

Summary of SB 422

Rescheduling the 2020 Primary Election and Amending the Pennsylvania Election Code

Overview

- * Signed into law by Governor Wolf on Friday, March 27, 2020.
- * Postponed the 2020 Primary from April 28 to June 2
- * Made several substantive changes to the PA Election Code

Provisions of Note

DEFINITIONS

* “Pre-Canvass”- a new defined term in the Act that refers to the inspection and opening of mail-in and absentee ballots (but not recording or publishing of the recorded votes on those ballots) (*see Canvassing Absentee and Mail-in Ballots section below for more on this*)

ELIGIBILITY TO VOTE A MAIL-IN BALLOT

* Elimination of requirements regarding ballot and font size, paper color and characteristic, and ink printing color as well as the requirement that ballots be bound together in books of 50 and the requirement that primary election ballots for each party must be bound separately

BALLOT REQUIREMENTS

* Elimination of the requirement that a ballot on a voting device must on the first page list the names of political parties and do so in the order that such parties are entitled to priority on the ballot

* Elimination the requirement that colors be used on primary election ballots to distinguish different parties. In its place, general language indicating that a method is to be used “to ensure that the elector votes the correct ballot.”

ELECTION DAY PROCEDURES

* Technical changes to the code provisions regarding write-in voting to square the language of the code to the actual modern practices regarding write-in voting

* Effective for the November 2020 General Election (but not for the June 2020 Primary), elimination of the requirement that voters who have requested absentee or mail-in ballots but have not yet voted them may only vote a provisional ballot if they appear at the polling place on Election Day (*see Application for Absentee Ballots section below for more on this*)

POST-ELECTION DAY PROCEDURES

* Elimination of the requirement that that county boards of election post election results for each election district no later than 5 pm on the second day following the election. Now, the only duty of the boards of election is to make such results available to the public “at the central tabulating center”; there does not appear to be any temporal component to this requirement

REGISTRATION TO VOTE

* Elimination of the prohibition against accepting registration applications on Sundays, holidays, on Election Day, and in the 15 days preceding each Election Day

* New language clarifying that a registration applicant is deemed a registered elector of the county in which the application is made “immediately upon acceptance of the voter registration application by the [county Voter Registration Commission]” and requiring that the elector’s registration information be entered in the general register

* New language requiring that when an applicant registers in person, “the Commission shall immediately examine the application and, while the applicant waits, promptly decide on said application by either accepting it, rejecting it or forwarding it ... and, if accepted, process the application...”

APPLICATIONS FOR ABSENTEE AND MAIL-IN BALLOTS

* New language clarifying that a request to be placed on a permanently disabled absentee ballot list file on the grounds that the voter is unable to attend his or her polling place on the day of the election or to operate a voting machine may be made “distinctly and audibly” at any time when accompanied with a supporting doctor’s note and that, upon such application, such voter shall be placed on such list and be mailed an absentee ballot application by the first Monday in February each year, or within 48 hours of the request, whichever is later, and further providing

that the transfer of such an elector from one country to another shall only be permitted upon the request of the elector

* New language clarifying that any qualified registered elector may request to be based on a permanent mail-in ballot list file at any time during the calendar year and that electors on such list must be sent a mail-in ballot application by the first Monday in February each year, or within 48 hours of the request, whichever is later, and providing that the transfer of such an elector from one country to another shall only be permitted upon the request of the elector

* Effective for the November 2020 General Election (but not for the June 2020 Primary), a requirement that absentee and mail-in ballot applications shall include language stating that an elector who applies for an absentee/mail-in ballot shall not be eligible to vote at a polling place on Election Day “unless the elector brings the Elector’s absentee [or mail-in] ballot to the Elector’s polling place, remits the ballot and the envelope containing the declaration of the Elector to the judge of elections to be spoiled and signs a statement subject to the penalties of 18 PA. C. S. 4904 (relating to unsworn falsification to authorities) to the same effect”; the text of such declaration will read:

“I hereby declare that I am a qualified registered Elector who has obtained an absentee ballot or mail-in ballot. I further declare that I have not cast by absentee ballot or mail-in ballot, and that instead I remitted my absentee ballot or mail-in ballot and the envelope containing the declaration of the elector to the judge of elections at my polling place to be spoiled and therefore request that my absentee ballot or mail-in ballot be voided.

[DATE]

[SIGNATURE OF ELECTOR]

[ADDRESS OF ELECTOR]

[NAME OF LOCAL JUDGE OF ELECTIONS]”

NOTE: copies of such declaration forms will need to be created and included in the materials sent to each polling place

* Provisions making clear that, for the November 2020 General Election (but not for the June 2020 Primary), this is the procedure for voters who applied for an absentee/mail-in ballot but have not voted them and instead want to vote at their polling place in person on Election Day

* Language revisions clarifying that challenges to a decision by the County Board of Elections to approve an absentee or mail-in ballot request may be made “only on the ground that the application was not a qualified elector”; establishing a deadline of 5 pm on the Friday prior to the Election for the making of such challenges; and prohibiting challenges to absentee ballot or mail-in ballot applications on the grounds that the voter used a mail-in ballot application rather than an absentee ballot application (and vice versa)

* Elimination of requirements regarding the creation and maintenance by County Boards of Election of temporary registration cards for absentee voters

* Elimination of the requirement that the ink used to print the words “Official Absentee Ballot” on official absentee ballots and “Official Mail-in Ballot” on official mail-in ballots be red in color

* Revising the requirements governing the preparation of ballots for mail-in voters to clarify that when doing that, a county board of elections must indicate “on the voter’s record the identification number of [the] specific ballot envelope into which the voter’s ballot is inserted”

* Amendment of the wording on the smaller of the two envelopes used in connection with absentee and mail-in ballots from “Official Absentee Ballot” and “Official Mail-in Ballot” to “Official Election Ballot” (thus enabling the same interior envelope to be used for both absentee and mail-in ballots)

ELIGIBILITY TO VOTE A MAIL-IN BALLOT

* Revising the language of the code to make clear than every qualified mail-in elector is entitled to vote by mail-in ballot (and eliminating the provision prohibiting an elector who is eligible to vote an absentee ballot from voting a mail-in ballot)

CANVASSING ABSENTEE AND MAIL-IN BALLOTS

* New language permitting the County Board of Elections to meet starting at 7 am on Election Day to Pre-Canvass all absentee and mail-in ballots received to that point; providing that public notice of the pre-canvass must be given on a publicly accessible website at least 48 hours before the pre-canvass meeting; permitting one authorized representative from each candidate and political party to be in the room for the pre-canvass; and forbidding any person in the pre-canvass from disclosing the results of any portion of the pre-cavass meeting prior to the closing of the polls

* Revisions regarding the canvassing of absentee and mail-in ballots to account for the new Pre-Canvass process, including a provision requiring the Pre-Canvass to continue after the polls close until all absentee and mail-in ballots received prior to the close of the polls have been Pre-Canvassed, a provision regarding the notice process and mechanics of a canvass meeting for the absentee and mail-in ballots, and a provision requiring the Pre-Canvass process to continue through the 8th day after the election for military and overseas ballots to be canvassed

* Elimination of the right of client and party representatives to challenge absentee and mail-in electors at the Pre-Canvass and Canvass meetings, and modification of provisions regarding the mechanics of the Canvass meeting to reflect the elimination of the right to challenge (including the elimination of the obligation to announce the name of each elector during the process of examining each mail-in and absentee ballot)

* Creating a new obligation on the County Board of Elections during the Pre-Canvass and Canvass process to “provide a list of the names of electors whose absentee ballots or mail-in ballots are to be Pre-Canvassed or Canvassed” after the Board has verified the proof of identification required under the Act for each absentee and mail-in ballot, is satisfied that the Declaration on the envelope of each absentee and mail-in ballot is sufficient, and has reviewed county records to verify the right of the elector to vote such absentee and mail-in ballot

* Providing that the Pre-Canvass process includes verification of the proof of identification required under the Act for each absentee and mail-in ballot, determining satisfaction that the Declaration on the envelope of each absentee and mail-in ballot is sufficient, review of County records to verify the right of the elector to vote such absentee and mail-in ballot, breaking the seals of the envelopes containing absentee and mail-in ballots, and counting, computing, and tallying the votes, but specifying that the Board may not record and publish the votes reflected on the ballots until after the close of the polls

* Revising the language in the code regarding extraneous marks on the “Official Election Ballot” envelopes to specify that those ballots that must be set aside are only those that contain “any text, mark or symbol which reveals the identity of the elector, the elector’s political affiliation or the elector’s candidate preference”

* Changing the deadline for a hearing on challenged absentee and mail-in ballots and applications from 5 days after the date of the challenge to 7 days after the deadline for all challenges to be filed (i.e., the Friday after Election Day)

ABSENTEE AND MAIL-IN VOTING VIOLATIONS

- * Elimination of the provision of the code providing for penalties for anyone who violates any provision of the Act relating to absentee or mail-in voting

- * Elimination of the provision of the code making it a misdemeanor to assist someone who is not a qualified elector in filling out an absentee or mail-in ballot application or absentee or mail-in ballot

- * Extending the penalties for making false declarations in connection with absentee ballots to false declarations in connection with mail-in ballots and revising the penalty for such violations from a first degree misdemeanor with a maximum prison term of 5 years and a maximum fine of \$10,000 to a third degree misdemeanor with a maximum prison term of 2 years and a maximum fine of \$2,500

SPECIAL PROVISIONS FOR 2020 PRIMARY

- * Changing the date of the 2020 Primary to June 2

- * Permitting any qualified registered elector in the county in which the polling place is located to serve as local election officer in such polling place (previously the local election officers had to live in the election district of the polling place)

- * Permitting the County Board of Elections, without court approval, to consolidate polling places at any public or private building within the county, so long as it is done not less than 20 days prior to the Primary, so long as the consolidation of polling places does not result in a reduction of more than 60% in the total number of polling places in the county (absent approval of the Department of State “in necessitous circumstances”), and so long as the consolidated polling place is directly accessible by a public street or thoroughfare

- * Requiring the County Board of Elections, at least 15 days before the Election, to post in a conspicuous place at the office of the County Board of Elections for public inspection, as well as on the County’s website, a list of the polling place for each election district in the County

- * Permitting polling places to be located in buildings where malt or brewed beverages or liquors are served during the hours the polling place is open, so long as the polling place is not in a room where such beverages are dispensed and so long as the polling place can be accessed from an outside entrance without passage through a room where such beverages are dispensed

- * Revising the due date for the 6th Tuesday pre-primary cycle 1 campaign finance reports to March 17, 2020

* Permitting the use of ballots acquired prior to the effective date of the law which show an election date of April 28

JMP