



**TESTIMONY ON SENATE BILL 878
ELECTION CODE REFORMS**

Presented to the Senate State Government Committee

By
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Good afternoon, my name is Lisa Schaefer and I am the executive director of the County Commissioners Association of Pennsylvania (CCAP), a non-profit, non-partisan association representing the commonwealth's 67 counties. Being the key administrators of the on-the-ground election, Pennsylvania's 67 counties have a significant responsibility in assuring elections remain fair, secure, accurate and accessible at every step of the process. Over the past several years, counties have worked closely with the General Assembly to achieve historic changes to the Pennsylvania Election Code, including the implementation of mail-in ballots under Act 77 of 2019. We appreciate this opportunity to offer our feedback on Senate Bill 878.

To say that 2020 was a challenging year for our counties to administer elections would be an understatement at best. As you are aware, this was the first time counties implemented the changes created by Act 77, while facing additional complications created by the very serious and unprecedented circumstances of the global COVID-19 pandemic – and in the middle of a highly contentious and high turnout presidential election. We applaud the county election offices and the tens of thousands of volunteers for the many challenges that were addressed in an extremely professional manner to maintain the security and integrity of the results and deliver successful elections in 2020.

That said, counties learned a great deal from their experience implementing Act 77 during the 2020 elections, and we know there are ways in which changes to the law can improve our ability to administer elections, as well as our ability to provide more efficient results. CCAP's Elections Reform Committee – which comprises county officials and county election directors from across the state – convened shortly after the November 2020 election and began reviewing county experiences, ultimately resulting in a preliminary report and recommendations released in January.

Counties selected elections reforms as their top legislative priority for 2021, which includes a renewed call for additional pre-canvassing time, as well as a recommendation to move back the mail-in ballot application deadline to 15 days prior to an election. Counties believe that making these two changes would resolve a substantial portion of the challenging circumstances they faced since implementing the provisions of Act 77.

Beyond these two priorities, the report also covers additional matters for review that we hope will inform clear and prompt policy changes. These include additional Election Code amendments, particularly to tighten up those matters that became subjects of interpretation throughout the various lawsuits and guidance. Counties further urged the General Assembly to continue to bring them to the table to discuss and provide feedback as any elections-related legislation is being developed so that we may work together to accomplish meaningful reforms. Counties have valuable experience to provide in the development of legislation to assure we can continue to administer elections that are secure and accurate. Regardless of whether counties have a policy position on any given reform, we must be consulted to ensure any new provisions are logistically possible and feasible.

With all of that said, we greatly appreciate the efforts of Sen. Argall and Sen. Street in developing SB 878, as county officials and election directors have already been part of multiple discussions on the bill's language prior to its introduction, and our comments and feedback taken into consideration. We also appreciate the opportunity to be here with you today to continue these discussions. While there still are areas of the bill where we have questions or would recommend additional work, the effort that has gone into SB 878 to date represents a meaningful partnership and a positive step toward an Election Code bill that will address many of the changes counties seek to improve the administration of elections.

Priorities: Pre-canvassing and mail-in ballot application deadlines

First and foremost, we support the inclusion of counties' top two priorities, an expanded pre-canvassing period, and moving back the deadline for mail-in ballot application to 14 days prior to an election.

Pre-canvassing

Counties have called for up to 21 days to begin pre-canvassing activities, although SB 878 as introduced would provide for just three days of pre-canvassing, and we look forward to further discussion on this timeline.

Allowing counties as much time as possible to pre-canvass ballots in advance of an election would offer a more meaningful option to complete these procedures, such as verifying the barcode number and voter's information on the outer envelope match the information in the SURE system, opening envelopes and removing and flattening the tri-fold ballot and scanning ballots – all following appropriate security and chain of command protocols for all individuals involved in the process. It is also important to note that counties are not calling for votes to be tabulated (for clarity, tabulation of votes occurs only when the designated and qualified official follows a secure procedure to manually extract the data from the central machine after all ballots have been entered or scanned), and certainly not released, until after the polls close on Election Day.

Allowing additional time to pre-canvass ballots simply allows us to use our resources most effectively and efficiently to safely and securely prepare for this to happen, and remediates our current situation where counties essentially must run two elections on the same day. Without an extended pre-canvass period, counties will continue to face very real challenges in providing timely results following an election, even those with significantly less voter turnout than we saw last November.

Mail-in ballot application deadlines

Our second priority is to move the mail-in ballot application deadline back to 15 days prior to an election, instead of the current seven days, and we appreciate the 14-day deadline provided in SB 878. Act 77 permitted voters to apply for a mail-in ballot up to seven days before an election, which created timing challenges with the postal service particularly for those who waited until the last days before the deadline. This ultimately led to some voters not receiving their ballots before the deadline to submit them at 8 p.m. on Election Day or receiving them too close to the

deadline, making it logistically impossible for ballots to be returned via mail by 8 p.m. on election night. Because of this, many voters faced uncertainty about whether the county would receive their ballot in time. This, in turn, led voters to come to their polling place to spoil their mail-in ballot and vote on the machines, or to vote by provisional ballot, to ensure that their vote has indeed been counted. However, the process caused timing issues that wholly undermined the flexibility and convenience mail-in ballots should provide and resulted in unnecessary lines, crowds, more time spent in the polling location and a longer wait on election results, due to the stringent process counties follow to reconcile mail-in and provisional ballots to ensure accuracy.

If the law is going to set a deadline of seven days prior to an election to apply for a ballot, we are telling voters that the process will work as advertised for an application submitted up to day seven. Unfortunately, the seven-day deadline does not set our voters up for success. Moving the application deadline back to 14 days prior to an election will better meet this goal and increase confidence that a mail-in ballot will arrive on time by allowing more time for the county to process a mail-in ballot application and allow for the ballot to travel through the mail to the voter and back again.

However, counties do have concerns with the provision of SB 878 that permit an additional seven days for voters to come to the county election office and apply for a mail-in ballot over the counter. This means that anyone who did not meet the 14-day deadline to apply online or by mail will be driven to the county election office as their only option to receive a mail-in ballot. Even with a concurrent mail or online application, counties have reported long lines from those wishing to apply for and vote a mail-in application in person. From a staffing perspective, this makes it difficult to attend to the myriad other critical tasks leading up to Election Day, as each in-person request must be handled at the time it is made (as opposed to mail-in or online applications which could be processed in batches throughout the day). In addition, it is important to note that the in-person process is still a mail-in application process, meaning that the county must verify the application and prepare the ballot, both envelopes and other necessary inserts before providing the ballot to the voter. This is not a true “early voting” option whereby a voter simply comes in, casts their vote, and leaves as they would at their polling place on Election Day.

We also note that the bifurcated deadline envisioned in SB 878 could create confusion for voters around how they can apply and when. It would be very easy, for instance, for someone who does not understand the difference, to post on social media that the deadline to apply is seven days prior to the election. However, without the distinction that this applies only to in-person applications, voters who attempt to apply online, or especially by mail, between days seven and 14, may find themselves expecting a mail-in ballot that will not come.

Drop boxes

Another recommendation in the county election report is to seek further clarity in the law on counties’ authority to use drop boxes for mail-in ballots, after questions were raised (and litigated) as to whether Act 77 permitted the use of drop boxes, and whether drop boxes

constituted polling places. Although CCAP did not take a position on whether or not drop boxes should be permitted, SB 878 meets the overall objective for clarity by expressly allowing counties to provide them if they choose.

However, we have several additional questions and comments regarding the drop box language:

- The bill would require drop box location to be announced at least 30 days before it is established in accordance with the Sunshine Law. We are unclear if this references requirements under the definition of public notice in that Law to publish the information in a newspaper of general circulation, and posting at the agency, or if this language means something else.
- We recommend that the specific provisions related to polling places with which drop boxes are to comply be spelled out. For instance, section 530 of the Election Code requires polling places to have a sufficient number of voting compartments with proper supplies, and we believe the intent is not for voters to be expected to complete their ballots at the drop box.
- We further recommend that the Department of State be required to consult with counties in the development of standards for drop boxes, whose experience with drop boxes to this point could help inform those standards and assure that counties will be able to operationalize those standards.
- Rather than specific language on monitoring, collection and securing ballots, we recommend that counties wishing to implement drop boxes be required to develop a security plan that would include measures such as how and when the ballots will be collected and transported, how the drop box will be secured and monitored and other similar matters. This would assure that counties have established these critical security procedures, while also offering flexibility for counties to meet their individual circumstances and resources.
- Finally, it is unclear what is meant by the "duration" of an election for which a drop box must be established.

Livestreaming and recording

Senate Bill 878 calls for livestreaming of both the pre-canvass and canvass period, and for the possibility of monitoring drop boxes by video recording. From a purely practical standpoint, counties have different IT capacities and infrastructure available to support livestreaming and/or recording, and so for many counties this would represent a cost for which there does not appear to be accompanying financial support. And we are all too well aware of the limitations of broadband access in our commonwealth, which may present challenges for some of our counties being able to provide a live stream, or for constituents to be able to access it. This raises questions as to what happens if the live stream feed drops out in the middle of the process – does a county have to stop its pre-canvass or canvass process unless and until they are able to get that live feed back?

Counties are absolutely committed to transparency in election operations, particularly in a time when we know there have been many questions about our elections processes. However, while the intent may be to assure that accurate information is available to the public, we also believe

these provisions have the potential to harm our elections by enabling and facilitating the spread of misinformation, and thus caution must be taken as to how and by whom these are accessible. If a live stream must be made publicly accessible, people will likely record it to suit their own purposes, and it has become far too easy to manipulate video and still frames. Senate Bill 878 also requires drop box recordings to be available in accordance with the Right-to-Know Law, and it is unclear whether that means someone could come to the county to view the recording, which could prevent county staff from being able to accomplish other critical tasks if there are large numbers of requests or long hours someone wants to review, or if the county would have to provide copies.

Once something is shared online, it takes on a life of its own, on the internet forever, that can be absolutely impossible to combat with accurate information. The county will also need to consider recording the live stream itself anyway so it has the actual record of what really happened. It can take considerable additional cost to invest in the equipment and licensing needed to assure the best record is available. Even if we don't, having people come to the office constantly to ask to see it is going to put a real burden on election staff ability to conduct regular operations.

Allowing public access to video or recordings may also prevent the appropriate investigation of any concerns, if people merely post images or videos accusing someone of an alleged action to generate public reaction, but don't actually take steps to get the information to the county as quickly as possible.

Again, while counties appreciate the need for transparency, livestreaming and recording could be financially and practically challenging, or in some cases impossible, to implement. Even more significantly, it could create and compound the significant misinformation challenges we have seen in recent elections if any piece of the live stream or recording is available for broad public consumption. We suggest any video be limited in access to court orders or some other narrowly tailored means of requesting it to serve an investigatory purpose and look forward to working toward a solution with the legislature.

Department of State guidance

While understanding that ongoing litigation was the underlying basis for some of the last-minute guidance changes in 2020, one of the recommendations of the counties' report is for the Department of State (DOS) to issue guidance as far in advance as possible to avoid the confusion of having to implement new practices immediately prior to an election and to offer greater opportunity for questions and input. The Department should also more consistently reference the sections of the Election Code on which its guidance is based, and more clearly indicate when the guidance is merely a best practice rather than based on a statutory requirement.

The language in SB 878 delineates the distinction between rules, directives and guidance documents, and includes the counties' request that citations to relevant statutory provisions be included. We recommend language be added to this language requiring counties to be involved

and consulted at least in the development of the official instructions and procedures manual and guidance documents. There may be practices and procedures already used by a majority of counties that can be captured and memorialized, rather than having to reinvent the wheel. In addition, this consultative process would help to assure that the procedures ultimately are understandable to those at the county level who will be trying to follow them.

Permanent mail-in list

Act 77 allows a voter to request to be placed on a permanent mail-in voter list. These individuals will have a ballot application mailed to them by the first Monday of February each year which, if completed and returned, entitles them to receive ballots in the mail for all elections taking place during the remainder of that calendar year. However, this process has created frustrations for both the voter and the county. Experience shows that voters often do not remember checking the box for the permanent list and think they are getting ballots they did not request. The number of renewal letters that must be sent out annually further add to the burdens on county workloads.

Senate Bill 878 removes the permanent mail-in voter list entirely, instead requiring all voters to request a ballot for each election at which they wish to cast a mail-in ballot. It is important to note that SB 878 does *not* impact the language in section 1301 (e.1) of the Election Code that permits a disabled voter to ask to be placed on a permanently disabled absentee list, and to automatically receive an absentee ballot application each year.

Finally, we also note that the Election Law Advisory Board is a concept CCAP supported long before Act 77 as a means of offering a standing group of county representatives and other election stakeholders who can be readily available to provide input and feedback on election-related legislation on an ongoing basis. The members of this Board carry a wealth of collective elections expertise and can play an integral role in the collaboration required to achieve meaningful and appropriate election reforms as well. We would strongly encourage the Board be used as a sounding board for this and other elections-related legislation as well.

We conclude by echoing any changes to the Election Code must be enacted well in advance of an election to allow for enough time to properly implement any changes, particularly if they involve developing new protocols or procedures, retraining poll workers, and so forth.

Regardless of the challenges brought on by the pandemic, regardless of the rhetoric, regardless of the lawsuits, regardless of the noise, our county officials and the dedicated public servants who work in our county election offices remained laser focused on their responsibility as stewards of our democracy. We hope you will join us in celebrating our counties' professionalism, dedication and commitment to the integrity of our elections in the face of unimaginably stressful circumstances.

Thank you again for the opportunity to offer our testimony and your consideration of these comments. We look forward to continuing to work with you on the necessary legislative changes to improve the administration of elections in Pennsylvania.