



**TESTIMONY ON SB 48
VOTING SYSTEM CERTIFICATION**

Presented to the Senate State Government Committee

By
Douglas E. Hill
Executive Director

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Good morning. I am Douglas E. Hill, Executive Director of the County Commissioners Association of Pennsylvania. The CCAP is a non-profit, non-partisan association providing legislative, educational, insurance, research, technology, and similar services on behalf of all of the Commonwealth's 67 counties.

We appreciate the opportunity to appear before you today to present our comments on SB 48, which addresses how voting machines may be decertified in the commonwealth. Counties have a significant responsibility in assuring elections remain fair and secure at every step of the process, and this includes the responsibility for selection, purchase, deployment and operation of voting equipment. Election equipment and voting systems is counties' top priority for 2019.

As you are already well aware, counties across the state have purchased, or are working toward the purchase, of new voter-verifiable paper trail voting systems this year in response to last year's settlement agreement between the Department of State and the Stein presidential campaign. While we would have preferred the discretion to move forward on our own timelines to replace voting equipment, the Stein settlement is legally binding, and so we must meet its April 2020 deadline.

At the time of announcement of the settlement, we explored whether counties might have the opportunity to intervene or seek another remedy. We can furnish more detail, but in short our conclusion is that there is no mechanism that would guarantee a timely or favorable result for counties, and thus we are working diligently to meet the settlement's replacement deadline.

Implicit in the settlement agreement is that the Department of State will decertify the current election equipment sometime in advance of the April 2020 deadline. Important to this discussion is that the apparent intent will be to decertify even those systems that currently have a paper trail, based on security questions raised by the Department of State regarding other elements of those systems such as operating systems, audit capacity, voter intent capability, and password protocol standards. As a result, all of the counties are affected and equipment replacement is required statewide.

In that context, Senate Bill 48 was introduced to provide some procedure for decertification of voting equipment by the state, specifically when at least half of the counties would be impacted.

Under section 201 (25 P.S. § 2621) of the Election Code, the Secretary of the Commonwealth has the authority to "examine and reexamine voting machines, and to approve or disapprove them for use in this State, in accordance with the provisions of this act" and under section 1105-A (25 P.S. 3031.5) to determine whether the systems "can be safely used by the voters at elections as provided in this act" and if not, to revoke approvals. Section 1107-A (25 P.S. 3031.7) offers 16 minimum standards that an electronic voting system must meet to be approved by the Secretary.

This language likely never envisioned a blanket decertification such as current circumstances have led us to today, so it was never an issue previously. But going forward, this experience

suggests there is some prudence in reviewing the process and at least putting in statute some higher burden regarding justification for decertification of machines. How and what that burden should look like, and with whom it should be vested, are questions that deserve careful consideration.

Senate Bill 48 requires the Department of State, in circumstances where 50 percent of the counties are affected, to develop and submit to the General Assembly a justification and plan for decertification and for replacement of the equipment. The plan includes timelines, costs, and funding sources. In turn, the General Assembly is to create a commission to review the plan, and to make findings and recommendations, including potential legislation, relative to the plan.

We believe a process of this type is sensible. There are however qualifications that we should note. First, the current law lacks specificity on any decertification, regardless of the number of counties affected. We believe there should be a more specific tie against the original certification criteria, that there should be clear acknowledgement of timelines (including practical effects relative to proximity to an election), and an allowance for the equipment vendor to craft a remedy to the certification issue. We recognize, on the other side, that there may be emergency circumstances that could require immediate action as an exception to this process.

Second, it is not wholly clear from the bill whether the commission has some veto capacity implicit in its ability to recommend legislation. Our membership does not express a uniform position on this point, some considering it a balance of powers issue where they are hesitant to tread.

Last, as a practical note, the legislation's immediate effective date would have the concurrent immediate effect of allowing counties to delay the purchase of new machines and continue to use their current equipment – at least until such time as a plan could be reviewed by the proposed commission. Anticipating the potential for a gubernatorial veto, given that a signature likely violates the settlement agreement, we appreciate the sponsor's support for county discretion in this matter, but believe the timeline is compressed enough that few counties would risk awaiting the outcome on passage. In any case, most counties are too far down the road in the equipment procurement process to change course now.

For the Committee's information, many of our counties, in fact, have already indicated their intent to have new machines in place in time for the November 2019 election, to afford them the opportunity to roll out new machines with poll workers, staff and the public during a municipal election, rather than deployment in a much busier (and more visible) presidential primary next spring.

With all of that said, the Stein settlement has replaced county discretion with an aggressive and mandatory replacement schedule, regardless of counties' available resources, and so of necessity our top election priority at this point has become obtaining full funding for voting systems, noting that every dollar that does not come from federal or state funding will be a local property tax dollar. Gov. Wolf, as he promised when announcing the settlement, has requested

\$75 million of the estimated \$150 million statewide cost, albeit in \$15 million grants for the next five years, as part of his FY 2019-2020 budget proposal.

Counties seek to work with the administration and General Assembly to maximize the level of state funding for equipment replacement, and to compress the proposed funding schedule, ideally, to a single year. Funding should match the county timeline – if counties must achieve replacement within the 2019-2020 fiscal year, the state appropriation should be for the 2019-2020 fiscal year. In addition, while the funding recommended by the administration totals \$75 million, the only appropriation under the current proposal would be \$15 million for FY 2019-2020. Future funding would be subject to the legislature’s budget process across each of the next four fiscal years, with no guarantee that the remaining \$60 million the Governor proposes would be approved.

Elections are the most fundamental government function in support of our democracy, and we believe every level of government has a stake in assuring they are secure, fair, and accurate.

Thank you for your consideration of these comments. We would be pleased to answer any questions you may have.