

# VOTING RIGHTS LAB

## **Pennsylvania House Bill 1300: Summary and Analysis As Amended - 6/21/2021**

### **ANTI-VOTER PROVISIONS**

**Requires voters to register 15 days earlier.**

- HB 1300 would require voters to register at least 30 days before election day. The current registration deadline is 15 days before Election Day. This change would represent a rollback of the voter registration deadline established in Act 77, which was enacted less than two years ago with overwhelming bipartisan support.

**Effectively eliminates all in-person early voting until 2025.**

- HB 1300 would repeal language permitting voters to conduct “over-the-counter” absentee and mail-in voting, whereby voters apply for and vote an absentee or mail-in ballot in person at their local election office. The new early voting provisions (noted below) do not go into effect until 2025, meaning this bill would effectively eliminate all in-person early voting from the time of its enactment through the end of 2024.

**Enacts new restrictive in-person voter ID provisions.**

- HB 1300 would require voters appearing in person to present one of the following forms of identification:
  - A driver’s license;
  - A non-photo driver’s license or state ID card issued by the Dept. of Transportation;
  - A voter registration card;
  - A document indicating the voter is a current member of the military;
  - A signed affidavit including the voter’s signature and the last four digits of their social security number; or
  - A document with the voter’s name, photo, and unexpired expiration date that has been issued by the United States, Pennsylvania, a municipality of Pennsylvania (to an employee), accredited in-state post-secondary schools, or an in-state care facility.
- Pennsylvania’s existing voter ID statutes, which require voters to present a photo ID when appearing to vote in person, remain enjoined under the *Applewhite v. Commonwealth*

decision.<sup>1</sup> Generally under current law, voters are only required to present ID when appearing to vote for the first time.

**Enacts new restrictive absentee/mail-in voter ID provisions.**

- HB 1300 would require voters to provide two of the following three types of identification when requesting an absentee or mail-in ballot : (1) the last four digits of the voter’s social security number, (2) the voter’s driver’s license or state ID number, and (3) the voter’s voter registration number. Current law only requires voters to provide one type of identifying number when requesting their ballot.

**Limits return options for absentee and mail-in voters.**

- HB 1300 would limit return options to only the following specified methods:
  - By mail, while eliminating existing prepaid postage.
  - In person to a county elections board office during its hours of operation.
  - To a designated “ballot return location” which must comply with the following:
    - May only be open from 7:00 a.m. to 8:00 p.m. during the seven days before an election,
    - Must be staffed by at least one inspector of elections from each of the two political parties with the highest number of voters in the state.
    - Must be video monitored during all hours of operation (with recordings retained for 2 years),
    - Must have ballots collected daily after 8:00 p.m.,
    - Before the adoption of early voting, must be in a location that complies with all requirements for polling places. After the adoption of early voting, must be in an early voting location,
    - Must be in a fixed location announced 30 days in advance,
    - Can include the county elections office,<sup>2</sup> and
    - Must have the inspectors of election verify the identity of each person returning a ballot, must review each ballot for envelope completion, and must date-, time-, and location-stamp each returned ballot. Counties must provide at least one ballot return location and may have an additional location for every 100,000 residents.
    - The Department of State would be prohibited from reimbursing county costs of operating ballot return locations.<sup>3</sup>
  - Current statutes allow for in-person return of ballots, but are silent as to the requirements for ballot return locations. However the Pennsylvania Department of State issued “[Absentee and Mail-in Ballot Return Guidance](#)” prior to the 2020 presidential election providing for the establishment of ballot return sites.

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<sup>1</sup> *Applewhite v. Commonwealth*, 617 Pa. 563, 54 A.3d 1 (2012)

<sup>2</sup> This provision was not in the previous version of the bill. It was added as an amendment on June 21, 2021.

<sup>3</sup> This provision was not in the previous version of the bill. It was added as an amendment on June 21, 2021.

- Ballot return by another registered voter in the voter's household is permitted, but any voter returning more than one ballot must be informed by the inspectors of the penalties for unlawful collection of ballots.

#### **Enacts other absentee and mail-in ballot restrictions**

- HB 1300 would enact a variety of new barriers that would make it more difficult for voters to cast an absentee or mail-in ballot:
  - Repeal the permanent absentee and mail-in voter lists, requiring voters who wish to vote by mail to apply for an absentee or mail-in ballot for every election. Under current law voters are able to request a ballot for all elections within the same calendar year.
  - Prohibit the mailing of pre-filled applications to voters, and would require non-governmental third parties to include a notice on any blank applications mailed to voters.
  - Move up the application deadline by eight days (from 7 days prior to Election Day to 15 days prior to Election Day)<sup>4</sup>
  - Prohibits election officials from mailing absentee or mail-in ballots to voters until the day after the voter registration deadline (29 days prior to Election Day under this bill). Current law permits ballots to be mailed as soon as they are certified by the Department of State.
  - If a voter requests their ballot be sent to a different mailing address, it requires counties to send an additional notice to the voter's registered address.

#### **Mandates signature matching for absentee/mail-in ballots.**

- HB 1300 would require counties to conduct signature verification on all returned absentee and mail-in ballots, and would require county boards to use automated sorting or extracting machines capable of conducting signature verification. The bill does not include explicit requirements for human verification, or establish standards for how a ballot is rejected. Current law does not provide for signature matching. The bill does not include an appropriation for the procurement of new machinery.

#### **Expanded authority to partisan observers.**

- HB 1300 would give partisan observers of canvassing and pre-canvassing expanded authority to view and observe the processing of ballots. This expanded authority could result in increased challenges to the qualifications of absentee and mail-in voters without a statutory requirement that the challenger attest to having personal knowledge of an applicant's ineligibility to vote.

#### **Increased criminalization of election activities.**

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<sup>4</sup> A previous version of the bill would have changed the application deadline to 8 days before election day. This provision was amended on June 21, 2021.

- HB 1300 would increase the fines and terms of imprisonment for each election crime, in all cases doubling the fines and the imprisonment term or range. Many of the misdemeanor election crimes carry penalties typically associated with felonies, in many instances making the penalties significantly higher than the designated crime classification.
- The bill would also create three new crimes:<sup>5</sup>
  - Unlawfully disclosing results of pre-canvassing would be a third degree felony punishable by up to 14 years in prison and a \$30,000 fine.
  - Wilfully collecting or returning absentee or mail-in ballots in violation of state law would be a third degree felony punishable by up to 14 years in prison and a \$30,000 fine.
  - Duress and intimidation of election officials would be a second degree misdemeanor punishable by up to four years in prison and a \$10,000 fine.<sup>6</sup>

**Shifts election authority from bipartisan election administrators to partisan actors**

- HB 1300 would explicitly assert that the U.S. Constitution vests authority for prescribing election law in the General Assembly, and gives the General Assembly special standing to intervene in litigation challenging the Pennsylvania Election Code. A motion to intervene would require a majority vote by the House of Representatives.<sup>7</sup>
- HB 1300 would establish a bureau of election audits within the Office of the Auditor General, shifting all audit authority from county elections boards and the Department of State, and requiring that the new bureau conduct result-confirming audits of each election (except those in which a full manual recount occurred or those that are uncontested<sup>8</sup>), including:
  - a risk limiting audit after every election,
  - an audit of election machine logs,
  - an audit of returned absentee and mail-in ballots, including examination of outer and secrecy envelopes,
  - an audit comparing retained paper ballots with number of recorded votes, and
  - an audit of pre-election equipment testing,
  - conduct performance audits at least once every 5 years, and
  - publicly post methodology and results.

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<sup>5</sup>The penalties for all of these new crimes far exceed the range provided in the Pennsylvania criminal code, which sets a maximum sentence for third degree felonies at seven years, and a maximum sentence for second degree misdemeanors at two years. 18 Pa.C.S. § 106. The maximum penalties established for the third degree felonies are more closely aligned with first degree felony offenses in the criminal code, including crimes like murder, rape, and kidnapping.

<sup>6</sup> This new crime was not in the previous version of the bill. It was added as an amendment on June 21, 2021.

<sup>7</sup> A previous version of the bill would have required action by the bi-partisan management committee instead of the House. The amendment was adopted on June 21, 2021.

<sup>8</sup> The exception for uncontested elections was not in the previous version of the bill. It was added as an amendment on June 21, 2021.

### **Other provisions**

- The bill would eliminate existing procedures for counties to announce returns with discrepancies, and instead require them to investigate discrepancies with the power to summon officials, make criminal referrals to the district attorney, and elect not to certify results in certain circumstances where an excess of ballots is found.
- The bill would require the Attorney General to appoint an independent prosecutor to review election complaints, who would be required to publish a report after each election detailing:
  - the total number of complaints filed and to whom,
  - a summary of how complaints were investigated, and
  - recommendations for reducing the number of future complaints.

## **PRO-VOTER PROVISIONS**

### **Creates a cure process for absentee/mail-in ballots.**

- Voters would be required to be notified of missing or mismatched signatures or other deficiencies with their voter information and provided an opportunity to cure the deficiency. Voters would be required to cure their ballot by Election Day. Deficiencies that compromise ballot secrecy — such as “naked” ballots or ballots that have an identifying mark — would be “incurable” and the voter’s only remedy would be to cast a provisional ballot in-person on Election Day. Robust cure provisions typically allow voters to fix problems with their ballot after Election Day and give voters the option to spoil their mail ballot and instead cast a regular in-person ballot.

### **Raises poll worker pay.**

- HB 1300 would increase the current range of \$75 to \$200, to a range of \$175 to \$300. Half of the cost would be reimbursed by the Department of State, however the bill does not include a corresponding appropriation.

### **Requires pre-canvassing prior to Election Day.**

- HB 1300 would require counties to begin pre-canvassing absentee and mail-in ballots prior to election day. Pre-canvassing may take place between 7:00 am and 11:00 pm on the five days prior to Election Day.<sup>9</sup> Under current law, pre-canvassing cannot begin until 7:00 am on Election Day.

### **Creates a voter bill of rights, senior voter’s bill of rights, and disabled voter’s bill of rights**

- HB 1300 specifies a variety of rights that would be available to each type of voter, and would require these bills of rights to be posted at every polling place.

### **Creates six days of early voting beginning in 2025**

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<sup>9</sup> A previous version of the bill would have restricted pre-canvassing hours between 9:00 am and 9:00 pm and would have required pre-canvassing to occur on specific days. This provision was amended on June 21, 2021.

- Beginning in 2025, HB 1300 would require all counties to conduct six days of early voting beginning on the second Friday before each election and ending on the first Wednesday before the election.
- Early voting would take place at vote centers which must be open between 7:00 am and 8:00 pm.<sup>10</sup>
- Counties would be required to have at least one vote center per 100,000 residents, but would be capped at 10 vote centers per county. Given current population estimates, this cap would only apply to the state's two largest counties, Allegheny and Philadelphia, likely resulting in longer lines in these more populous areas. Additionally, no county would be required to open more than five early voting locations.<sup>11</sup>
- Early voting locations would need to:
  - Meet the same requirements as apply to a polling place
  - Be announced at least 30 days before the establishment of an early voting center
  - Be located in a public library, public or private school, college or university building, courthouse, or government-owned building<sup>12</sup>
  - Be distributed throughout the county
  - Be ADA accessible and meet the criteria for polling places
  - Use the same type of voting machines that the county uses on election day
  - Have continual staff and video monitoring for all hours of early voting, including overnight
- The Department of State would be required to reimburse counties half the costs of operating early vote centers.

**Explicitly authorize counties to establish satellite election offices,**

- HB 1300 would permit counties to establish satellite election offices provided they meet the requirements applicable to polling places and offer the same services as permanent election offices. Current law does not explicitly allow or prohibit the establishment of satellite election offices, however they were widely adopted in the 2020 presidential election.
- After in-person early voting is established in 2025, satellite election offices could only be located at early voting locations. Note: Under this bill satellite election offices could not be used as in-person voting locations prior to 2025 due to the repeal of over-the-counter absentee/mail-in voting.

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<sup>10</sup> A previous version of the bill would have given counties discretion to offer early voting hours between 7:00 am and 8:00 pm. This provision was amended on June 21, 2021.

<sup>11</sup> A previous version of this bill did not give counties discretion to offer fewer early voting locations than provided by the formula of one location per 100,000 residents. This provision was amended on June 21, 2021.

<sup>12</sup> A previous version of this bill did not allow early voting locations to be sited at schools or colleges or universities, but did permit them to be located at city hall. This provision was amended on June 21, 2021.

## **NEUTRAL OR MIXED PROVISIONS**

### **Imposes new powers and duties on the Secretary of the Commonwealth,**

- HB 1300 would impose a number of new powers and duties on the Secretary of the Commonwealth including, among other things, new reporting and transparency requirements, a requirement to develop and issue guidance to maintain statewide uniformity, create and maintain a tracking system for absentee/mail-in ballots (which currently exists in similar form), maintain a voter fraud hotline, provide technical assistance to counties, participate in the multi-state ERIC system, conduct voter list maintenance activities to identify deceased voters, distribute grant funding from private sources, and offer free trainings on topics identified by the Election Law Advisory Board<sup>13</sup>.

### **Imposes new powers and duties on county Boards of Elections**

- HB 1300 would impose a number of new powers and duties on county boards of elections including, among other things, reporting and transparency requirements, capture and storage of voter signatures, purchase of electronic pollbooks, publication of the voter bill of rights, senior voter bill of rights, and disabled voter bill of rights at each polling place, and new voter list maintenance requirements.
  - HB 1300 would give county Boards of Elections a one-year grace period after its effective date to obtain electronic pollbooks.<sup>14</sup>
- The bill would remove the authority for county boards of elections to make rules, regulations and instructions for the guidance of poll workers and voters, and instead require counties to obey and follow the rules and guidance promulgated by the Department of State.
- The bill would require counties to investigate any absentee or mail-in ballot returned as undeliverable.
- HB 1300 would prohibit counties from accepting private grant funding, but gives the Secretary of the Commonwealth the authority to accept such grants and distribute them on a per capita basis.

### **Recodifies the voter registration statutes in their entirety with modifications.**

- HB 1300 substantially moves the voter registration statutes currently in the Pennsylvania Consolidated Statutes to the Pennsylvania Election Code. As part of moving these provisions, the bill also makes a number of substantive changes. Among other things, the bill would:
  - Remove language previously struck down in court requiring certain voters to wait for five years following release from incarceration for a felony offense before their

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<sup>13</sup> The training requirement was not in the previous version of the bill. It was added as an amendment on June 21, 2021.

<sup>14</sup> This provision was not in the previous version of the bill. It was added as an amendment on June 21, 2021.

voting rights are restored. Under the court decision, returning citizens are able to register to vote immediately following their release<sup>15</sup>

- Codify the existing online voter registration system
- Add records retention requirements
- Require clerks and registrars to verify the social security number, driver's license and/or state ID number when provided by a registrant
- Require the Department of State to enter into agreements with the Dept. of Transportation and the Social Security Administration to enable verification of new registrants
- Require newly issued voter registration cards to include a copy of the voter's signature and scannable ID number

**Changes methodology for calculating the number of ballots the Department must provide to counties.**

- HB 1300 enacts a formula that would require the Department of State to provide ballots to counties using a formula based on the number of registered voters in each district. Current law provides a formula based on the number of voters who cast a ballot in previous elections.

**Expands the authority of the Election Law Advisory Board**

- HB 1300 would require the Election Law Advisory Board to make official instructions and procedures manual by December 31 of each odd-numbered year and receive reports from county boards of elections regarding voter education.
- HB 1300 would require poll watchers to undergo annual training conducted by the Election Law Advisory board, in addition to training currently conducted for county election officials, poll workers and judges of elections.<sup>16</sup>

**Establishes new standards and examination/testing requirements for voting machines.**

- HB 1300 requires the Secretary of the Commonwealth to conduct testing of all voting system software and voting machines prior to use, and requires county boards of elections to publicly test voting and tabulating equipment prior to each election.

**Requires county boards of elections to provide supervised voting in assisted living facilities and nursing homes.**

- Supervised voting would be provided upon written request of the facility's administrator at least 21 days prior to the election, and must include the names of every voter who wishes to vote absentee. Supervised voting would take place on a select date and time, and supervised voting teams would be required to be made up of at least two people,

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<sup>15</sup> Note: A previous version of this bill retained a reference to the five year waiting period in the form statement applicants must sign when registering. This language was amended out of the bill on June 21, 2021.

<sup>16</sup> This provision was not in the previous version of the bill. It was added as an amendment on June 21, 2021.

including representatives of the two parties with the largest share of registered voters in the state.

**Requires the State Treasurer to reimburse counties for various costs**

- Reimbursements would be withheld from counties in violation of election law or which have unresolved voting violations or irregularities, as determined by the Auditor General. Note: this bill does not appear to include a corresponding appropriation to fund this new provision.

**Makes every ballot available for public inspection.**

- HB 1300 would require that every ballot cast must be open for public inspection after an election and for the entire ballot retention period. Inspections would have to take place in the presence of a sheriff and county official, and beginning in 2023 counties would be required to create digital copies of all ballots for public inspection as well.

**Authorizes experimental use of electronic voting systems for voters with disabilities<sup>17</sup>**

- HB 1300 would expand the availability of experimental electronic voting systems to include voters with disabilities. Current law limits the use of such systems to military and overseas voters. The bill would also require the Secretary of the Commonwealth to investigate the viability of using blockchain technology for these experimental systems.

**Permits election officers to work in any precinct within their county of residence<sup>18</sup>**

- HB 1300 would permit election officers to work at any polling place within their county of residence. Current law requires election officers to be qualified registered voters of the district in which they serve.

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<sup>17</sup> This provision was not in the previous version of the bill. It was added as an amendment on June 21, 2021.

<sup>18</sup> This provision was not in the previous version of the bill. It was added as an amendment on June 21, 2021.