



**TO:** Members, Senate State Government Committee

**FROM:** Douglas E. Hill, Executive Director

**SUBJECT:** **CCAP Comments on SB 1249, PA Election Law Advisory Board**

**DATE:** September 20, 2018

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On behalf of the County Commissioners Association of PA, representing all of the Commonwealth's 67 counties, we are pleased to send our comments and support for SB 1249, amendments to the Election Code to create the PA Election Law Advisory Board, scheduled for public hearing by the Committee on September 25.

The proposal for the Board originates from Joint State Government Commission's December 2017 report, Voting Technology in Pennsylvania. The report is the result of the work of the Advisory Committee on Voting Technology, convened under SR394 of 2016.

In the report, the Committee recommends creation of the Advisory Board (in the report, a "commission") "to advise the General Assembly regarding proposed amendments to the Pennsylvania Election Code, as well as other election-related matters."

CCAP, which participated on the committee directly and through participation of both county commissioners and county election directors, fully supports the recommendation and we express our gratitude to Senator Vogel for sponsoring the legislation and to the Senate State Government Committee for holding this hearing on the legislation.

The Pennsylvania Election Code, enacted in 1937, is in many ways outdated and in need of overhaul to better accommodate current technologies and practices, to reduce unnecessary costs and inefficiencies, and to meet the expectations of Commonwealth voters. The creation of the Advisory Board would be an important step toward updating the Code, by making available to the General Assembly the combined and diverse knowledge of state and local elected officials, election directors, and stakeholders.

We have two observations on the legislation, including changes to comport more closely with the discussions that led to the recommendation.

First, much of the discussion leading up to the recommendation was based on perceptions that legislative deliberations on Election Code amendments do not regularly include consideration of

practical and administrative effects of the changes being proposed. And so a stated duty under section 1302-D.(c) should be for the Advisory Board to review and furnish commentary to the respective State Government Committees on Election Code amendatory bills up for active consideration.

An example of the need for practitioner input such as this is currently at play in New Jersey. Media reports highlight county and voter confusion over a legislative change to a provision of their election code that allows automatic application for vote by mail, which was just enacted on August 10 and applies to this November's election. Compounding the tight timeline is that the change is vaguely written and yet requires county election offices to mail notice of its provisions to affected electors in advance of September 22, the date the first round of vote-by-mail ballots is to be mailed to voters.

In this example, if election practitioners and stakeholders had better access to provide advice in the legislation's development and consideration, the current confusion in the courthouses and in the media could have been avoided.

Our second recommendation is to include members with technological expertise on the Advisory Board, also a recommendation in the SR394 report. Given the realities of our technological risks and opportunities in registration, voting, and administrative systems, expertise in the complexities of current and next generation technologies is important in guiding development of legislation and practice.

In a separate matter, knowing that the Committee will also be participating in a demonstration of preparation, deployment and operation of election equipment, we would like to inform the Committee of a resolution adopted last month by the CCAP membership in response to the Department of State directive that counties have new election equipment deployed in advance of the April 2020 primary:

The Association supports county choice in selection of voting equipment, believing the determination, while compliant with state and federal certification requirements:

- a. Should be on a voluntary calendar that is predicated on market, equipment availability, and reasonable timelines including employee, poll worker and voter training;
- b. Should meet the needs and expectations of the county's voters;
- c. Should have available reliable and ongoing state and federal funding; and
- d. Should be statutorily framed as a decision by the board of commissioners or home rule equivalent, rather than the election board.

The CCAP membership was already on record acknowledging our equipment is approaching the end of its useful life, and in fact had adopted, as a priority for 2018, an objective to seek funding for its replacement. The counties' intent was to do so on a locally-determined time frame, but the establishment of the April 2020 deadline has raised significant practical concerns.

In response, the resolution indicates that, if we are to successfully undertake this replacement in time to meet the deadline of the April 2020 primary, several conditions have to be met, including (1) funding, (2) a marketplace of certified equipment, and (3) assurance that the equipment will be deliverable on a schedule that allows orderly and unhurried deployment as well as training of election staff, poll workers, and the voters themselves.

Meeting each of these conditions is critical – with April 2020 being a Presidential primary, the added stakes are high voter turnout with correspondingly longer lines, and higher scrutiny of the conduct of the election. This is a less than optimal circumstance for deploying new equipment, and so contingency plans should be in place to extend the timeframe for equipment replacement if the necessary conditions cannot be met.

Thank you for your consideration of these comments. We look forward to further discussions with you on these matters.