



TESTIMONY ON SENATE BILL 878

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. We appreciate this opportunity to offer our feedback on Senate Bill 878.

As we have testified before you previously, for 2022, our members selected promoting election integrity and funding and resources for elections among their top priorities. Since the enactment of Act 77 of 2019, it has become clear that additional adjustments to the Election Code are critical to assist counties in providing smooth election administration and efficient results. The current law remains ambiguous on such matters as drop boxes, signatures, curing ballots, and other areas related to Act 77. Counties continue to pursue changes and clarifications recommended in CCAP's January 2021 elections reform report. But we must make sure that any further changes to the Election Code are themselves clear so that counties can implement them consistently and so voters can ultimately have confidence in the elections process.

With that in mind, Senate Bill 878 addresses a number of the matters on which counties seek improvements to the statutory language. 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. We believe additional work could make these provisions even stronger:

- While counties have called for up to 21 days to begin pre-canvassing activities, SB 878 as introduced would provide for just three days of pre-canvassing, and we look forward to further discussion on this timeline.
- Counties also have concerns with provision permitting an additional seven days for voters to come to the county election office and apply for a mail-in ballot over the counter, as it will drive everyone who did not meet the 14-day deadline to apply online or by mail to the county election office as their only option to receive a mail-in ballot. Long lines are already reported for over-the-counter mail-in voting, and 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) and still involves the full mail-in application process (verifying the application and preparing the ballot, both envelopes and other necessary inserts before providing the ballot to the voter). We also note that the bifurcated deadline envisioned in SB 878 could create confusion for voters around how they can apply and when.

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, including as it relates to drop boxes and the requirement that drop boxes follow the same standards as polling places. While we understand the general intent related to access and political activity restrictions, we believe spelling out the intended requirements instead of just referring to polling places would be helpful to be sure all counties are able to implement this consistently and uniformly. Some examples of polling place requirements that might need to be clarified or specifically ironed out include the following:

- Supplies – Section 530 of the Election Code requires polling places to have a sufficient number of voting compartments with proper supplies, and we do not believe the intent is for voters to be expected to complete their ballots at the drop box.
- Poll watchers – In SB 878, it appears the term “observers” is used in place of what we commonly think of as poll watchers, although the only other time that observers are referenced in the Election Code is related to the central count process, not polling places. But making that assumption:
 - There are requirements for poll watchers at polling places to receive official county credentials in advance and be assigned to specific precincts, including how many can be present and a requirement to remain outside the “enclosed space.” Would this also apply related to drop boxes?
 - The current law on poll watchers requires them to direct permitted challenges on a voter’s qualifications directly to the Judge of Elections – is a Judge of Elections required to be at each drop box, and if not, to whom should a poll watcher direct his or her challenge? And are a voter’s qualifications the only criteria a poll watcher can challenge related to a drop box?
 - Does language prohibiting poll watchers from attempting to influence or intimidate voters (which includes photographing or videotaping voters), or otherwise interfere with the orderly process of voting, apply with regard to drop boxes? Additionally, if video recording or live streaming of drop boxes is required, it may be necessary to clarify that this is not voter intimidation, but that other photographing or videotaping of voters remains so.
- Accessibility – On February 15, the U.S. Department of Justice issued [guidance](#) on requirements for drop boxes under The Americans with Disabilities Act (ADA). While these provisions seem to correlate well with requirements for polling places in terms of locations and physical access, there are standards for polling places which would mostly not apply or have varying degrees of application to drop boxes, including parking, accessible routes, ramps, protruding objects, entrances (as the ADA guidance imagines drop boxes as outside structures), lifts and voting area requirements.

Putting the polling place definition aside, there are various other questions and considerations for drop boxes that could use further clarity. Some of the other questions counties are seeking clarification on include:

- Location notification – 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.

- DOS Standards – 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.
- Video monitoring – The bill suggests drop boxes must be monitored during each hour of operation, including the option for video surveillance and recording. We appreciate that SB 878 offers recording as an option rather than a mandate, noting 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.
- Timeframe – Finally, it is unclear what is meant by the “duration” of an election for which a drop box must be established.

In order to assure that all counties are able to understand the language, and implement the language, consistently across the commonwealth, we must be very clear on all of these matters, rather than trying to fit the square peg of polling place requirements into the round hole of drop box requirements.

We offer drop boxes as one example where we look forward to continuing to work with this committee. In previous testimony, we have also noted further comments related to how livestream and recording of the pre-canvass period are made available to the public, in order to prevent the spread of misinformation and assure the record is preserved if it is later needed for investigatory purposes. We also support language removing the permanent mail-in voter list, as it does not affect the ability of a disabled voter to be placed on a permanently disabled absentee list to automatically receive an absentee ballot each year.

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 share these comments with you today to continue these discussions, working together to offer solutions and iron out language that reflects the administrative role of elections. 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.

Counties further urge 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.

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.

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.