



MEMORANDUM

TO: The Pennsylvania House of Representatives

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: November 12, 2021

RE: OPPOSITION TO HB 1800 P.N. 2125 (GROVE)

Bill summary: [HB 1800](#) (PN 2125) is an omnibus bill that would introduce significant changes to the Pennsylvania Election Code. While there are certainly some provisions in HB 1800 that the ACLU-PA would support, the bill contains numerous problematic changes, including ones that:

- Change, grant, and/or expand election-related authority vested in: the Auditor General; county boards of elections; local election officials and poll workers; the Election Law Advisory Board; the Attorney General; and local district attorneys.
- Shorten the deadline or time to:
 - Register to vote;
 - Apply for a mail-in or absentee ballot;
 - Vote a mail-in or absentee ballot.
- Require signature matching—an historically unreliable and unworkable requirement for elections.
- Impose unnecessary restrictions or limitations on ballot return locations; polling locations; vote centers.
- Grant the General Assembly special standing in challenges to the Election Code.
- Create new election-related offenses while doubling criminal penalties for existing Election Code offenses.

On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose House Bill 1800.

HB 1800 would establish new voter registration requirements.

Many of the voter registration requirements in HB 1800 mirror existing requirements, except that this bill would:

- Require voters to provide new information, including the last four digits of the voter's social security number and the voter's driver's license or ID number. If the voter does not have a social security number, the voter's identity can be confirmed through alternate means. A voter's failure to provide a license or ID number cannot form the basis for rejection of their voter registration. Clerks and registrars would be required to verify these data upon receipt of a voter registration application.
- Move the voter registration deadline to 30 days before an election, from the current 15-day deadline.
- Require election officials to reject a voter registration 25 days before an election, instead of the existing 10 days before an election.
- Create a method of birthdate privacy for voters who have an active protection from abuse order, only for the duration that such order is in effect. The previous version of the bill (HB 1300) would have made this available to any person who had made a claim for protection.
- Codify a court decision that eliminates the statutory bar to registration for people who have been incarcerated in the past five years for a felony.
- Codify a requirement that the Department of State provide online voter registration, which is already available in Pennsylvania.

HB 1800 would change or restrict absentee and mail-in voting.

- Change the deadline for absentee and mail-in ballot applications to fifteen days before the election or primary. Existing law sets the deadline at the first Tuesday before the election or primary.
- Prohibit counties and the Department of State from maintaining a permanent mail-in voting list and instead require voters to request a mail-in ballot for each election, even when elections are held within the same calendar year.
- Change absentee and mail-in ballot application procedures to:
 - Require applications to have at least two of the following, or be rejected: last four digits of social security number, driver's license number, and voter registration number;
 - Prevent election officials from mailing absentee or mail-in ballots earlier than 29 days before the election;
 - Prohibit voters from applying for an absentee or mail-in ballot in person;
 - Mandate that the Secretary of the Commonwealth provide electronic applications for absentee and mail-in ballots. Under existing law, the Secretary is authorized, but not required, to create such a system; and
 - Require county boards of elections to investigate any absentee or mail-in ballot returned as undeliverable and mail a notice to the voter's registered address if a voter requests an absentee or mail-in ballot be mailed to any other address.
- Limit absentee and mail-in ballot return options to only the following specified methods:
 - By mail, while eliminating existing prepaid postage;
 - In person to a county board of elections office during its hours of operation; or
 - By dropbox. (See requirements below.)

HB 1800 would establish strict limitations for ballot drop boxes.

HB 1800 would require that counties provide at least one drop box location and may have an additional location for every 100,000 residents and exclude the expenses of operating a dropbox from eligibility for state reimbursement.

In addition, the following requirements would apply to drop boxes:

- May only be open from 7 a.m. to 8 p.m. during the seven days before an election;
- Must be staffed by at least one paid 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; 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.

HB 1800 would change how and when polling locations are chosen.

HB 1800 would change when and how polling place locations are chosen, specifically to:

- Require that any polling place location selection in a new election district or any polling place location change must be fixed no less than 14 days before an election. Under existing law, only emergency changes are allowed after 20 days before an election;
- Require posting of polling places on the County Board's website at least 14 days before an election;
- Remove the requirement that polling places provide all electors with an environment that is free from violence, but imposes an accessibility requirement;

- Permit non-public buildings to be used as polling places if an appropriate public building is not situated within an election district, provided those buildings are accessible to all voters. Under existing law, suitable public buildings in adjacent districts are the first alternative location used, but under HB 1800, public buildings in adjacent districts could only be used if no suitable public or non-public buildings are located in a district; and
- Permit the use of mobile polling places only if no public or other building is available. Under existing law, county boards are authorized to use mobile polling places at their discretion.

HB 1800 would both improve and complicate ballot processing.

- Mandate signature verification, a notoriously unreliable and unworkable process, requiring that the county board of elections verify that a ballot signature matches the voter's signature on file.
- Change canvassing and pre-canvassing methods and timelines. Specifically, the bill would:
 - Allow party representatives to view and observe pre-canvass and canvass activities, which must also be recorded;
 - Require machine sorting and extracting to assist in processing absentee and mail-in ballots. Machines used must have signature verification capabilities used by the county;
 - Provide that pre-canvassing of absentee and mail-in ballots occur between the hours of 7:00 a.m. to 11:00 p.m. during the five days before Election Day, and while polls are open on Election Day. Under existing law, pre-canvassing cannot begin until 7:00 a.m. on Election Day; and
 - Require canvassing of absentee and mail-in ballots to begin immediately upon the close of the polls on Election Day. Under current law, canvassing must be started by the third day after the election.
- Create a mandatory cure process. For failure to provide ID or a matching signature, a county board of elections must notify the voter by mail, email, phone call, or text message and provide the voter an opportunity to cure by the close of the polls. Cure can include providing proof of ID and an affirmation that the voter is the same person who returned the absentee or mail-in ballot or providing an affirmation that the voter is the same person who returned the absentee or mail-in ballot and that the voter is indigent and cannot obtain proof of identification. Certain errors are incurable, such as failure to include a secrecy envelope or lack of identity information on the secrecy envelope. For such incurable errors, a county board of elections must notify the voter and direct the voter to vote on election day with a provisional ballot or apply for an emergency absentee ballot.

HB 1800 would require voter ID, but with fewer ID options currently available to PA voters.

HB 1800 would change voter ID requirements to accept a voter registration card of the type created by this bill or an affidavit with the voter's signature and the last four digits of the voter's social security number.

Under existing law, photo ID is required for voters unless they have a religious objection to being photographed, but the enforcement of voter ID requirements has been enjoined since a 2014 court decision. While on paper this bill would add two non-photo ID options, it restricts the voter ID options practically available to Pennsylvania voters under current law and jurisprudence.

HB 1800 would impose new technical requirements for voting machines.

HB 1800 would impose new technical requirements for voting machines, which must be publicly tested before voting machines can be approved. Additional requirements include:

- Manufacture within the U.S.;
- Allowance for direct comparison of machine interpretation and human interpretation of the same ballot;
- Utilization of open-source software.

Voting system vendors would have ongoing requirements to report known defects and the Department of State would have reporting requirements regarding voting system performance and defects.

HB 1800 would also prohibit the Secretary of the Commonwealth from decertifying voting machines purchased by a county before 2024 for failure to comply with prescribed standards.

HB 1800 would establish early voting and vote centers, but with numerous restrictions.

HB 1800 would require county boards of elections to establish in-person early voting at vote centers by the 2025 primary. Early voting would begin the second Friday before an election and end the first Wednesday before an election.

Counties would be required to provide one early voting vote center for every 100,000 residents and would not be required to provide more than five vote centers, although they could provide more if they chose to. HB 1800 would also authorize county boards of elections to establish satellite election offices, which could only be located in early voting locations after the initiation of early voting.

However, before in-person early voting is required under this bill, voters would lack an early in-person voting option because other provisions of this bill limit the ability to vote an absentee or mail-in ballot in person. Under HB 1800, vote centers would have to:

- Meet the requirements for a polling place;
- Be open for the hours of 7:00 a.m. to 8:00 p.m. daily;
- Be announced at least 30 days before the establishment of an early voting center;
- Be located in a permanent public library, courthouse, public or private school, college, or university, or government-owned building;
- 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; and
- The Department of State would be required to reimburse counties half the costs of operating early vote centers.

HB 1800 would make several changes to Election Day procedures.

HB 1800 would change certain Election Day procedures, specifically: naming materials required for election day; delivery and pick up procedures; changing the prevailing time for poll opening and closing to local time, rather than Eastern Standard time; and requiring voters to electronically sign an electronic poll book.

In addition, this provision would impose certain requirements on voters receiving voter assistance:

- Allow 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 existing 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.
- Continue to require that election officers "be satisfied" that a voter requesting voting assistance has the condition described in the affidavit. This is a continuation of existing law, but since other provisions of this bill eliminate the requirement that the affidavit describe the voter's condition, the continuation of this provision, which is now unworkable, is notable.
- Create a voter fraud hotline created to take reports of any known or suspected voter fraud, intimidation or duress of poll workers, judges of elections, election officials, or elections observers.

HB 1800 would change, grant, or expand election-related powers vested in various entities.

General Assembly

In addition to underscoring that the constitution vests authority for prescribing election law in the legislature, HB 1800 would provide that the Pennsylvania House of Representatives may intervene in a lawsuit challenging the constitutionality of this Act upon a majority vote of that chamber. (HB 1300 previously only allowed House intervention upon a majority vote of the Bipartisan Management Committee.)

Auditor General

HB 1800 would establish a Bureau of Election Audits within the office of the Auditor General, along with an appropriation of \$3.1 million to the Auditor General for this purpose. This provision would shift all audit authority from county boards of elections and the Department of State, and require that the new bureau conduct result-confirming audits of each election (except those in which a full manual recount occurred or those which are uncontested), including:

- A ballot comparison audit for absentee and mail-in ballots with a risk limit of 1%;
- A ballot polling audit for ballots cast in person on voting machines with a risk limit of 1%;
- A risk-limiting audit after every election that is contested;
- 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.

Secretary of the Commonwealth

HB 1800 would alter the powers and duties of the Secretary of the Commonwealth, including:

- A new requirement to provide a free photo ID to any registered elector upon request;
- A new limitation that the Secretary must distribute, after approval by the Election Law Advisory Board, all private election grant funds and public funds for voter education equally across the state based upon the most recent census;
- A new requirement to make all communications between the Secretary and at least three county election directors publicly available;
- A new requirement to publish a list of registered voters at least 5 days before an election;
- A new requirement to obtain a list of deceased people and compare it to the voter database monthly.
- Creating and maintaining a tracking system for absentee and mail-in ballots;
- Reimbursing counties for the cost of annual training the Pennsylvania Election Law Advisory Board must require under this bill; and
- Limiting the Secretary's powers to only those authorized in the Pennsylvania Statutes or Pennsylvania Consolidated Statutes.

County boards of elections

HB 1800 would alter the powers and duties of county boards of elections, including:

- A new requirement that the board capture and store voter signatures;
- Requiring that the board provide each voter with a "durable" voter registration card that includes the voter's signature;
- Removing the authority of boards to make rules, regulations, and instructions;
- Requiring boards to use electronic poll books, with reimbursement from the Department of State;
- Requiring boards to decline any private grant money unless received from the Secretary of the Commonwealth;
- Requiring boards to seek a record of deaths and compare to the registered voter list at least monthly. Under existing law, boards do not have to proactively seek out information about deceased voters periodically; and

- Creating new procedures for county boards of elections when announcing returns and locating discrepancies in return numbers, including granting such board subpoena power. A board would be empowered to correct returns in accordance with recount results or to exclude the poll or the district, as to any, some, or all offices, candidates, questions, and parties, if the ballot box contains more ballots than there are electors, or more ballots from one party than there are electors of that party, or more ballots than voters who voted.

Local election officials and poll workers

HB 1800 would change the responsibilities of local election officials and poll workers by:

- Dictating that county boards must fill vacancies in district election boards in conjunction with county parties with specific timelines and reporting requirements to the Department of State;
- Changing the requirement that election officers be residents of the districts in which they are working, to instead requiring that they be residents of the county where they are working;
- Changing the number of machine inspectors required from one per machine under existing law to one per every two machines in each district and removing the requirement that the minority party inspector appoint a machine inspector in each district; and
- Changing who determines the minority and majority parties in each district from the judge of elections to the county board.

Election Law Advisory Board

HB 1800 would expand the authority of the Election Law Advisory Board, requiring it to:

- Make official instructions and procedures manual by December 31 of each odd-numbered year;
- Establish training standards for poll workers, election officials, and election observers and require the Secretary of the Commonwealth to develop and offer this training free of charge; and
- Receive reports from county boards of elections regarding voter education.

Attorney General

HB 1800 would create new powers and duties for the Attorney General relating to elections, specifically requiring 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.

District attorneys

HB 1800 would designate county district attorneys, or their appointees, as county election integrity officers for elections within the county. In years when the district attorney is a candidate, the district attorney shall appoint an independent prosecutor 90 days before the election to serve as the election integrity officer. County Boards must cooperate with election integrity officers and include them in all correspondence related to the election.

HB 1800 would mandate certain post-election actions and reports.

- Mandate that the Department of State report certain information to the legislature after each election, including incidents of absentee and mail-in ballots being sent to the wrong person, absentee and mail-in ballots being voted by a person other than the voter, and absentee and mail-in ballots returned by means not permitted by law.
- Require that every ballot cast be open to public inspection, under certain conditions, after an election, and for the entire time ballots are required to be retained.

HB 1800 would create a voter's bill of rights for voters, seniors, and people with disabilities.

HB 1800 would create a voter's bill of rights, a senior voter's bill of rights, and a disabled voter's bill of rights, affirming all voters' current rights to:

- Vote;
- Have their vote accurately counted;
- Vote if they are in line when polls close;
- Vote free from coercion or intimidation;
- Vote on a working, accurate voting system;
- Ask for and receive assistance in voting;
- Cast a provisional ballot;
- Receive written instructions, and oral instructions upon request; and
- An explanation if their registration or identity is in question.

In addition, seniors and voters with disabilities have the right to:

- Receive any assistance necessary to cast a ballot and move to the front of the line at a polling place.
- Establish supervised voting in assisted living facilities and nursing home facilities at the request of an administrator.
- Voters with disabilities have the additional rights to:
 - Bring a qualified service animal into a polling place or elections office;
 - Vote using an accessible voting machine;
 - Vote at a polling place that complies with ADA accessibility requirements;
 - Request a ballot be brought outside the polling place, provided the vote is cast within 150 of the entrance to the polling place, the voter marks their ballot secretly in the presence of two election officers (one from each party), who must deposit the ballot in a voting machine immediately. The electronic poll book must be brought to the voter and the use of this method must be recorded; and
 - Allow voters with disabilities to use any experimental electronic voting system provided for UOCAVA voters and direct the Secretary of the Commonwealth to investigate the viability of using blockchain technology to verify such electronic voting systems.

HB 1800 would make additional fiscal-related changes to the Election Code.

- Increase the compensation of poll workers from a range of \$75-200 to a new range of \$175-300, with 50% of the cost of paying poll workers to come from the Department of State.
- Repeal existing law authorizing the Department of State to apply for bond funding under Pennsylvania's Financing Law for the replacement of voting apparatus, and create a new election equipment funding section. This section would authorize counties to apply to the Commonwealth Financing Authority for grant funds to purchase and maintain voting machines, sorters, extractors, electronic poll books, servers for data storage, and tabulators.

HB 1800 would increase existing criminal penalties and create new election-related offenses.

- HB 1800 would double the maximum fines and incarceration for each existing election offense. Oddly, despite the different incarceration terms, none of the misdemeanor offenses are increased to felonies.
- HB 1800 would also create new offenses for:
 - Disclosing results of a pre-canvassing meeting: Third-degree misdemeanor punishable by a \$5,000 fine and/or imprisonment up to 4 years, except if a chief clerk or member of a county board of elections, return board, or board of registration commissioners does so, it would a third-degree felony punishable by a \$30,000 fine and/or imprisonment up to 14 years.
 - Willfully collecting or returning absentee or mail-in ballots in violation of state law: Third-degree felony punishable by a \$30,000 fine and/or imprisonment up to 14 years.
 - Prohibiting duress and intimidation of elections officials. This would be a misdemeanor punishable by a fine of up to \$10,000 and up to four years' imprisonment.

For these reasons, we urge you to oppose House Bill 1800.