



CCAP ELECTION REFORM PRELIMINARY REPORT

January 2021

Counties have a significant responsibility in assuring elections remain fair, secure and accessible at every step of the process. In 2020, this task was complicated greatly by a perfect storm of factors. First, counties had to implement the provisions of Act 77 of 2019, including expansion of absentee ballots to all eligible voters, and like many other significant legislative changes, they discovered a number of areas of the Election Code that would need further clarification. Then, election directors, county commissioners and other county officials confronted the unprecedented responsibility of considering risk to public health in holding an election during a global pandemic, as well as the resulting explosion in demand for mail-in ballots. And finally, ongoing uncertainty regarding court challenges at the state and federal level, as well as the potential for additional state legislation, in the weeks leading up to the November election left numerous questions and anxiety during a highly contested and highly visible presidential election.

While the first two elections using mail-in ballots were successfully completed, counties have been reviewing their experiences and lessons learned from the front lines to call for additional changes to the Election Code that will streamline administrative requirements and provide clarity and consistency across the commonwealth. This report outlines county priorities, with a renewed call to allow counties additional time to pre-canvass, as well as to move the deadline for mail-in ballot applications back to 15 days to coincide with the voter registration deadline. These two items alone could resolve a significant portion of the challenges counties saw during 2020.

Background

Our counties and our election staff deserve our utmost respect and gratitude for administering a smooth, fair and successful election. Regardless of the challenges brought on by the pandemic, disagreements and lawsuits, these dedicated public servants have remained laser focused on their responsibility as stewards of our democracy.

But we have also learned a great deal from the 2020 elections, and this report outlines a number of 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. However, they also include administrative issues to be addressed with the state, as well as recommendations related to county operations and administration.

CCAP stands ready to engage with the General Assembly and the administration to assess the successes and challenges of the 2020 General Election, so that we can work together to create positive, effective election policy. Counties, as the entities that administer our elections, must be at the table for these conversations to help create any changes brought forth regarding elections, to help create language that is clear and easily understood, and identify challenges up front regarding how, or even if, certain changes can be practically and successfully implemented. And 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.

It is our responsibility to work together in the future to promote a smoother election process in support of our democracy. Running elections should not be a partisan battle but should be about making sure that our systems are secure and accurate and that our voters can have confidence that every properly cast vote will count.

It is time to put political differences aside and resolve to make meaningful improvements to the Pennsylvania Election Code. Elections are a fundamental government function, and every level of government has a stake in assuring they are secure, fair, and accurate. We look forward to working together on this important topic.

Summary of Priority Recommendations

Counties have identified the following issues as top priorities for further election reforms, which could resolve many of the challenges they faced regarding the implementation of Act 77 of 2019.

Please note: Given that absentee ballots and mail-in ballots are, for all intents and purposes when it comes to application, processing and voting, the same, the terms may be used interchangeably throughout this report. However, regardless of the terminology, any reforms counties propose here are intended to be applied to both absentee and mail-in ballots.

Offer counties as much time as possible to begin pre-canvassing ballots to improve the likelihood of timely election results.

Prior to Act 77, absentee ballots were provided to each voter's precinct on Election Day, to be counted and added to that precinct's vote counts once the polls closed at 8 p.m. The small number of absentee ballots made this process reasonable and did not cause any appreciable delay in tabulating results.

However, with the increase expected once mail-in ballots were available to all registered voters, Act 77 moved the processing and counting of these ballots from the precincts to central count at the county board of elections. The Election Code continued to permit the canvassing of absentee and mail-in ballots beginning at 8 p.m. on election night.

Counties began to raise concerns early in 2020 that with the expected volume of absentee and mail-in ballots, they would not be able to complete the canvass in a timely fashion if they could not begin the process until after polls closed. In response, amendments to the Election Code in Act 12 of 2020 permitted counties to begin a pre-canvass period as early as 7 a.m. on Election Day.

While these additional hours were helpful to some counties, for most it meant the prospect of essentially conducting two elections – both an in-person election and a mail-in election – on the same day, with the same resources. As expected, even with the ability to begin at 7 a.m., it took several days in most counties to fully process all of the mail-in ballots.

Immediately following the June election, counties spent the months prior to the General Election advocating for legislation that would allow them to begin pre-canvassing – opening and preparing the mail-in and absentee ballots – prior to Election Day so that results could be available on election night or shortly thereafter. Without an extended pre-canvass period, counties expected that it could take days or weeks *following the election* to see final results, because they also needed to focus their efforts on a successful in-person election on Nov. 3, rather than on the manual labor of opening and preparing substantial numbers of mail-in ballots. While any time provided ahead of Election Day would have been a significant help, counties asked for as much time as possible to avoid the anticipation of very real challenges in providing the timely results they knew would be sought, especially in a highly contested and highly visible presidential election.

But with counties only able to begin pre-canvassing on Election Day, as predicted it took several days for the millions of mail-in ballots to be counted, delaying election results and causing confusion despite counties' best efforts. Therefore, counties renew their call for legislation to allow pre-canvassing to begin prior to Election Day, thus allowing counties to focus on administering an in-person election on Election Day, improving workload management and allowing results to be available much more efficiently.

Move back the deadline to apply for mail-in ballots to 15 days before an election.

Act 77 of 2019 permitted voters to apply for a mail-in ballot up to seven days before an election, which created timing challenges with the postal service. 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 to make it logistically possible for ballots to be returned via mail by 8 p.m. on election night, so that 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, just “to be on the safe side.” This wholly undermines the flexibility and convenience mail-in ballots should provide and causing unnecessary lines, crowds, more time spent in the polling location and a longer wait on election results as counties must then reconcile mail-in and provisional ballots for accuracy.

With postal delays and public health concerns, shifting this deadline to 15 days before an election (to coincide with the voter registration deadline) will benefit voters by providing more time for the ballot to be able to get from the county to the voter and back again through the mail, creating less uncertainty over whether ballots were received by 8 p.m. election night. Voters will be able to receive their confirmation email and feel confident that their ballot was received, so that they do not need to come to the polling place or find other means of returning their ballot. At the same time, counties will have more time to assure poll books are as current as possible with those voters who have applied for, and submitted, mail-in ballots, all adding up to more efficient polling place operations as well as preventing unnecessary crowds as counties continue to implement COVID-19 risk management strategies. The emergency absentee period could also be extended accordingly to accommodate this longer deadline period.

Counties also note that changing the receipt deadline to allow ballots postmarked by election day and received up to three days after the election, instead of moving back the deadline, *will likely cause a delay in results and disruption at the polls*. This “solution” will do nothing to discourage voters from waiting until the last minute to return ballots, requires additional clarity on what constitutes a postmark as voters seek other delivery methods, and will lead to more provisional voting at the polls as, again, voters who do not yet have confirmation that their mail-in ballot was received will still show up in person to be on the safe side. Moving the application deadline back is the best opportunity to enfranchise our mail-in voters.

Topic Review and Discussion

In addition to the two priority issues noted above, counties seek meaningful reforms that can address other issues that arose during the 2020 elections, in particular to promote clarity and consistency across the commonwealth. As discussions evolve, counties must continue to be at the table to provide input and perspective on how amendments can be implemented on the ground.

Topic: Election Code Amendments

Drop boxes:

Background

- Questions were raised as to whether Act 77 permitted the use of drop boxes for mail-in ballots, and whether drop boxes constituted polling places.
- In *Pennsylvania Democratic Party v Boockvar*, the Pennsylvania Supreme Court determined in its Sept. 17, 2020, ruling that the Election Code permits counties to use drop boxes.
- On Oct. 10, 2020, a federal district court dismissed claims that certain election practices were unconstitutional under the federal or state constitutions, including the claim that the use of drop boxes for mail-in ballots is unconstitutional.

Policy Considerations

- Counties also seek further clarity in the law on their authority to use drop boxes for mail-in ballots.

- If drop boxes or return locations other than county government locations are permitted, language must be developed in conjunction with counties regarding any criteria on their location.
- Attention must also be paid to the staffing and other resource considerations that would be needed for implementation.

Ballot signatures

Background

- The law is unclear, or in some cases silent, on how counties should address certain situations, such as what to do with naked ballots and whether voters should be contacted to be permitted to cure defects with their mail-in ballot.
- This lack of clarity was the basis for many of the lawsuits that were filed at the state and federal level after the 2020 Primary Election
- Changing court decisions, in addition to the statutory language or lack thereof, led to a situation where counties struggled to implement the law on a consistent basis.

Policy Considerations

- The fatal flaws under which a mail-in ballot is not to be counted must be clearly identified.
 - Should a mail-in ballot be counted if a signature or date is missing from the voter's declaration?
 - Should naked ballots be counted?
 - What should a county do with mail-in ballots that contain writing on the privacy envelope?
- Counties need a clear rule in the law on when or if curing of flaws may happen, and whether or not a county is required to contact a voter to cure their ballot.

Permanent status

Background

- 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 did not remember checking the box for the permanent list and thought they were 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.

Policy Considerations

- Additional discussion is needed on the number of renewal letters/applications that must be mailed out each year
- Discussion is also needed regarding whether the responsibility for sending the renewal letters/applications should be at the county or state level.

Topic: Administrative issues with the state

Beyond the law itself, counties experienced a number of challenges working with the commonwealth and the Department of State that should be addressed to improve administration of elections going forward.

SURE system and ballot tracking website

Background

- Counties routinely experience technical difficulties with the SURE system, including slow speeds or even full system crashes that make it impossible to process voter registrations and ballot applications in a timely fashion, unnecessarily increasing county workloads.
- The ballot tracking website was often confusing to voters as they attempted to understand where their mail-in ballot was in the process.

Policy considerations

- Upgrades/replacement of the SURE system are under consideration, and counties must be part of these conversations as changes are made to assure they are easily understood and user friendly.
- As the ballot tracking website is updated going forward, counties must also be part of these conversations to help identify areas of concern, either now or in the future.
- The state should consider the possibility of a state phone bank that could facilitate voter questions.

DOS guidance to counties

Background

- In addition to the changing statutory and litigation landscape, counties also experienced confusion because of ever-changing guidance from the Department of State related to the administration of mail-in ballots.
- It was often unclear what statutory basis the DOS guidance had, and how much was truly guidance/best practices.

Policy considerations

- While understanding that ongoing litigation was the underlying basis for some of the last-minute guidance changes in 2020, the Department of State must 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 must 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.

Election staff retention and development

Background

- Since the implementation of Act 77 in 2019, more than 20 counties have experienced the loss of their election director and other top elections staff.
- The increased workloads and stress of implementing an entirely new law during a highly contentious presidential election and a global pandemic, while also having to constantly correct misinformation, respond to confused, angry and often threatening voters on a daily basis, and defend their work implementing a fair and secure election, no longer make this work environment palatable for many.
- The resulting loss of institutional knowledge is immeasurable.

Policy considerations

- Counties and the state must work together as new laws and policies are developed to assure workload needs are also considered.
- New laws and policies must be enacted with sufficient time for their implementation.
- Education and training must be available to help develop needed skill sets among election staff.
- To improve staff retention, all levels of government must work together to promote accurate information at each election, which can help reduce the level of confusion and anxiety among voters, and thus the level of anger county elections staff must address.

County resource needs

Background

- As counties implemented Act 77 in 2020, most counties saw their budgets for elections-related costs increase significantly, as additional supplies were needed and staffing and overtime needs grew to address workload requirements.
- These impacts fell squarely on county shoulders, as they are solely responsible for administration of elections at the local level.

Policy considerations

- Counties and the state must work together as new laws and policies are developed to assure any increased costs and resource needs, including supplies and staffing, are also considered.
- Appropriate resources and funding support must be provided by the federal and state governments to support counties in their critical task of administering elections.