

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 401 Session of
2023

INTRODUCED BY FONTANA, KANE, COSTA, MUTH AND COLLETT,
MARCH 15, 2023

REFERRED TO STATE GOVERNMENT, MARCH 15, 2023

AN ACT

1 Amending the act of June 3, 1937 (P.L.1333, No.320), entitled
2 "An act concerning elections, including general, municipal,
3 special and primary elections, the nomination of candidates,
4 primary and election expenses and election contests; creating
5 and defining membership of county boards of elections;
6 imposing duties upon the Secretary of the Commonwealth,
7 courts, county boards of elections, county commissioners;
8 imposing penalties for violation of the act, and codifying,
9 revising and consolidating the laws relating thereto; and
10 repealing certain acts and parts of acts relating to
11 elections," providing for voting by all-mail; and, in
12 penalties, further providing for violations of provisions
13 relating to absentee and mail-in ballots.

14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

16 Section 1. The act of June 3, 1937 (P.L.1333, No.320), known
17 as the Pennsylvania Election Code, is amended by adding an
18 article to read:

19 ARTICLE XIII-F

20 VOTE BY ALL-MAIL

21 Section 1301-F. Definitions.

22 The following words and phrases when used in this article
23 shall have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Department." The Department of State of the Commonwealth.

3 "Nonforwardable mail." Mail collected for delivery by the

4 United States Postal Service which cannot be forwarded or mailed

5 to an address other than the mailing address inscribed on the

6 materials mail, notwithstanding whether a change of address has

7 been received and processed by the United States Postal Service,

8 and which is conspicuously stamped "DO NOT FORWARD" by the

9 sender.

10 "Official ballot drop box." A secure receptacle that is

11 designated by a county and used exclusively for the collection

12 of absentee ballots and mail-in ballots under the provisions of

13 Articles XIII and XIII-D and:

14 (1) Except as provided in paragraph (4), is locked and

15 sealed.

16 (2) Except as provided in paragraph (5), is tamperproof

17 to protect the contents from unauthorized access or

18 transport.

19 (3) Is located at an official ballot drop site, inside

20 or outside, and remains in view of on-site staff, visually or

21 by video monitoring, or both.

22 (4) Only authorized personnel designated by the county

23 board of elections director may access the contents at

24 specified times or as directed by the director.

25 (5) Is transported only by authorized personnel

26 designated by the county board of elections director.

27 "Official ballot drop site." A location, designated by the

28 county board of elections, at which one or more official ballot

29 drop boxes are located and satisfies the requirements of section

30 1304-F.

1 Section 1302-F. All-mail elections.

2 Notwithstanding any provision of this act or of any other law
3 of this Commonwealth, all voting in elections held after
4 November 3, 2023, shall be conducted only by mail-in and
5 absentee ballot in accordance with Articles XIII and XIII-D,
6 subject to the following:

7 (1) Notwithstanding sections 1302, 1302.1, 1302.2, 1302-
8 D, 1302.1-D and 1302.2-D or any other provision of law:

9 (i) Not sooner than 20 days prior to the date of the
10 election but not later than 14 days prior to the date of
11 the election, the county board shall commence to mail by
12 nonforwardable mail, postage prepaid, an official mail-in
13 ballot to every qualified registered elector in the
14 county to the elector's voter registration address, if
15 the elector has not lost the elector's voting rights by
16 failure to vote as otherwise required under this act.

17 (ii) If the county board determines that the elector
18 does not receive daily mail service from the United
19 States Postal Service, the county shall mail by
20 nonforwardable mail, postage prepaid, an official mail-in
21 ballot not sooner than 20 days prior to the date of the
22 election and not later than the 18 days prior to the date
23 of the election.

24 (iii) For an official ballot to be mailed to
25 addresses outside this Commonwealth to electors who are
26 not military or overseas electors, the county may mail
27 the official ballots not sooner than 29 days prior to the
28 date of the election.

29 (iv) If a registered elector modifies or changes the
30 elector's registration after the deadline for

1 registration provided under section 1231, the county
2 board shall make the mail-in ballot available by
3 nonforwardable mail, at the county board's office or at
4 another place designated by the county board.

5 (2) For a qualified registered elector who is absent
6 from the elector's voter registration address by a reason
7 enumerated under section 1301 and unable to retrieve the
8 elector's official mail-in ballot from that address prior to
9 the election, the elector may submit an application for an
10 official absentee ballot to the appropriate county board as
11 provided under Article XIII, which must be received by the
12 county board no later than the deadline provided in section
13 1302.1(a).

14 (3) For a primary election:

15 (i) The county board shall mail the official mail-in
16 ballot of a party to each qualified registered elector
17 who is duly registered and enrolled as a member of a
18 party.

19 (ii) For a qualified registered elector with no
20 party affiliation, if the ballot for the primary election
21 provides for a measure or question, each registered
22 elector shall be mailed a mail-in ballot limited to those
23 measures or questions for which the registered elector is
24 eligible to vote.

25 (4) Official ballots delivered or mailed under this
26 section shall be accompanied by the following warning
27 conspicuously placed in boldface type:

28 ANY PERSON WHO, BY USE OR FORCE OR OTHER MEANS,
29 UNDULY INFLUENCES AN ELECTOR TO VOTE IN ANY
30 PARTICULAR MANNER OR TO REFRAIN FROM VOTING IS

1 SUBJECT TO CRIMINAL PENALTIES UPON CONVICTION,
2 INCLUDING IMPRISONMENT OR A FINE, OR BOTH.

3 (5) A county board shall count a ballot only if:

4 (i) the ballot is returned in the envelope
5 containing the declaration of the elector;

6 (ii) the envelope containing the declaration of the
7 elector is signed by the elector to whom the mail-in or
8 absentee ballot is issued; and

9 (iii) the signature on the envelope containing the
10 declaration of the elector is verified by the county
11 board by comparing it to the signature on the elector's
12 registration card according to the procedure adopted by
13 the department under section 1303-F.

14 (6) If the county board determines that an elector to
15 whom a replacement ballot has been issued under paragraph (7)
16 has voted more than once, the county board shall count only
17 one ballot cast by that elector.

18 (7) A qualified registered elector may obtain a
19 replacement ballot if the ballot is destroyed, spoiled, lost
20 or not received by the elector. The county board shall
21 maintain a record of each replacement ballot provided under
22 this section. Notwithstanding the deadline for mailing
23 ballots under paragraph (1), a replacement ballot may be
24 mailed, made available at the office of the county board or
25 made available at one central location designated by the
26 county board in the election district in which the election
27 is conducted. The county board is not required to mail a
28 replacement ballot after the fifth day before the date of the
29 election. Replacement ballots shall be issued in accordance
30 with the following:

1 (i) To vote a replacement ballot, the elector must
2 complete and sign a replacement ballot request form,
3 which must include a signed statement of the elector
4 subject to the penalties of 18 Pa.C.S. § 4904 (relating
5 to unsworn falsification to authorities) that the
6 elector's mailed ballot was destroyed, spoiled, lost or
7 not received by the elector.

8 (ii) The request for a replacement ballot may be
9 made electronically, by telephone, in writing, in person
10 or by other means designated by the department.

11 (iii) The replacement ballot request form shall be
12 mailed or made available to the elector along with the
13 replacement ballot.

14 (iv) Upon receipt of a request for a replacement
15 ballot, the county board shall:

16 (A) verify the registration of the elector and
17 ensure that another ballot has not been returned by
18 the elector;

19 (B) note in the district register that the
20 elector has requested a replacement ballot;

21 (C) mark the outer return envelope clearly so
22 that it may be readily identified as a replacement
23 ballot; and

24 (D) issue the replacement ballot by mail or
25 other means determined appropriate by the department.

26 (v) Upon receipt of a voted replacement ballot, the
27 county board shall verify that a completed and signed
28 replacement ballot request form has been received by the
29 county board or is included with the voted replacement
30 ballot. If a request form has been completed and signed

1 by the elector and received by the county board, the
2 county board shall process the replacement ballot. If the
3 request form is not completed or signed by the elector or
4 received by the county board, the county board may not
5 process the replacement ballot.

6 (vi) If the county board determines that an elector
7 to whom a replacement ballot has been issued at the
8 request of the elector has voted more than once, the
9 county board shall count only the first ballot received
10 by the county board and provide the elector's name to the
11 department for further review.

12 (8) The county board shall provide, at any location
13 where ballots are issued, at least three suitable
14 compartments, shelves or tables at which registered electors
15 may mark and return a mail-in or absentee ballot. The
16 compartments, shelves or tables shall be arranged in a manner
17 as to ensure that the elector may conveniently mark the
18 ballot with absolute secrecy. The county board shall also
19 provide, at any location where ballots are issued,
20 compartments with accessible voting units, which shall
21 include any voting device that complies with 42 U.S.C. Ch.
22 126 (relating to equal opportunity for individuals with
23 disabilities) and 52 U.S.C. § 21081 (relating to voting
24 systems standards) and meets any additional criteria
25 established by the department under section 1303-F. The
26 compartments, shelves or tables under this paragraph shall be
27 made available during the entire period of time ballots are
28 issued under paragraph (1)(i) until the deadline for receipt
29 of absentee and mail-in ballots under paragraph (9).

30 (9) Notwithstanding the deadline for receipt of ballots

1 under sections 1306, 1308 and 1306-D:

2 (i) A completed mail-in ballot or absentee ballot
3 must:

4 (A) If the mail-in or absentee ballot is
5 returned by any means other than by mail, be received
6 by the county board no later than 8 p.m. on the day
7 of the primary or election.

8 (B) If the mail-in or absentee ballot is
9 returned by mail:

10 (I) be received by the county board no later
11 than 8 p.m. on the day of the primary or
12 election; or

13 (II) as follows:

14 (a) have a postal indicator showing that
15 the ballot was mailed no later than the date
16 of the primary or election; and

17 (b) be received by the county board no
18 later than seven calendar days after the date
19 of the primary election. If the elector
20 returns the ballot by mail and a postal
21 indicator is not present or legible, the
22 ballot shall be considered to be mailed on
23 the date of the primary election and may be
24 counted if the ballot is received no later
25 than seven calendar days after the primary or
26 election.

27 (ii) If the county board receives a marked ballot
28 for an elector who does not reside in the same county of
29 the receiving county board, the ballot shall be forwarded
30 to the county board of the county in which the elector

1 resides no later than the eighth day after the primary or
2 election.

3 (iii) As used in this paragraph, the term "postal
4 indicator" means a postmark or other indicator on a
5 mailed ballot, identified by the Secretary of the
6 Commonwealth by directive or instructions, that
7 demonstrates the date or time at which a ballot was
8 mailed.

9 (10) Notwithstanding sections 1306(b) (3) and 1306-D(b)
10 (3) or any other provision of law, elections in this
11 Commonwealth shall be conducted only by mail-in and absentee
12 ballot as required under this section. A registered elector
13 may not remit a ballot for spoiling in order to vote at the
14 polling place unless otherwise provided under this article.
15 Notwithstanding sections 1302(i) (1), 1303(e), 1302-D(f) and
16 1303-D(e), official mail-in and absentee ballots mailed under
17 this article may not state that the elector is eligible to
18 vote at a polling place on election day if the elector brings
19 the elector's absentee ballot to the elector's polling place,
20 remits the ballot and the envelope containing the declaration
21 of the elector to the judge of elections to be spoiled and
22 signs a statement subject to the penalties of 18 Pa.C.S. §
23 4904 to the same effect.

24 (11) Notwithstanding section 1308(g) (1.1) or any other
25 provision of law, no earlier than the seventh day prior to
26 the date of the election, the county board shall meet to
27 begin prec canvassing all mail-in and absentee ballots received
28 prior to the meeting. A county board shall provide at least
29 48 hours' notice of a prec canvass meeting by publicly posting
30 a notice of a prec canvass meeting on its publicly accessible

1 Internet website. One authorized representative of each
2 candidate in an election and one representative from each
3 political party shall be permitted to remain in the room in
4 which the mail-in and absentee ballots are precanned. An
5 individual observing, attending or participating in a
6 precanned meeting may not disclose the results of any
7 portion of a precanned meeting prior to the close of the
8 polls.

9 Section 1303-F. Duties of department.

10 The department may establish by guidance, rule or regulation
11 the requirements and criteria for implementation and
12 administration of this article, including the following:

13 (1) the designation of places of deposit for the mailed
14 ballots cast in an election;

15 (2) the dates and times the places of deposit must be
16 open and the security requirements for the places of deposit;

17 (3) the requirements and criteria, including to ensure
18 privacy and adequate public availability of the compartments,
19 shelves, tables and voting booths provided to electors; and

20 (4) the appropriate means by which county boards provide
21 for requests for, issuance of and tracking of replacement
22 ballots.

23 Section 1304-F. Official ballot drop site.

24 (a) Establishment.--Each county shall establish one official
25 ballot drop site for every 30,000 registered electors residing
26 in the county. A county with fewer than 30,000 registered
27 electors shall establish at least one official ballot drop site.

28 (b) Locations.--An official ballot drop site shall be
29 located in a place that provides registered electors with an
30 official and secure environment and is:

1 (1) Accessible during hours established by the county
2 board of elections under this section.

3 (2) Staffed by on-site employees, such as municipal
4 buildings, county buildings, libraries and fire stations.

5 (3) Conveniently accessible to registered electors.

6 (4) Accessible to registered electors with disabilities.

7 (5) Available and accessible to park a vehicle.

8 (c) Duties of county board of elections.--A county board of
9 elections shall:

10 (1) Develop and maintain a security plan. The plan shall
11 be filed with the Secretary of the Commonwealth. The plan
12 shall include security, including overnight security, of
13 official ballot drop boxes and official ballot drop sites.

14 (2) Except as provided in paragraph (3), establish hours
15 of accessibility both for official ballot drop boxes and
16 official ballot drop sites. A drop site may be open on the
17 first day ballots are mailed, but at a minimum, must be open
18 to the public beginning on the Friday preceding election day,
19 during the normal business hours of each official ballot drop
20 site location. Hours and dates of operation shall be posted
21 at a conspicuous place at each official ballot drop site and
22 on the publicly accessible Internet website of the county.

23 (3) On election day, keep official ballot drop sites
24 open for at least eight hours and until 8 p.m. Official
25 ballot drop sites shall close at 8 p.m. on election day. An
26 elector in line at 8 p.m. shall be permitted to complete the
27 deposit of the elector's absentee or mail-in ballot.

28 (d) Transfer of ballots.--Ballots transferred from an
29 official ballot drop box to a county board of elections for
30 canvassing and tabulation shall be transported in a locked or

1 sealed ballot box or pouch.

2 Section 2. Section 1853 of the act is amended to read:

3 Section 1853. Violations of Provisions Relating to Absentee
4 and Mail-in Ballots.--If any person shall sign an application
5 for absentee ballot, mail-in ballot or declaration of elector on
6 the forms prescribed knowing any matter declared therein to be
7 false, or shall vote any ballot other than one properly issued
8 to the person, or vote or attempt to vote more than once in any
9 election for which an absentee ballot or mail-in ballot shall
10 have been issued to the person, or shall violate any other
11 provisions of Article XIII [or], Article XIII-D or Article XIII-
12 E of this act, the person shall be guilty of a misdemeanor of
13 the third degree, and, upon conviction, shall be sentenced to
14 pay a fine not exceeding two thousand five hundred dollars
15 (\$2,500), or be imprisoned for a term not exceeding two (2)
16 years, or both, at the discretion of the court.

17 If any chief clerk or member of a board of elections, member
18 of a return board or member of a board of registration
19 commissioners, shall neglect or refuse to perform any of the
20 duties prescribed by Article XIII or Article XIII-D of this act,
21 or shall reveal or divulge any of the details of any ballot cast
22 in accordance with the provisions of Article XIII or Article
23 XIII-D of this act, or shall count an absentee ballot or mail-in
24 ballot knowing the same to be contrary to Article XIII or
25 Article XIII-D, or shall reject an absentee ballot or mail-in
26 ballot without reason to believe that the same is contrary to
27 Article XIII or Article XIII-D, or shall permit an elector to
28 cast the elector's ballot at a polling place knowing that there
29 has been issued to the elector an absentee ballot, the elector
30 shall be guilty of a felony of the third degree, and, upon

1 conviction, shall be punished by a fine not exceeding fifteen
2 thousand dollars (\$15,000), or be imprisoned for a term not
3 exceeding seven (7) years, or both, at the discretion of the
4 court.

5 Section 3. The amendment or addition of Article XIII-F and
6 section 1853 of the act shall apply to elections occurring
7 after November 3, 2023.

8 Section 4. This act shall take effect immediately.