of watchers, use of seals, voting equipment issues, curbside voting, and opening and closing procedures.

WE REVIEWED:

- ❖ Watcher and observer logs.
- ❖ Seal envelopes.
- ❖ Voting equipment inspection and incident reports.
- ❖ Opening and closing guides and checklists and ballot reconciliation worksheets.

WE FOUND:

- ❖ Records of watchers were incomplete.
- ❖ Seal numbers on the seal envelopes were prewritten by county staff rather than poll workers, thus eroding an established control that seals are affixed and checked by poll workers.
- ❖ Voting equipment inspection and incident reports were mostly missing or incomplete.
- ❖ 2 of the 16 PLTs did not attend pre-election day training. One of these was paid without any record that he worked.
- ❖ The majority of reconciliation worksheets were unreconciled and did not include an adequate explanation as to why.

Campaigning at Polling Locations

It is unclear if candidates and candidate representatives were denied by poll workers from verbally campaigning at various polling locations during the November 2022 General Election, as there is no evidence to support or deny the allegations.

Candidates and candidate representatives, however, may verbally campaign outside polling locations while adhering to certain restrictions. Campaign *materials*, on the other hand, may not be distributed within 500 feet of a polling location. The nuance between verbal campaigning and campaigning through material distribution may be causing confusion as to whether campaigning is permitted at polling locations on election day.

Focused training on the permissions and restrictions that must be followed by candidates and their representatives regarding campaigning may alleviate future complaints on this topic.

Legal Restrictions and Permissions

It is unclear if candidates and candidate representatives were denied by poll workers from verbally campaigning as alleged, as there is no evidence to support or deny the allegations.

S.C. Code §7-25-180(A) states that no one may display or distribute campaign materials inside a polling location or within 500 feet of an entrance to a polling location. However, a 1974 S.C. Attorney General opinion states that candidates and candidate representatives may verbally campaign outside of polling locations. While both are types of campaigning, the distinction is in the type of campaign activity: material versus verbal.

A candidate is an individual seeking election to an office. Outside a polling location, he *may* verbally campaign and wear a badge, with his name and office sought, that meets legal size limits. A candidate representative is an individual who assists a candidate in campaigning at the polling location. He *may* verbally campaign outside a polling location but *may not* wear a badge.

The audit request alleged candidate and candidate representative campaigning issues at three polling locations. All poll workers at each of these locations attended pre-election day training. Training presentations used to train poll workers prior to this election adequately described the permissions and restrictions regarding candidates and candidate representatives. Additionally, the poll manager handbook, which is provided to all poll workers, also correctly noted this information.

If these alleged incidents did occur despite poll workers being trained, providing more focused training on this topic will likely improve poll worker knowledge on it and eliminate future complaints.

Recommendation

16. The Berkeley County Office of Voter Registration and Elections should ensure its pre-election poll worker training includes a focus and emphasis on candidate and candidate representative campaigning permissions and restrictions.

Record of Election Watchers

Minor record-keeping issues were noted for election watchers on precinct sign-in sheets. Watchers are individuals who are appointed by a candidate or political party to observe the election day process inside a polling location. Focused training for poll workers on completing watcher logs will likely improve record keeping.

Watcher and Observer Roles

Watchers and observers are members of the public who, pursuant to the direction of the poll clerk, are permitted to view election activities occurring inside a polling location during time periods in which they are not voting. Neither watchers nor observers are permitted to interfere with the conduct of an election.

Watchers are differentiated from observers in that they are designated by a party in partisan contest or a candidate in a non-partisan contest. S.C. Code §7-13-860 requires a watcher to:

- Be a qualified voter in the county where he is to watch.
- Be certified, in writing, by the party/candidate to the manager of the polling precinct.
- Wear identification specifying the party/candidate they represent and according to legal size and color provisions.
- Be placed in an area designated by poll managers to observe the election process at the polling location.

In turn, observers are not defined or recognized in state law. The SEC, however, considers observers to be members of the public who are not performing specific role inside the polling location but are nonetheless permitted to view the election activities occurring there.

Minor Sign-In Sheet Issues

Watchers were not adequately signed in at polling locations during the November 2022 General Election.

The SEC's Poll Watcher and Observers policy requires poll workers to record the names of watchers and observers and if identification was presented. Additionally, poll workers must notate if watchers presented a certified letter from the party/candidate, the party/candidate's name, and if an identification badge was provided and worn.

Watcher and observer logs from the 2022 General Election were randomly selected to determine if poll workers maintained complete records of poll watchers on election day. The sample included 77 of 96 precincts, and the results were calculated at a 95% confidence level ± 5 percentage points. Therefore, these results can be generalized about all precincts during the 2022 General Election.

Forty-two percent (32) of sampled precincts were not visited by a poll watcher. For the remaining sample:

- 36% (28) of precincts filled all required log fields.
- 9% (7) of precincts partially filled all required log fields.
- 5% (4) of precincts did not fill any required log fields.
- 3% (2) of precincts used the incorrect form, in which the required log fields were not included.
- 5% (4) of precincts had no logs to analyze.

In total, 14% (11) of logs were either partially or fully incomplete. Most of the logs that were partially complete were missing information from only one of several watchers in attendance. The issue appears to be limited to a few precincts.

According to the training presentations used for this election, the content regarding watchers and observers and use of sign-in sheets was adequately outlined in the poll clerk and manager material. The poll managers handbook, a resource provided to all poll workers, also adequately covered maintaining records of watchers and observers. For the 11 precincts in which the logs were not completed as required, 4 had staff who did not attend pre-election training (additional information in Chapter 2, section *Poll Worker Training*).

Focused training for poll workers on recording poll watchers and observers will likely improve record keeping. Ensuring poll managers compile an accurate record of poll watchers through the sign-in sheets provides greater confidence that those permitted to view election activities are compliant with statutory requirements.

Recommendations

17. The Berkeley County Office of Voter Registration and Elections should ensure its poll workers maintain a complete log of watchers in attendance on election day.
18. The Berkeley County Office of Voter Registration and Elections should ensure it retains all watcher logs after an election concludes.
19. The Berkeley County Office of Voter Registration and Elections should ensure to expand its current poll worker training to include an emphasis on documenting a complete record of watchers in attendance on election day.

Use of Seals

The county office does not have adequate controls to ensure poll workers affix seals on voting equipment as required. County office staff pre-record the seal numbers on the seal envelope that poll workers are expected to affix on equipment at the polling location, which, in effect, eliminates a poll worker's confirmation that seals were indeed used. Prewriting this information, may erode established controls that poll workers are affixing seals on voting equipment.

Legal Requirements

Various sections of state law require the use of seals on voting equipment—electronic poll books, ballot-marking devices, and scanners—and containers—blue bins and ballot storage bags. The following sections discuss the seal requirements as established in state law for the periods prior to an election, during an election, and after polls close.

Prior to an Election

Voting equipment must be sealed after being prepared for an election pursuant to S.C. Code §§7-13-1670 and 7-13-1750. Additionally, S.C. Code §7-13-1770 requires the use of an envelope, known as a seal envelope, to be delivered to precincts with the following information:

- Scanner serial number.
- Number of seals.
- The number registered on the counter, also known as the protective count, which is the total number of votes cast on the equipment over its lifespan.

During an Election

S.C. Code §7-13-1800 requires that the main ballot door and provisional ballot door on the scanner remain *locked*, except for good and sufficient reason. There is no legal seal requirement.

After Polls Close

S.C. Code §7-13-1400(c)(3) states that:

The poll manager shall furnish for each [scanner] at least one hour before the opening of the polls a seal for sealing the [scanner] after the polls are closed and other such materials and supplies as may be necessary or as may be required by law or by rules and regulations of the State Election Commission.

S.C. Code §7-13-1410(g), reinforces the abovementioned code, requiring that scanners and containers containing voted ballots be sealed. Furthermore, per S.C. Code §7-13-1890, a seal envelope must be returned by a poll worker containing the following information:

- Scanner serial number.
- The precinct name.

- The number of seals.
- The number registered on the counter, or the protective count.
- All seals used for the election.

SEC Seal Requirements

The SEC's seal envelope provides instructions to county office staff and poll managers regarding seal requirements, according to equipment type. The front of the seal envelope contains seal requirements for seals placed by county office staff. Envelope fields include the county name, election date, precinct/polling location, election name, and the serial number and seal number for the seals affixed to electronic poll books, scanners, and ballot-marking devices.

The back of the seal envelope contains seal requirements for seals placed by poll managers. Envelope fields include opening seal numbers for those affixed as part of opening procedures to the scanner's main and provisional ballot compartments. Additionally, there are fields for seals affixed as part of closing procedures for the electronic poll books, the scanner, and the ballot bin.

Figure 5.1 below outlines the seal envelope's front and back seal requirements.

Figure 5.1 SEC's Seal Envelope Fields

SEAL ENVELOPE				
FRONT SEAL ENVELOPE FIELDS (Affixed by county office staff)			BACK SEAL ENVELOPE FIELDS (Affixed by poll managers)	
COUNTY				
DATE OF ELECTION				
PRECINCT/POLLING LOCATION				
ELECTION DATE				
ELECTRONIC POLL BOOK			OPENING	
Serial #	Carrying Case Seal #		Scanner Emergency/ Provisional Compartment Seal #	Scanner Main Ballot Compartment Seal #
SCANNER			CLOSING	
Serial #	Base Seal #		Electronic Poll Books Seal #	Scanner Front Latch Seal #
Front Latch Seal #		Thumb Drive Seal #	OTHER SEALS	
BALLOT-MARKING DEVICE			Description	Seal #
Serial #	Carrying Case Seal #	Thumb Drive Seal #		

Source: State Election Commission Seal Envelope

The SEC's seal requirements match the legal requirements for equipment and ballots prior to and after an election. SEC seal requirements for election

day exceed those in state law, requiring that the scanner's main and provisional compartment doors are sealed.

Various SEC guides and training for poll workers reinforce these seal requirements. Specifically, the SEC's poll manager handbook, which is distributed to all poll managers, adequately covered the appropriate use of seals as indicated on the seal envelope. The handbook also refers to opening and closing guides for the scanner and ballot-marking device, which also adequately covered the use of seals on this equipment. Furthermore, pre-election poll worker training adequately addressed the seal requirements these workers must complete.

Seals at Polling Locations

The county office does not have adequate controls in place to ensure poll workers affix seals as required by law.

Per the audit request, there were several allegations regarding the appropriate use of seals during early voting and election day. One of the allegations noted that seals were missing on the main and provisional compartments in the middle of the day at an early voting center. County office staff confirmed this incident, noting there was a piece of voting equipment that did not have the required seals, and that once it was noticed a seal was affixed.

We intended to review a sample of seal envelopes to determine if poll workers sealed equipment as required in its polling locations. However, we found that prior to election day county office staff had pre-recorded the seal numbers on the envelope that poll workers were expected to use for opening and closing the polls. For the seal envelope, the act of recording the seal number confirms the use of seals. Since these were prewritten, it was not possible to evaluate whether poll workers followed procedure as required. According to county office staff, seal numbers are prewritten to make it easy for poll workers, so they would only need to confirm that the numbers already recorded were correct.

Prewriting the seal numbers for poll workers may erode the established controls that are used to ensure required seals are used.

Recommendation

20. The Berkeley County Office of Voter Registration and Elections should not pre-record seal numbers on the seal envelope intended to be written by poll workers during opening and closing procedures.

Voting Equipment Issues

The county office does not have an accurate log of all equipment issues that occurred on election day, as some polling location technicians (PLTs)—individuals who fix voting equipment issues on election day—did not complete inspection or incident reports for all issues encountered. Failing to complete these reports may limit PLT accountability and result in a less than accurate record of voting equipment issues that occur on election day.

Furthermore, two PLTs did not attend pre-election day training. Ensuring only trained PLTs are permitted to work may provide greater assurance that PLTs have the necessary skill set to correct voting equipment issues. For one of the untrained PLTs, there also was no record of assigned precincts or visits. Paying those who do not work may result in less than equitable distribution of funding.

Overview

S.C. Code §7-13-1870 requires poll workers to give immediate notice if voting equipment becomes inoperative in order to have it repaired or, if necessary, substituted for equipment in good order. Generally, poll workers notify the county office to request PLT assistance.

The SEC pays counties for PLTs, who are individuals that travel throughout the county providing trouble shooting and technical support services for voting equipment. PLTs are trained by the county office to fix common voting equipment—electronic poll books, ballot-marking devices, and scanners—issues including power issues, printer jams, and ballot feeding issues.

For the 2022 General Election, the county office paid 16 PLTs who were assigned to approximately 4 polling locations each. They were expected to visit each site in the morning, mid-day, and evening as well as be available on an as needed basis when issues arise.

Lack of Accurate Log of Equipment Issues

The county office does not have an accurate log of all equipment issues that occurred on election day, as some PLTs did not complete inspection or incident reports.

PLTs were provided a form by the county office called a precinct inspection report, which contains fields for the polling location name, time of visit, and reason for visit. The form notes PLTs are required to visit assigned locations three times on election day and poll clerks should sign the form before the PLT leaves each location at each visit. Only 4 of the 16 PLTs completed a sheet and only 2 of those had signatures from the clerks, confirming their visits. According to county office staff, some PLTs are more consistent at completing the report more than others. Completing these reports, including clerk signatures, provides record of a PLT's visit and confirmation of the work he performed on election day.

PLTs were also provided a second form by the county office, called an election day incident form, which is intended to record a description of voting equipment issues and subsequent resolutions. Based on the notes provided in the four available *inspection* reports, not all issues were then

documented in an *incident* report. As such, there is no comprehensive record of election day issues for this election.

Requiring PLTs to complete these forms will likely result in an accurate accounting of equipment issues that occurred on election day.

Examples of Equipment Issues

The audit request included 11 allegations of equipment failures at 8 polling locations. Nine of the allegations generally referred to one or more equipment failures. The other two involved a voting access issue and power issue. Based on the polling locations referenced in the audit request and the notes in an inspection report, two of the equipment issues involved a jammed ballot-marking device and a poll book power issue. No other records were available to determine the specific issues reference in the audit request.

In general, based on the available inspection and incident reports, the equipment issues noted on election day included power issues, electronic pollbook scanner issues, and paper jams. Resolution for these issues often included shutting down and restarting the equipment.

Polling Location Technicians Not Trained

Two of the county office's 16 PLTs did not attend pre-election training.

The county office held PLT training on October 20th and 27th, in which 14 PLTs signed an attendance sheet. PLT payments, however, shows 16 individuals were paid as PLTs for the 2022 General Election. It is important to note, of the equipment failure allegations from the audit request, none of the polling locations with the alleged issues were overseen by PLTs that did not attend training.

Attending pre-election PLT training is likely to improve a technician's ability to resolve equipment issues on election day. It may also provide an opportunity for county office staff to emphasize the importance of completing inspection and incident reports.

Polling Location Technician Reimbursed Without Working

One of the county office's 16 PLTs was paid for performing a PLT role on election day but there is no record of which locations the individual was assigned to or visited. County office staff had no response to inquiries regarding this PLT and if he worked on election day.

Paying individuals who did not perform a role as those who did can be an inequitable distribution of funding.

Recommendations

21. The Berkeley County Office of Voter Registration and Elections should ensure polling location technicians complete inspection reports in order to account for a technician's whereabouts on election day.
22. The Berkeley County Office of Voter Registration and Elections should ensure polling location technicians collect poll clerks' signatures from all polling locations visited on election day.
23. The Berkeley County Office of Voter Registration and Elections should ensure polling location technicians complete incident reports for voting equipment issues, including issues and resolutions, occurring on election day.
24. The Berkeley County Office of Voter Registration and Elections should ensure all polling location technicians attend pre-election day training for each election prior to serving in this role.
25. The Berkeley County Office of Voter Registration and Elections should ensure only polling location technicians who worked election day are reimbursed for their services.

Curbside Voting

There is no record available to review the audit request allegations regarding curbside voters—voters permitted to vote in a vehicle due to handicap, age, or inability to stand for long periods. It is, therefore, unclear if poll workers at a particular polling location had curbside voters wait overly long periods to be recognized to vote or to actually vote and if some of these voters were forced to come inside to vote.

Curbside voting does not allow these voters to jump to the front of the line, so these voters must wait as long as others in line at the time to vote. Voters who opt for curbside due to an inability to stand in line for long periods may vote inside when it is their turn. This may give the impression a curbside voter was forced to vote inside the polling location even if it was his choice.

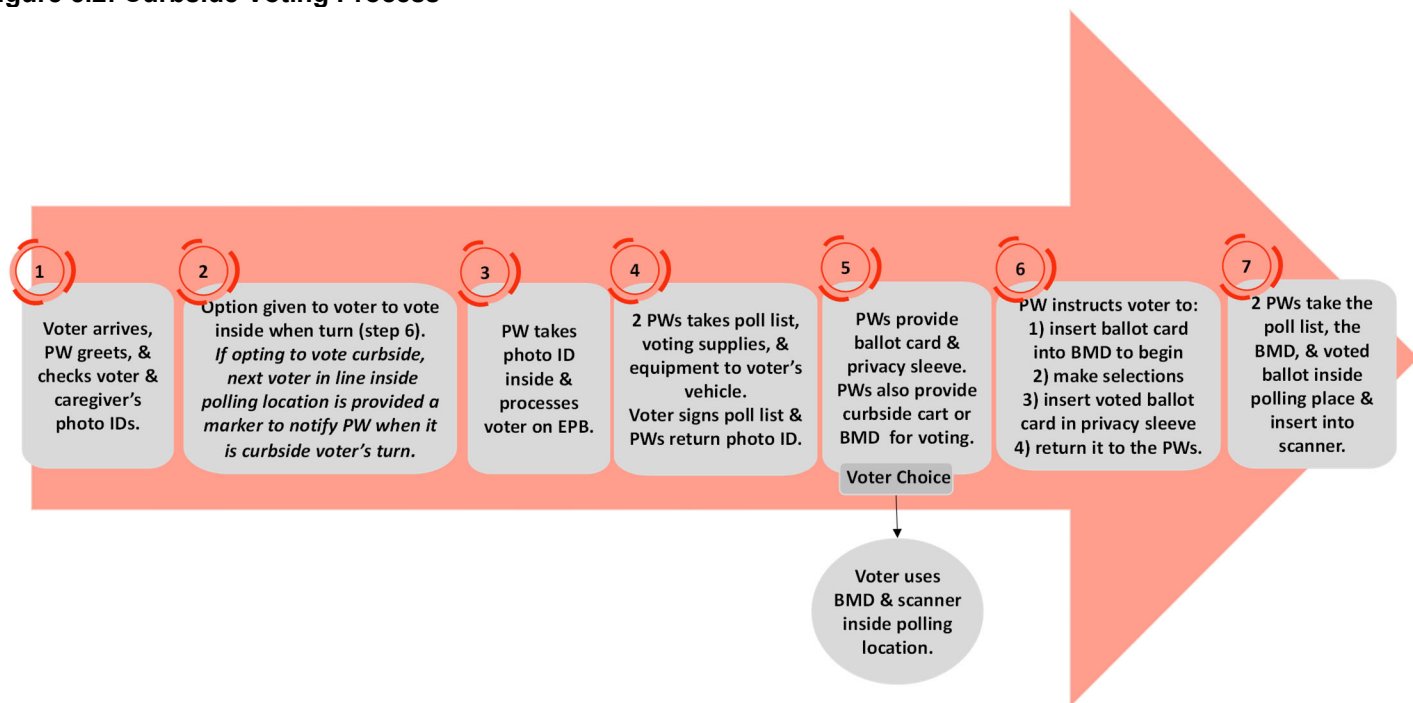
It is also unclear if, at another polling location, there was only one poll worker serving curbside voters. There must be two poll workers assisting curbside voters at their vehicle.

Legal and Agency Requirements

The Federal National Voting Accessibility for the Elderly and Handicapped Act and S.C. Code §7-13-771(A) allows voters who cannot enter a polling location due to a physical handicap, age, or inability to stand in line to vote in a vehicle in the closest available parking area. A disability means a temporary or permanent physical disability. The applicable age is 65 years or older. Like other voters, these voters must show identification, demonstrating their eligibility to vote. Furthermore, state law requires two poll workers attend to these voters in their vehicle and then return their voted ballots inside.

The SEC's poll managers handbook refers to this process as curbside voting and provides step-by-step instructions for poll workers to implement this process. Figure 5.2 is a flowchart of the curbside voting process.

Figure 5.2: Curbside Voting Process



PW=poll worker | BMD=ballot-marking device | EPB=electronic pollbook

Source: State Election Commission Poll Managers Handbook

In addition to the process, the handbook lists the following provisions for curbside voting:

- Poll managers must monitor the parking area every 15 minutes for potential curbside voters.
- Only voters who meet qualifications may vote curbside. That is, a driver or caregiver of a curbside voter may not vote curbside unless she also meets curbside voting qualifications.
- Curbside voters are not permitted to jump to the front of the line.
- Voters voting curbside due to the inability to stand for long periods may opt to vote inside rather than curbside when it is their turn.
- Only the curbside voter is permitted in the vehicle during voting unless the voter is entitled to assistance.

Allegations Regarding Curbside Voting

According to the audit request, there were allegations some curbside voters waited 35 minutes to vote. There is no record of voting wait times to determine if curbside voters had to wait longer than other voters. Since curbside voters must wait, like all voters, for their turn to vote, it is plausible that 35 minutes was the standard wait time at that polling location at that time.

Another allegation claimed some curbside voters were not served and others were forced to vote inside the polling location. There is also no type of record available to confirm or deny these allegations. As noted above, however, curbside voters who cannot stand for long periods may opt to vote inside when it is their turn. This may give the impression that a curbside voter was forced to vote inside the polling location even if it was his choice.

Lastly, there was an allegation that, at a particular polling location, only one poll worker was attending curbside voters. While we could not confirm or deny, state law requires two poll workers attend curbside voters at their vehicle and return their voted ballot.

Opening and Closing Procedures

Guides and Checklists

The county office has not ensured adequate completion of opening and closing checklists—lists of tasks for poll workers to complete for opening and closing polls—and reconciliation worksheets—forms used to reconcile used and unused ballots with voters. Completing these checklists and worksheets will likely boost the public confidence that polls are opened and closed, as required, and all ballots are accounted for.

Guides and checklists exist to assist poll workers in opening and closing of the polls. Specifically, there are opening and closing guides for ballot-marking devices and scanners. These guides provide step-by-step instructions on how to open and close the voting equipment for election day.

Additionally, there are opening and closing checklists that account for the type and amount of equipment provided to polling locations as well as a listing of various tasks necessary to open and close the polls. Opening tasks include, among other things:

- Matching equipment seal numbers to those on seal envelopes.
- Checking the number of blank ballots issued by the county office matches the amount listed on the reconciliation worksheet.
- Posting accessibility signs.
- Connecting equipment to power.

Closing tasks include, but are not limited to:

- Powering off equipment.
- Removing USB sticks from scanners and securing for transport.
- Completing the ballot reconciliation worksheet.

Poll clerks are required to complete the opening checklist before the polls open and the closing checklist after the polls close. Both checklists require the signature of the poll clerk. The purpose of the checklists is to ensure all tasks have been completed and increase accountability.

Incomplete Opening and Closing Checklists

Poll clerks did not adequately complete opening and closing checklists. We reviewed all opening and closing checklists for all 59 polling locations; some of the county's 96 precincts were combined into one polling location, totaling 59 polling locations altogether. Completion status for opening checklists included:

- 32% (19) were completed.
- 49% (29) were partially completed.
- 7% (4) were over completed, meaning there were more checkmarks than tasks, suggesting the checklist was not used as intended.
- 12% (7) with no paperwork.

Completion status for closing checklists included*:

- 42% (25) were completed.
- 37% (22) were partially completed.
- 5% (3) were not completed.
- 15% (9) with no paperwork.

Training provided to poll workers adequately covered completing the opening and closing checklists.

Focused training on use and the importance of completing these checklists may improve the completion rate of these forms. Not using the checklists as designed provides less assurance that all necessary steps were taken in opening and closing the polls.

*1% off due to rounding.

Reconciliation Worksheets

S.C. Code §7-13-1410 states:

Immediately following the closing of the polls, the manager shall:

- (a) Count the number of electors who voted, as shown in the poll list.
- (b) Count the unused ballots without removing stubs.
- (c) Count the soiled and defaced ballots.
- (d) Insert the totals of (a), (b) and (c) of this section on the report forms provided therefor.

Poll workers capture this required information on a form called the ballot reconciliation worksheet. It includes fields for the number of ballots supplied to the precinct by the county office, the number of ballots used, the number of ballots not used, and the number of voters checked in at the precinct.

The bottom of the worksheet contains fields to reconcile the abovementioned figures, including the total ballots used plus the total ballots unused equaling the total ballots supplied. A second reconciliation involves the number of ballots used less the number of spoiled ballots—issued but unvoted ballots due to various reasons—equaling the number of voters

checked in. Figure 5.3 provides a visual of the ballot reconciliation worksheet.

Figure 5.3: SEC's Ballot Reconciliation Worksheet

County _____ Precinct _____ Date _____

Ballots Supplied		
A	Ballot Cards (Completed by County Office)	
B	Hand-Marked Paper Ballots (Completed by County Office) (Emergency/Provisional + Failsafe Provisional)	
C	Additional Ballot Cards	
D	Additional Hand-Marked Paper Ballots (Emergency/Provisional + Failsafe Provisional)	
Total 1		

Ballots Used		
E	Ballots Scanned	
F	Provisional Ballots	
G	Spoiled Ballots	
Total 2		

Ballots Not Used		
H	Ballot Cards	
I	Hand-Marked Paper Ballots (Emergency/Provisional + Failsafe Provisional)	
Total 3		

Voters Checked In		
J	Electronic Poll Book	
K	Paper Poll List (Do NOT Include Curbside Poll List)	
Total 4		

Total 2 + **Total 3** = (Should equal Total 1)

Total 2 - **G** = (Should equal Total 4)

Explain any discrepancies: _____

Are you returning any Emergency ballots that have not been scanned? Yes ☐ No ☐
(Do NOT include Provisional or Failsafe Provisional ballots)

Poll Clerk Signature: _____ Time: _____

Source: State Election Commission Poll Managers Handbook

Incomplete and Unreconciled Worksheets

The county office has not ensured that its poll workers complete and reconcile ballot reconciliation worksheets.

Reconciliation worksheets from the 2022 General Election were randomly selected to determine if poll workers adequately completed these worksheets on election day, as required. The sample included 77 of 96 precincts, and the results were calculated at a 95% confidence level ± 5 percentage points. Therefore, these results can be generalized about all precincts during the 2022 General Election. The results are as follows:

- 65% (50) of precinct forms contained completed fields but with totals not reconciled, where required.
- 22% (17) of precinct forms contained incomplete fields. Reconciliation could not be conducted.
- 12% (9) of precinct forms were completed and reconciled, where required.
- 1% (1) did not have a reconciliation worksheet.

According to county office staff, these worksheets are checked with poll clerks on election night for completeness and accuracy and any discrepancies are noted on the worksheets. Of the 50 worksheets that were unreconciled, only 16 (32%) had notes regarding discrepancies. None of these notes adequately explained the reason for discrepancies. Failing to ensure reconciliation worksheets are completed and reconciled provide less assurance that all ballots cast are accounted for.

Training provided to poll workers adequately covered how to complete and reconcile the worksheet. Furthermore, the poll managers handbook, a resource provided to all poll workers, also adequately covered the completion and reconciliation of the worksheet.

Focused training for all poll workers on how to complete and reconcile the ballot reconciliation worksheet has the potential to improve completion of the worksheet and ensure voted ballots are all accounted.

Recommendations

26. The Berkeley County Office of Voter Registration and Elections should ensure opening and closing checklists are completed in full by poll workers on election day.
27. The Berkeley County Office of Voter Registration and Elections should enhance existing pre-election poll worker training to include an emphasis on completing opening and closing checklists.
28. The Berkeley County Office of Voter Registration and Elections should ensure ballot reconciliation worksheets are completed and reconciled by poll workers on election day.
29. The Berkeley County Office of Voter Registration and Elections should enhance existing pre-election poll worker training to include an emphasis on accurately completing and reconciling the ballot reconciliation worksheet.

Recommendations

Rec #	The Berkeley County Office of Voter Registration and Elections should:	Page
2	post complete notices—including agenda, date, time, and location—for its special meetings.	8
4	ensure all its regular and special meeting minutes are posted to its website.	9
8	ensure the board is referred to as the Board of Voter Registration and Elections of Berkeley County in all board and county office documents.	9
11	ensure annual post-certification continuing education training courses are varied among staff members.	19
12	ensure it publishes all notices of election in a newspaper according to requirements in state law.	23
13	retain documentation of its public notices, including date and location posted.	23
14	ensure only poll workers who attended pre-election day training are used on election day and then paid.	25
15	no longer use inmates to perform or assist during post-election audits.	27
16	ensure its pre-election poll worker training includes a focus and emphasis on candidate and candidate representative campaigning permissions and restrictions.	29
17	ensure its poll workers maintain a complete log of watchers in attendance on election day.	31
18	ensure it retains all watcher logs after an election concludes.	31
19	ensure to expand its current poll worker training to include an emphasis on documenting a complete record of watchers in attendance on election day.	31
20	not pre-record seal numbers on the seal envelope intended to be written by poll workers during opening and closing procedures.	34
21	ensure polling location technicians complete inspection reports in order to account for a technician's whereabouts on election day.	37
22	ensure polling location technicians collect poll clerks' signatures from all polling locations visited on election day.	37
23	ensure polling location technicians complete incident reports for voting equipment issues, including issues and resolutions, occurring on election day.	37

24	ensure all polling location technicians attend pre-election day training for each election prior to serving in this role.	37
25	ensure only polling location technicians who worked election day are reimbursed for their services.	37
26	ensure opening and closing checklists are completed in full by poll workers on election day.	44
27	enhance existing pre-election poll worker training to include an emphasis on completing opening and closing checklists.	44
28	ensure ballot reconciliation worksheets are completed and reconciled by poll workers on election day.	44
29	enhance existing pre-election poll worker training to include an emphasis on accurately completing and reconciling the ballot reconciliation worksheet.	44

Rec #	The Board of Voter Registration and Elections of Berkeley County should:	Page
1	provide advance written public notice of its regular meetings as soon as possible for the remaining meetings for 2023 and at the beginning of each calendar year thereafter.	8
3	ensure its meeting minutes—regular and special—are available in written format in a timely manner after the meeting.	8
5	ensure a motion, second, and favorable vote occurs and is noted in its minutes when entering executive session.	9
6	limit meeting content to items listed on the agenda unless statutory requirements are followed to amend an agenda once a meeting has begun.	9
7	adopt a procedural guide for taking action in its meetings and ensure its minutes reflect that these procedures were followed.	9
8	ensure that the board is referred to as the Board of Voter Registration and Elections of Berkeley County in all board and county office documents.	9
9	notify the Governor’s Office of its board member’s noncompliance with meeting attendance.	13

Rec #	The Governor should:	Page
10	consider removing the noncompliant board member of the Board of Voter Registration and Elections of Berkeley County once notified by its chair or his designee.	13

Appendix B

Berkeley County Office Comments

No comments.

Appendix C

Berkeley County Board Comments

No comments.

Appendix D

Governor’s Office Comments

No comments.