

VOTING RIGHTS LAB

Pennsylvania House Bill 1800: Summary and Analysis As Introduced - 9/20/2021

Drafter's note: Except where specifically noted, the provisions outlined below are substantially similar to the provisions included in HB 1300 as passed by the General Assembly on June 25, 2021 and vetoed by Governor Wolf on June 30, 2021. Notable differences between the two bills have been highlighted.

ANTI-VOTER PROVISIONS

Requires voters to register 15 days earlier.

- HB 1800 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 1800 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 1800 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.¹ 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 1800 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. The bill does not establish a formal process to allow voters to cure problems with their application.

Limits return options for absentee and mail-in voters.

- HB 1800 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, 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.
 - 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.

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

- 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 1800 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 indicating that the application was not sent or distributed by the county or the Department of State.
 - Move up the application deadline by eight days (from 7 days prior to Election Day to 15 days prior to Election Day)
 - 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 1800 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 1800 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.

- HB 1800 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:²
 - 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.

Shifts election authority from bipartisan election administrators to partisan actors

- HB 1800 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.
- HB 1800 would appropriate \$3.1 million to the Auditor General³ to 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), 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.

Other provisions

- The bill would require county boards of election to investigate discrepancies in the number of ballots cast versus the number of registered voters, with the power to summon officials, make criminal referrals to the district attorney, recount the ballots and correct returns accordingly, and elect not to certify results in certain circumstances where an excess of ballots is found. HB 1300 contained these provisions and would have also eliminated existing procedures for county boards to announce the number of ballots

²The 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.

³ This appropriation was not included in HB 1300 as passed by the General Assembly.

issued, spoiled, cancelled, and cast, and stop reading returns if there are any discrepancies.

- 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.
- HB 1800 would name each county district attorney or their appointee as the county's "election integrity officer" for elections in the county. In years where the district attorney is a candidate, the district attorney would be required to appoint an independent prosecutor 90 days before the election to serve as the election integrity officer. **Note:** This provision was not included in HB 1300 as passed by the General Assembly.
- HB 1800 would prohibit the use of moveable or temporary polling places on Election Day unless no other public or other building is available. Under existing law, County Boards are authorized to use mobile polling places at their discretion. **Note:** This provision was not included in HB 1300 as passed by the General Assembly.

PRO-VOTER PROVISIONS

Creates a limited 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 1800 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 and timely canvassing of absentee/mail-in ballots.

- HB 1800 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. Under current law, pre-canvassing cannot begin until 7:00 am on Election Day.
- Absentee and mail-in ballots would begin being counted after the close of polls on Election Day, in contrast to current law, which allows counties to wait to begin canvassing

of absentee/mail-in ballots as much as three days after Election Day. **Note: This provision was not included in HB 1300 as passed by the General Assembly.**

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

- HB 1800 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

- Beginning in 2025, HB 1800 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. Under current law, voters may request an over-the-counter absentee or mail-in ballot and cast it early in-person at their board of elections office or satellite offices, but counties cannot provide election-day style early vote centers.
- Early voting would take place at vote centers which must be open between 7:00 am and 8:00 pm.
- Counties would be required to have at least one vote center, with an additional vote center for every 100,000 residents.⁴ Additionally, no county would be required to open more than five early voting locations.
- 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
 - 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
 - Be distributed throughout the county.
- 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 1800 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

⁴ Note: HB 1300 would have capped counties at a maximum of 10 vote centers. This cap does not appear in HB 1800.

be used as in-person voting locations prior to 2025 due to the repeal of over-the-counter absentee/mail-in voting.

Authorizes experimental use of electronic voting systems for voters with disabilities

- HB 1800 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.

NEUTRAL OR MIXED PROVISIONS

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

- HB 1800 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, mandate participation in the multi-state ERIC system (Pennsylvania is already a member but is not statutorily required to be), conduct voter list maintenance activities to identify deceased voters, be the sole distributor of grant funding from private sources, and offer free trainings on topics identified by the Election Law Advisory Board.

Imposes new powers and duties on county Boards of Elections

- HB 1800 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. **Note: HB 1300 would have given counties a one year grace period after the bill's effective date to obtain electronic pollbooks.**
- 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 1800 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.
- County boards would be required to cooperate with election integrity officers appointed in the county and include the officer in all correspondence related to the conduct of the

election. Note: This provision was not included in HB 1300 as passed by the General Assembly.

Alters the responsibilities of local election officials and poll workers.

- Note: These provisions were not included in HB 1300 as passed by the General Assembly.
- HB 1800 would change various provisions relating to the appointment and responsibilities of local election officials and poll workers, including:
 - Making county boards — rather than the court — responsible for filling vacancies on district election boards in conjunction with county parties, and requiring positions to be filled two months prior to a general election (or one month prior to a special, midterm, or primary election). County boards would be subject to monthly reporting requirements.
 - Changing the residency requirements for election officers, requiring them to be residents of the county in which they are working. Current law requires election officers be residents of the election district in which they are working.
 - Reduce the mandatory number of machine inspectors from one per machine to one per every two machines in each district, and remove the requirement that the minority party inspector appoint a machine inspector in each district.
 - Give county boards the responsibility of determining the minority and majority party in each district. Current law provides that this determination is made by the judge of elections.
 - Requires oaths of office sworn by machine inspectors and judges, inspectors, and clerks of elections to be made in writing rather than orally.
 - HB 1800 would remove the authority of judges of elections and inspectors of elections to administer oaths to people claiming the right to vote or to their witnesses, however provisional voters claiming the right to vote still retain the option to sign a written affidavit.

Modifies polling place siting requirements

- Note: These provisions were not included in HB 1300 as passed by the General Assembly.
- HB 1800 would impose various new requirements regarding how polling place locations are chosen.
 - Require that the selection of any polling place location be fixed at least 14 days before an election. Current law provides that only emergency changes are allowed within 20 days of an election.
 - Require posting of polling places on the County Board's website at least 14 days before an election.
 - Repeal the requirement that polling places be located in an environment that is free from violence, but imposes a new accessibility requirement.

- Permit non-public buildings to be used as polling places if an appropriate public building cannot be identified within an election district. Under current law, public buildings in adjacent districts are the first alternative location used.

Modifies the authority of counties and the Department of State to seek election financing

Note: These provisions were not included in HB 1300 as passed by the General Assembly.

- HB 1800 would repeal existing law authorizing the Department of State to apply for funding under the Pennsylvania Financing Law for the replacement of voting apparatus, and setting forth the process for issuance and repayment of the bonds.
- HB 1800 would enact a new provision authorizing counties to apply to the Commonwealth Financing Agency for grant funds to purchase and maintain voting machines, sorters, extractors, electronic poll books, servers, and tabulators. The bill identifies appropriations including federal money as sources of funding.

Makes changes to certain election day procedures

- Note: These provisions were not included in HB 1300 as passed by the General Assembly.
- HB 1800 would make changes to certain election day procedures, including:
 - Allowing election officials to pick up election materials if delivery by the County Board is impossible.
 - Allowing voters to receive voting assistance only if the voter signs an affidavit at the polls that the voter is unable to read the name on the ballot or has a physical disability specifically named by the voter and election officers are “satisfied that the voter suffers from the same condition” described in the affidavit. Visually impaired voters may receive the assistance of an election officer to complete the affidavit. Under current law, voters may only receive voting assistance if they sign an affidavit, if their voter registration card records the nature of the voter’s “condition” or disability, and if election officers are satisfied that the voter still has the condition or disability described on the registration card.

Recodifies the voter registration statutes in their entirety with modifications.

- HB 1800 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 voting rights are restored. Under the court decision, returning citizens are able to register to vote immediately following their release
 - 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 1800 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 1800 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 1800 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.

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

- HB 1800 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, including representatives of the two parties with the largest share of registered voters in the state. Voters may retain the ballot provided to them during supervised voting to vote at a later time.

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 1800 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.

Permits election officers to work in any precinct within their county of residence

- HB 1800 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.