

## No. 2002-150

## AN ACT

## SB 824

Amending the act of June 3, 1937 (P.L.1333, No.320), entitled "An act concerning elections, including general, municipal, special and primary elections, the nomination of candidates, primary and election expenses and election contests; creating and defining membership of county boards of elections; imposing duties upon the Secretary of the Commonwealth, courts, county boards of elections, county commissioners; imposing penalties for violation of the act, and codifying, revising and consolidating the laws relating thereto; and repealing certain acts and parts of acts relating to elections," further providing for definitions and for powers and duties of the Secretary of the Commonwealth; providing for voting standards development board and State plan advisory board; further providing for qualifications of election officers and for vacancies in election boards; providing for the compensation of district election officers; further providing for district boundaries, for manner of signing nomination petitions, for nominations by political bodies, for placing the question on the ballot, for examination and approval of electronic voting systems by the Secretary of the Commonwealth, for experimental use of electronic voting systems, for assistance in voting, for applications for official absentee ballots, for duties of common pleas court on days of primaries and elections; providing for creation of new election districts by court, for petitions for new election districts, for reference to county board of elections and report, for petitions by county board and action by court on petition or report, for creation, division, realignment or consolidation of wards in cities of the first class, for alterations after period of restriction and for Title III complaints; further providing for manner of applying to vote, for assistance in voting by certain absentee electors, for canvassing of official absentee ballots and for enforcement; providing for regulatory procedure; and making repeals.

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

Section 1. Section 102 of the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code, is amended by adding a clause to read:

Section 102. Definitions.—The following words, when used in this act, shall have the following meanings, unless otherwise clearly apparent from the context:

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*(g.1) The words "election officer" shall include the judge of elections and the majority and minority inspectors elected or appointed by a county board of elections and the clerk or machine inspector appointed by a county board of elections.*

\* \* \*

Section 2. Section 201 of the act is amended by adding subsections to read:

Section 201. Powers and Duties of the Secretary of the Commonwealth.—The Secretary of the Commonwealth shall exercise in the manner provided by this act all powers granted to him by this act, and shall

perform all the duties imposed upon him by this act, which shall include the following:

**\* \* \***

***(e.1) To receive from county boards of elections information on voting system errors or difficulties or other election data pursuant to regulation.***

**\* \* \***

***(f.1) To develop a voluntary professional certification and poll worker training program for county election officials in consultation with county boards of elections.***

**\* \* \***

***(h) To establish a system for the remedy of complaints regarding the administration of the provisions of Title III of the Help America Vote Act of 2002 (Public Law 107-252, 42 U.S.C. § 15481 et seq.).***

Section 3. The act is amended by adding sections to read:

***Section 204. Voting Standards Development Board.—(a) There is hereby established within the Department of State a Voting Standards Development Board comprised of seven members for the purpose of developing uniform and nondiscriminatory standards that define what constitutes a vote.***

***(b) The board shall be comprised of the following members:***

***(1) The Secretary of the Commonwealth or his designee.***

***(2) Two county directors of election appointed by the President pro tempore of the Senate, one of whom shall be from a county in which votes are cast on paper ballots.***

***(3) One county director of elections appointed by the Minority Leader of the Senate, who shall be from a county in which votes are cast on punch card voting systems.***

***(4) Two county directors of election appointed by the Speaker of the House of Representatives, one of whom shall be from a county in which votes are cast on direct recording electronic voting systems.***

***(5) One county director of elections appointed by the Minority Leader of the House of Representatives, who shall be from a county in which votes are cast on optical scan voting systems.***

***(c) The Secretary of the Commonwealth shall serve as chair of the board. Each member shall serve until the expiration of his term. A vacancy shall be filled in the same manner as the original appointment.***

***(d) The board shall meet as needed to fulfill the requirements of this section.***

***(e) Four members of the board shall constitute a quorum, and an affirmative vote of a majority of the members of the board is required for the issuance of standards in accordance with subsection (h).***

***(f) The board may establish any rules necessary for its operation, consistent with the provisions of subsection (e).***

***(g) The members of the board shall receive no compensation for their services on the board but shall be reimbursed by the department for***

*ordinary and necessary expenses incurred in the performance of their duties.*

*(h) The board shall have the power and duty to develop uniform and nondiscriminatory standards that define what constitutes a valid vote cast through a paper ballot and what constitutes a valid vote through each type of electronic voting system used in the Commonwealth. On or before July 1, 2003, the board shall adopt standards for paper ballots and each type of electronic voting system. The department shall cause these standards to be published as a notice in the Pennsylvania Bulletin.*

**Section 205. State Plan Advisory Board.**—*(a) There is hereby established within the Department of State a State Plan Advisory Board comprised of fifteen members for the purpose of advising the Secretary of the Commonwealth on the development of the State Plan required by the Help America Vote Act of 2002 (Public Law 107-252, 42 U.S.C. § 15301 et seq.).*

*(b) The board shall be comprised of the following members:*

*(1) One director of elections from a county of the first class.*

*(2) One director of elections from a county of the second class.*

*(3) The chairperson of the political party with the highest number of registered voters in the Commonwealth.*

*(4) The chairperson of the political party with the second highest number of registered voters in the Commonwealth.*

*(5) Eleven members appointed by the Secretary of the Commonwealth as follows:*

*(i) Seven directors of elections, one from a county of the second class A and one each from a county of the third, fourth, fifth, sixth, seventh and eighth class.*

*(ii) One representative of an organization of disabled Pennsylvania veterans.*

*(iii) One representative of an organization of blind and visually impaired Pennsylvanians.*

*(iv) Two representatives of the public at large, who shall be registered electors of the Commonwealth.*

*(c) The board shall elect a chairman from among its members. Each member appointed by the secretary shall serve for a term of five years. A vacancy shall be filled in the same manner as the original appointment.*

*(d) The board shall meet as needed to fulfill the requirements of this section.*

*(e) Eight members of the board shall constitute a quorum. A vote of the majority of the members of the board is required for the issuance of recommendations in accordance with subsection (h).*

*(f) The board may establish any rules necessary for its operation consistent with the provisions of subsection (e).*

*(g) The members of the board shall receive no compensation for their services on the board but shall be reimbursed by the department for*

*ordinary and necessary expenses incurred in the performance of their duties.*

*(h) The board shall have the power and duty to advise the Secretary of the Commonwealth on the development of the State Plan, which the secretary must develop and submit to the Federal Election Assistance Commission in accordance with the Help America Vote Act of 2002. The board shall make recommendations on all aspects of the State Plan described in section 254 of the Help America Vote Act of 2002.*

Section 4. Section 402 of the act, amended May 5, 1982 (P.L.374, No.108), is amended to read:

Section 402. Qualifications of Election Officers.—[Election]

*(a) Except as provided in subsection (b), election officers shall be qualified registered electors of the district in which they are elected or appointed. No person shall be qualified to serve as an election officer who shall hold, or shall within two months have held, any office, appointment or employment in or under the Government of the United States or of this State or of any city or county or poor district, of any municipal board, commission or trust in any city, save only district justices, notaries public and persons in the militia service of the State; nor shall any election officer be eligible to any civil office to be voted for at a primary or election at which he shall serve, except that of an election officer.*

*(b) The county board may appoint students notwithstanding their eligibility to vote to serve as a clerk or machine inspector pursuant to the following:*

*(1) The county board may appoint no more than two students per precinct.*

*(2) The judge of elections shall have direct supervision of the student.*

*(3) The county board may compensate the student.*

*(4) The county board shall comply with all applicable Federal and State laws.*

*(5) The student must at the time of the election for which the student shall serve:*

*(i) be at least seventeen (17) years of age;*

*(ii) be a United States citizen and a resident of the county in which he was appointed to serve;*

*(iii) be enrolled in a secondary educational institution with an exemplary academic record as determined by the educational institution;*

*(iv) be approved by the principal or director of the secondary educational institution; and*

*(v) have obtained the consent of their parent or guardian.*

*(6) The student may not serve as a judge of election or majority or minority inspector.*

Section 5. Section 405 of the act, amended June 1, 1978 (P.L.456, No.58) and repealed in part April 28, 1978 (P.L.202, No.53), is amended to read:

Section 405. Vacancies in Election Boards; Appointment; Judge and Majority Inspector to Be Members of Majority Party; Minority Inspector to Be Member of Minority Party.—(a) Vacancies in election boards existing by reason of the disqualification, removal, resignation or death of an election officer, or from any other cause, occurring prior to **[the day of] the fifth day before** any primary or election, shall, in all cases, be filled by appointment, by the court of the proper county, of competent persons, qualified in accordance with the provisions of this act, who shall serve for the unexpired term of the person whose place he is appointed to fill: Provided, however, That any district election officer who, after his election or appointment, changes his political affiliation, shall not thereby become disqualified to serve on said election board, and shall not thereby be subject to removal. In making such appointments, the court shall receive and consider any petitions filed by qualified electors of the district affected, and shall make no appointment to fill any vacancy **[occurring more than five days before any primary or election,]** unless notice of the time at which they will make such appointment shall have been posted on the polling place of such district, and in the immediate vicinity thereof, at least five days prior thereto. In the appointment of inspectors in any election district, both shall not be of the same political party at the time of said appointment, but one shall be of the party having the largest number of votes and the other shall be of the party having the second largest number of votes in said district at the last preceding November election, as nearly as the judge or judges can ascertain the fact. The judge of election shall, in all cases of appointment, be of the political party having the majority of votes in said district at the last preceding November election, as nearly as the judge or judges can ascertain the fact. Immediately upon the entry of an order of court filling any vacancy on an election board, the clerk of said court shall forthwith transmit a certified copy of said order to the county board, giving the name and address of said appointee. Notwithstanding any provisions to the contrary, in counties which have adopted home rule charters or optional plans and which appoint the members of the county election board under section 301(b), vacancies in the county board of elections shall be filled consistent with the provisions for appointment of county election board members under that section.

***(a.1) Vacancies in county boards existing by reason of the disqualification, removal, resignation or death of a clerk or machine inspector appointed pursuant to section 404 or a vacancy of a clerk or machine inspector from any other cause occurring prior to the day of any primary or election may be filled by a student pursuant to section 402(b).***

(b) The first election board for any new district shall be selected, by the court of the proper county, of competent persons, qualified in accordance with the provisions of this act, who shall serve until the next municipal election at which all election officials are elected under the provisions of section 401.

(c) *Vacancies in election boards occurring at any time during the five days immediately preceding any primary or election or on the day of the primary or election may be filled by appointment by the county board of elections from a pool of competent persons who are qualified registered electors of the county and who have been trained by the county to perform the duties of election officers which are required by this act. Any person appointed to fill a vacancy in accordance with this subsection shall serve as a member of the election board on the day of the primary or election only. Any election board position filled in accordance with this subsection shall be deemed vacant on the day immediately following the primary or election and subsequently shall be filled in accordance with subsection (a).*

Section 6. The act is amended by adding a section to read:

**Section 412.2. Compensation of District Election Officers.—***(a) In all counties regardless of class, the compensation of judges of election, inspectors of election, clerks and machine operators shall be fixed by the county board of elections for each election in accordance with the following:*

<i>Election Officers</i>	<i>Minimum Compensation</i>	<i>Maximum Compensation</i>
<i>Judges of election</i>	<i>\$45</i>	<i>\$200</i>
<i>Inspectors of election</i>	<i>\$45</i>	<i>\$195</i>
<i>Clerks and machine operators</i>	<i>\$40</i>	<i>\$195</i>

*(b) If a county board of elections authorizes that the duties of a clerk of elections or machine operator may be performed by two individuals who each perform such duties for one-half of an election day, such individuals shall each be compensated at one-half of the rate authorized for a single individual who performs the duties for the entire election day.*

*(c) The county board of elections may, in its discretion, establish different per diem rates within the minima and maxima provided for in subsection (a) based on the number of votes cast for the following groups:*

- (1) 150 votes or fewer.*
- (2) 151 to 300 votes.*
- (3) 301 to 500 votes.*
- (4) 501 to 750 votes.*
- (5) 751 votes and over.*

*(d) For transmitting returns of elections and the ballot box or boxes, all judges of election shall be entitled to receive the additional sum of twenty dollars (\$20).*

*(e) The county board of elections may, in its discretion, require the minority inspector of election to accompany the judge of election in transmitting the returns of elections, in which case the minority inspector of election shall be entitled to receive the additional sum of twenty dollars (\$20).*

*(f) The person furnishing transportation to the judge of election and the minority inspector in transmitting returns and ballot boxes shall be entitled to a minimum of thirty-five cents (35¢) per circular mile from the polling place to the county court house. The name of such person shall appear on the voucher of the judge of election, and only one person shall receive mileage compensation.*

*(g) A constable or deputy constable performing duties under section 1207 of this act shall receive compensation at the same rate payable to an inspector.*

*(h) When a primary and special election or a special election and a general or municipal election take place on the same date, they shall be construed as one election for the purpose of receiving compensation.*

*(i) Compensation and other payments received by election officials pursuant to this section shall not be deemed income classified and categorized under section 303 of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971."*

Section 6.1. Sections 502, 503 and 504 of the act, amended February 13, 1998 (P.L.72, No.18), are amended to read:

Section 502. Court to Create New Election Districts.—Subject to the provisions of section 501 of this act, the court of common pleas of the county in which the same are located, may form or create new election districts by dividing or redividing any borough, township, ward or election district into two or more election districts of compact and contiguous territory, having boundaries with clearly visible physical features *conforming with census block lines from the most recently completed Federal decennial census* and wholly contained within any larger district from which any Federal, State, county, municipal or school district officers are elected, or alter the bounds of any election district, or form an election district out of two or more adjacent districts or parts of districts, or consolidate adjoining election districts or form an election district out of two or more adjacent wards, so as to suit the convenience of the electors and to promote the public interests. Except for good cause shown, election districts so formed shall not contain more than one thousand two hundred (1,200) registered electors. No election district shall be formed that shall contain less than one hundred (100) registered electors. When a school district crosses county lines, the regions of the school district shall be composed of contiguous election districts.

Section 503. Petitions for New Election Districts; Reference to County Board of Elections; Report.—Upon the petition of twenty registered electors of any township, borough, ward or election district, to the court of the proper county, praying for the division or redivision of such township, borough, ward or election district into two or more election districts, or for the alteration of the bounds of any election district, or for the formation of one or more election districts out of two or more existing election districts, or parts thereof, or for the consolidation of adjoining election districts, the

said court shall refer the said petition to the county board of elections, which shall make a full investigation of the facts, and shall report to the court its findings and recommendations as to the division, redivision, alteration, formation or consolidation of election districts prayed for. If the county board shall find that a division, redivision, alteration, formation or consolidation of election districts will promote the convenience of the electors and the public interests, it shall recommend a proper division, redivision, alteration, formation or consolidation of election districts, which must have clearly visible physical boundaries *conforming with census block lines from the most recently completed Federal decennial census*, and shall accompany its report with a map and a verbal description of the boundaries, as well as a certification of the number of electors registered in each of the resulting election districts for the immediately preceding general or municipal election. Such petitions may specify the boundaries desired by the petitioners, and may be accompanied by a map setting forth such boundaries. When petitioners request specific boundaries, their petition shall include a certification from the county board of elections of the electors registered in each proposed election district for the immediately preceding general or municipal election.

Section 504. Petitions by County Board; Action by Court on Petition or Report.—The county board of elections may also petition the court for the division or redivision of any township, borough, ward or election district into two or more election districts, or for the alteration of the bounds of any election district, or for the formation of one or more election districts out of two or more existing election districts, or parts thereof, or for the consolidation of adjoining election districts, accompanying its petition with a map and a verbal description of the boundaries of the proposed new election districts which must have clearly visible physical features *conforming with census block lines from the most recently completed Federal decennial census*. The petition must also include a certification of the number of electors registered in each of the resulting election districts for the immediately preceding general or municipal election. Upon the presentation of any such petition by the county board, or upon the filing by the board of its report and recommendations as to any petition presented by qualified electors under the provisions of section 503 of this act, the court may make such order for the division, redivision, alteration, formation or consolidation of election districts, as will, in its opinion, promote the convenience of electors and the public interests: Provided, however, That the court shall not make any final order for the division, redivision, alteration, formation or consolidation of election districts until at least ten days after notice shall have been posted in at least five public and conspicuous places in the district or districts to be affected thereby, one of which notices shall be posted on or in the immediate vicinity of the polling place in each such district. Such notice shall state in brief form the division, redivision, alteration, formation or consolidation of election districts



recommended by the county board, the number of electors registered in each district at the immediately preceding general or municipal election, and the date upon which the same will be considered by the court, and shall contain a warning that any person objecting thereto must file his objections with the clerk of the court prior to such date. Upon the making of any such final order by the court, a copy thereof shall be certified by the clerk to the county board of elections.

Section 6.2. The act is amended by adding a section to read:

**Section 506. District Boundaries.**—*In administering elections for the nomination and election of candidates for the United States House of Representatives and the General Assembly, county boards of election shall adhere to the following rule: Where an election district is used in or pursuant to a congressional redistricting statute or the Final Plan of the Legislative Reapportionment Commission to define the boundary of a congressional district or State legislative district, the boundary of such election district shall be the boundary existing and recognized by the Legislative Reapportionment Commission for the adoption of its Final Plan. The boundaries of the congressional districts as established by statute and State legislative districts as set forth in the Final Plan of the Legislative Reapportionment Commission shall remain in full force and effect for use thereafter until the next reapportionment or redistricting as required by law and shall not be deemed to be affected by any action taken pursuant to this article.*

Section 6.3. Section 532(a) of the act, amended February 19, 1986 (P.L.29, No.11), is amended to read:

**Section 532. Wards in Cities of the First Class May be Created, Divided, Realigned, or Consolidated.**—

(a) Wards in a city of the first class may be created, divided, realigned or consolidated, along clearly visible physical boundaries *conforming with census block lines from the most recently completed Federal decennial census*, by the court of common pleas of the county in which said city is located, upon application thereto for those purposes by the petition of at least a total of one hundred qualified electors from the ward or wards sought to be affected, or of the council of such city.

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Section 6.4. Section 537 of the act, added November 24, 1999 (P.L.543, No.51), is amended to read:

**Section 537. Alterations After Period of Restriction.**—(a) Unless otherwise provided in this act, an election district may be established, abolished, divided [or], consolidated *or altered* if the boundary of each resulting district is composed entirely of clearly visible physical features conforming with census block lines from the most recently completed Federal decennial census.

(b) Within thirty (30) days of an alteration under subsection (a), the county board of elections shall submit to the bureau a report, including a map and a verbal description, of the boundaries of each resulting district.

***(c) The bureau shall review each report submitted under subsection (b) to determine whether the boundaries of all resulting election districts included in the report comply with the requirements of subsection (a). If the bureau determines that the boundaries of any resulting election district included in the report do not comply with the requirements of subsection (a), the bureau shall send written notice of this determination to the county board of elections within thirty (30) days of receipt of the report. Within sixty (60) days of receipt of the notice, the county board shall submit a subsequent report regarding the election district or districts named in the bureau's notice, indicating that changes have been made to the boundaries of each such election district so as to comply with the requirements of subsection (a). If the county board fails to submit a subsequent report indicating that changes have been made to the boundaries of each such election district so as to comply with the requirements of subsection (a), the Department of State shall withhold any reimbursements owed to the county board under section 305 until the bureau receives the report.***

Section 7. Section 908 of the act, amended August 13, 1963 (P.L.707, No.379), is amended to read:

Section 908. Manner of Signing Nomination Petitions; Time of Circulating.—Each signer of a nomination petition shall sign but one such petition for each office to be filled, and shall declare therein that he is a registered and enrolled member of the party designated in such petition: Provided, however, That where there are to be elected two or more persons to the same office, each signer may sign petitions for as many candidates for such office as, and no more than, he could vote for at the succeeding election. He shall also declare therein that he is a qualified elector of the county therein named, and in case the nomination is not to be made or candidates are not to be elected by the electors of the State at large, of the political district therein named, in which the nomination is to be made or the election is to be held. He shall add his [occupation and] residence, giving city, borough or township, with street and number, if any, and shall ***legibly print his name and*** add the date of signing, expressed in words or numbers: Provided, however, That if the said political district named in the petition lies wholly within any city, borough or township, or is coextensive with same, it shall not be necessary for any signer of a nomination petition to state therein the city, borough or township of his residence. No nomination petition shall be circulated prior to the thirteenth Tuesday before the primary, and no signature shall be counted unless it bears a date affixed not earlier than the thirteenth Tuesday nor later than the tenth Tuesday prior to the primary.

Section 8. Section 951(c) of the act is amended to read:

## Section 951. Nominations by Political Bodies.—\* \* \*

(c) Each person signing a nomination paper shall declare therein that he is a qualified elector of the State or district, as the case may be, and shall add to his signature his [occupation] *legibly printed name* and residence, giving city, borough or township, with street and number, if any, and shall also add the date of signing, expressed in words or numbers: Provided, however, That if said political district named in the papers lies wholly within any city, borough or township, or is coextensive with same, it shall not be necessary for any signer of a paper to state therein the city, borough or township of his residence. No elector shall sign more than one nomination paper for each office to be filled, unless there are two or more persons to be elected to the same office, in which case he may sign nomination papers for as many candidates for such office as, and no more than, he could vote for at the succeeding election. More than one candidate may be nominated by one nomination paper and candidates for more than one office may be nominated by one nomination paper: Provided, That each political body nominating does not nominate more candidates than there are offices to be voted for at the ensuing election: And provided, That all the signers on each nomination paper are qualified to vote for all the candidates nominated therein.

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Section 9. Sections 1103-A(e), 1105-A(a), (b), (e) and (f) and 1106-A of the act, added July 11, 1980 (P.L.600, No.128), are amended to read:

Section 1103-A. Placing the Question on the Ballot; Election Thereon.—\* \* \*

(e) If a majority of the electors of any county or municipality, voting on such question, shall vote against the adoption of an electronic voting system the question [shall not] *may* again be submitted to the voters of such county or municipality [within a period of one hundred three weeks].

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Section 1105-A. Examination and Approval of Electronic Voting Systems by the Secretary of the Commonwealth.—(a) Any person or corporation owning, manufacturing or selling, or being interested in the manufacture or sale of, any electronic voting system, may request the Secretary of the Commonwealth to examine such system[.] *if the voting system has been examined and approved by a federally recognized independent testing authority and if it meets any voting system performance and test standards established by the Federal Government. The costs of the examination shall be paid by the person requesting the examination in an amount set by the Secretary of the Commonwealth.* Any ten or more persons, being qualified registered electors of this Commonwealth, may, at any time, request the Secretary of the Commonwealth to reexamine any electronic voting system theretofore examined and approved by him. Before any [such examination or] reexamination, the person, persons, or corporation, requesting such

[examination or] reexamination, shall pay to the Treasurer of the Commonwealth [an examination] *a reexamination* fee of four hundred fifty dollars (\$450). The Secretary of the Commonwealth may, at any time, in his discretion, reexamine any such system therefore examined and approved by him. The Secretary of the Commonwealth may issue directives or instructions for implementation of electronic voting procedures and for the operation of electronic voting systems.

(b) Upon receipt of a request for examination or reexamination of an electronic voting system as herein provided for or in the event he determines to reexamine any such system, the Secretary of the Commonwealth [shall require such electronic voting system to be examined or reexamined by three examiners whom he shall appoint for that purpose, of whom one shall be an expert in patent law and the other two shall be experts in electronic computer systems, automatic tabulating equipment or such other fields as in the judgment of the Secretary of the Commonwealth shall be reasonably related to the operation of the electronic voting system under examination, and he shall require of them a written report on such system, attested by their signatures; and the Secretary of the Commonwealth himself] shall examine the electronic voting system and shall make and file in his office[, together with the reports of the examiners appointed by him, his own] *his* report, attested by his signature and the seal of his office, stating whether, in his opinion [and in consideration of the reports of the examiners aforesaid], the system so examined can be safely used by voters at elections as provided in this act and meets all of the requirements hereinafter set forth. If his report states that the system can be so used and meets all such requirements, such system shall be deemed approved and may be adopted for use at elections, as herein provided. With respect to any electronic voting system approved for use in this Commonwealth by the secretary, the report of the secretary shall specify the capacity of the components of that system, the number of voters who may reasonably be accommodated by the voting devices and automatic tabulating equipment which comprise such system and the number of [additional] clerks *and machine inspectors*, if any, [that may be] required based on the number of registered electors in any election district in which the voting system is to be used, such specifications being based upon [the reports of the examiners and] the secretary's [own] examination of the system. Any county which thereafter may adopt any such approved system shall provide the components of such system in a number no less than that sufficient to accommodate the voters of that county or municipality in accordance with the minimum capacity standards so prescribed by the secretary. *The county board shall comply with the requirements for the use of the electronic voting system as set forth in the report by the Secretary of the Commonwealth.*

\* \* \*

(e) Neither the Secretary of the Commonwealth[, nor any examiner appointed by him for the purposes prescribed by this section,] nor any member of a county board of elections shall have any pecuniary interest in any electronic voting system or in any of the components thereof, or in the design, manufacture or sale thereof.

[(f) Each examiner appointed hereunder shall receive a compensation of one hundred and fifty dollars (\$150) for each type of electronic voting system examined by him.]

Section 1106-A. Experimental Use of Electronic Voting Systems.—(a) The county board of elections of any county may provide for experimental use at any primary or election in one or more election districts of said county, of an electronic voting system, and the use of such system shall be as valid for all purposes as if the electronic voting system had been adopted in accordance with the provisions of this act.

(b) *The Secretary of the Commonwealth may approve the use of an experimental electronic voting system by the county board of elections of any county which complies with section 1306(a) for absentee voters as provided for in the Uniformed and Overseas Citizens Absentee Voting Act (Public Law 99-410, 100 Stat. 924) if the system allows the elector to mark his electronic ballot in secrecy as provided for paper absentee ballots pursuant to section 1306(a). The system shall be exempt from the requirements of sections 1107-A, 1302, 1303, 1304, 1305 and 1306.*

Section 10. Section 1206 of the act, amended July 13, 1961 (P.L.603, No.303), is amended to read:

Section 1206. Duties of Common Pleas Court on Days of Primaries and Elections.—The court of common pleas of each county of the Commonwealth or a judge or judges thereof, shall be in continuous session at the courthouse of said county, or, in judicial districts composed of more than one county, at the courthouse of the county in which such judge or judges reside, on the day of each primary and election from 7 o'clock A. M. until 10 o'clock P. M. and so long thereafter as it may appear that the process of said court will be necessary to secure a free, fair and correct computation and canvass of the votes cast at said election. In judicial districts having but one judge of the court of common pleas, such judge shall not be required to be in session, as aforesaid, between the hours of 12 o'clock noon and 2 o'clock P. M., nor between the hours of 5:30 o'clock P. M. and 7 o'clock P. M. During such period said court shall act as a committing magistrate for any violation of the election laws; shall settle summarily controversies that may arise with respect to the conduct of the election; shall issue process, if necessary, to enforce and secure compliance with the election laws; and shall decide such other matters pertaining to the election as may be necessary to carry out the intent of this act[; and in]. *When an individual is seeking a judicial order to vote, the court shall, pursuant to the provisions of the Help America Vote Act of 2002 (Public Law 107-252, 42 U.S.C. § 15301 et seq.), inform the individual of the*

*provisional ballot process set forth in section 1210(a.4) and shall direct the individual to follow the procedure in section 1210(a.4). In counties of the third class the court shall have power to appoint additional clerks at the polling places where needed and requested by the election board: Provided, That for each clerk appointed from the majority political party, a clerk from the minority political party must also be appointed.*

Section 11. The act is amended by adding a section to read:

*Section 1206.2. Title III Complaints.—The Department of State shall establish within the Bureau of Commissions, Elections and Legislation a procedure for the review of complaints regarding the administration of Title III of the Help America Vote Act of 2002 (Public Law 107-252, 42 U.S.C. § 15301 et seq.). The Department of State shall provide a complaint form which shall require the signature of the complainant, an affidavit and notarization and the attachment of any supporting documentation.*

*(b) Where a complaint pertains to a local or county employe or official, the following procedure shall apply:*

*(1) The Department of State shall provide the county board of elections with a copy of the complaint within three business days of receipt.*

*(2) The county board of elections shall have twenty days to either reach an agreement with the complainant or file a written response to the complaint.*

*(3) The Department of State shall provide the complainant with a copy of the response and an opportunity for an informal hearing.*

*(4) Where an informal hearing is requested, the county board of elections shall be given notice and the opportunity to participate.*

*(5) The Department of State shall issue a final determination and remedial plan if necessary no later than ninety days after the filing of the complaint. If the Department of State fails to issue the determination within ninety days, it shall provide alternative dispute resolution for the disposition of the complaint. The alternative process shall be completed within sixty days of its commencement.*

*(c) Where a complaint pertains to the Department of State the following procedure shall apply:*

*(1) The Department of State shall forward the complaint to the Office of General Counsel within three business days of receipt.*

*(2) The Department of State shall have twenty days to either reach an agreement with the complainant or file a written response to the complaint.*

*(3) The Office of General Counsel shall provide the complainant with a copy of the response and an opportunity for an informal hearing.*

*(4) Where an informal hearing is requested, the Department of State shall be given notice and an opportunity to participate.*

*(5) The Office of General Counsel shall issue a final determination and remedial plan if necessary no later than ninety days after the filing of the complaint. If the Office of General Counsel fails to issue the determination within ninety days, it shall provide alternative dispute resolution for the disposition of the complaint. The alternative process shall be completed within sixty days of its commencement.*

*(d) Proceedings under this section shall not be considered an administrative adjudication under 2 Pa.C.S Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action), known as the Administrative Agency Law.*

*(e) A determination made pursuant to subsection (b) shall not be an agency determination subject to appellate review pursuant to 42 Pa.C.S. § 763 (relating to direct appeals from government agencies). Either party may initiate a de novo appeal from the department's final order in the court of common pleas of the county where the election board is located.*

*(f) A determination made pursuant to subsection (c) shall be an agency determination subject to appellate review pursuant to 42 Pa.C.S. § 763.*

Section 12. Section 1210 of the act, amended June 10, 1982 (P.L.458, No.135), is amended to read:

Section 1210. Manner of Applying to Vote; Persons Entitled to Vote; Voter's Certificates; Entries to Be Made in District Register; Numbered Lists of Voters; Challenges.—(a) At every primary and election each elector who *appears to vote in that election district for the first time and who* desires to vote shall first *present to an election officer one of the following forms of photo identification:*

*(1) a valid driver's license or identification card issued by the Department of Transportation;*

*(2) a valid identification card issued by any other agency of the Commonwealth;*

*(3) a valid identification card issued by the United States Government;*

*(4) a valid United States passport;*

*(5) a valid student identification card;*

*(6) a valid employe identification card; or*

*(7) a valid armed forces of the United States identification card.*

*The election officer shall examine the identification presented by the elector.*

*(a.1) Where the elector does not have a photo identification as provided for in subsection (a), the elector shall present for examination one of the following forms of identification that shows the name and address of the elector:*

*(1) nonphoto identification issued by the Commonwealth, or any agency thereof;*

*(2) nonphoto identification issued by the United States Government, or agency thereof;*

*(3) a firearm permit;*

*(4) a current utility bill;*

*(5) a current bank statement;*

*(6) a paycheck;*

*(7) a government check.*

*The election officer shall examine the identification presented by the elector.*

*(a.2) If the elector is unable to produce identification or the elector's identification is challenged by the judge of elections, the elector shall be permitted to cast a provisional ballot in accordance with subsection (a.4).*

*(a.3) All electors, including any elector that shows identification pursuant to subsection (a), shall subsequently sign a voter's certificate, and, unless he is a State or Federal employe who has registered under any registration act without declaring his residence by street and number, he shall insert his address therein, and hand the same to the election officer in charge of the district register. Such election officer shall thereupon announce the elector's name so that it may be heard by all members of the election board and by all watchers present in the polling place and shall compare the elector's signature on his voter's certificate with his signature in the district register. If, upon such comparison, the signature upon the voter's certificate appears to be genuine, the elector who has signed the certificate shall, if otherwise qualified, be permitted to vote: Provided, That if the signature on the voter's certificate, as compared with the signature as recorded in the district register, shall not be deemed authentic by any of the election officers, such elector shall not be denied the right to vote for that reason, but shall be considered challenged as to identity and required to make the affidavit and produce the evidence as provided in subsection (d) of this section. When an elector has been found entitled to vote, the election officer who examined his voter's certificate and compared his signature shall sign his name or initials on the voter's certificate, shall, if the elector's signature is not readily legible, print such elector's name over his signature, and the number of the stub of the ballot issued to him or his number in the order of admission to the voting machines, and at primaries a letter or abbreviation designating the party in whose primary he votes shall also be entered by one of the election officers or clerks. As each voter is found to be qualified and votes, the election officer in charge of the district register shall write or stamp the date of the election or primary, the number of the stub of the ballot issued to him or his number in the order of admission to the voting machines, and at primaries a letter or abbreviation designating the party in whose primary he votes, and shall sign his name or initials in the proper space on the registration card of such voter contained in the district register.*



As each voter votes, his name in the order of voting shall be recorded in two (2) numbered lists of voters provided for that purpose, with the addition of a note of each voter's party enrollment after his name at primaries.

**(a.4) (1) At all elections an individual who claims to be properly registered and eligible to vote at the election district but whose name does not appear on the general register and whose registration cannot be determined by the inspectors of election or the county election board shall be permitted to cast a provisional ballot. Individuals who are voting for the first time at the election district shall be required to produce identification pursuant to subsection (a) or (a.1) and if unable to do so shall be permitted to cast a provisional ballot. An individual presenting a judicial order to vote shall be permitted to cast a provisional ballot.**

**(2) Prior to voting the provisional ballot, the elector shall be required to sign an affidavit stating the following:**

**I do solemnly swear or affirm that my name is \_\_\_\_\_, that my date of birth is \_\_\_\_\_, and at the time that I registered I resided at \_\_\_\_\_ in the municipality of \_\_\_\_\_ in \_\_\_\_\_ County of the Commonwealth of Pennsylvania and that this is the only ballot that I cast in this election.**

**Signature of Voter/Elector**

**Current Address**

**Signed by Judge of Elections and minority inspector**

**(3) After the provisional ballot has been cast, the individual shall place it in a secrecy envelope. The individual shall place the secrecy envelope in the provisional ballot envelope and shall place his signature on the front of the provisional ballot envelope. All provisional ballots shall remain sealed in their provisional ballot envelopes for return to the county board of elections.**

**(4) Within three business days of the election, the county board of elections shall examine each provisional ballot envelope to determine if the individual voting that ballot was entitled to vote at the election district in the election. One authorized representative of each candidate in a primary or election, who is an elector in the county, shall be permitted to remain in the room in which the determination is being made if he does not impede the orderly conduct of the determination.**

**(5) If it is determined that the individual was registered and entitled to vote at the election district where the ballot was cast, the county board of elections shall compare the signature on the provisional ballot envelope with the signature on the elector's registration form and, if the signatures are determined to be genuine, count the ballot.**

**(6) If it is determined that the individual voting the provisional ballot was not registered, the provisional ballot shall not be counted and the**

***ballot shall remain in the provisional ballot envelope and shall be marked "Rejected as Ineligible."***

***(7) If it is determined that the individual voting the provisional ballot was eligible to vote but not at the election district where the ballot was cast, the county board of elections shall open the envelope and only count that portion of the ballot that the individual would have been eligible to vote in his proper election district and at the election district where the vote was cast.***

***(8) The department shall establish a World Wide Web site and a toll-free telephone number to permit an individual who cast a provisional ballot to determine whether the vote of that individual was counted and, if the vote was not counted, the reason that it was not counted.***

***(9) For purposes of this subsection, "provisional ballot" means a ballot issued to an individual who claims to be a registered elector by the judge of elections on election day when the individual's name does not appear on the general register and the individual's registration cannot be verified.***

***(b) If any elector was unable to sign his name at the time of registration, or, if having been able to sign his name when registered, he subsequently shall have lost his sight or lost the hand with which he was accustomed to sign his name, or shall have been otherwise rendered by disease or accident unable to sign his name when he applies to vote, he shall establish his identity to the satisfaction of the election officers, and in such case he shall not be required to sign a voter's certificate, but a certificate shall be prepared for him by one of the election officers, upon which the facts as to such disability shall be noted and attested by the signature of such election officer.***

***(c) No person who applies to vote shall be permitted by any election officer or clerk or other person to see the signature recorded as his in the district register until after he shall have signed his name to the voter's certificate.***

***(d) No person, except a qualified elector who is in actual military or naval service under a requisition of the President of the United States or by the authority of this Commonwealth, and who votes under the provisions of Article XIII of this act, shall be entitled or permitted to vote at any primary or election at any polling place outside the election district in which he resides, nor shall he be permitted to vote in the election district in which he resides, unless he has been personally registered as an elector and his registration card appears in the district register of such election district, except by order of the court of common pleas as provided in this act, and any person, although personally registered as an elector, may be challenged by any qualified elector, election officer, overseer, or watcher at any primary or election as to his identity, as to his continued residence in the election district or as to any alleged violation of the provisions of section 1210 of this act, and if challenged as to identity or residence, he shall produce at***

least one qualified elector of the election district as a witness, who shall make affidavit of his identity or continued residence in the election district: Provided, however, That no person shall be entitled to vote as a member of a party at any primary, unless he is registered and enrolled as a member of such party upon the district register, which enrollment shall be conclusive as to his party membership and shall not be subject to challenge on the day of the primary.

Section 13. Section 1218 of the act, amended February 13, 1989 (P.L.1, No.1), is amended to read:

Section 1218. Assistance in Voting.—

(a) No voter shall be permitted to receive any assistance in voting at any primary or election, unless there is recorded upon his registration card his declaration that, by reason of blindness, disability, or inability to read or write, he is unable to read the names on the ballot or on the voting machine labels, or that he has a physical disability which renders him unable to see or mark the ballot or operate the voting machine, or to enter the voting compartment or voting machine booth without assistance, the exact nature of such condition being recorded on such registration card, and unless the election officers are satisfied that he still suffers from the same condition.

(b) Any elector who is entitled to receive assistance in voting under the provisions of this section shall be permitted by the judge of election to select a person of the elector's choice to enter the voting compartment or voting machine booth with him to assist him in voting, such assistance to be rendered inside the voting compartment or voting machine booth except that *the judge of election*, the elector's employer or an agent of the employer or an officer or agent of the elector's union shall not be eligible to assist the elector.

(c) In every case of assistance under the provisions of this section, the judge of election shall forthwith enter in writing in a book to be furnished by the county board of elections, to be known as the record of assisted voters—(1) the voter's name; (2) a statement of the facts which entitle him to receive assistance; and (3) the name of the person furnishing the assistance. The record of assisted voters shall be returned by the judge of election to the county board of elections with the other papers, as hereinafter provided, and said county board shall permit the same to be examined only upon the written order of a judge of the court of common pleas: Provided, however, That such record shall be subject to subpoena to the same extent to which other election records may be subpoenaed: And provided further, That the county election board shall permit any registration commission to examine any records of assisted voters without a court order, in order that the registration commission may ascertain whether electors, who have declared, at the time of registration, their need for assistance, actually did receive assistance when voting at any election.

Section 14. Section 1302(c) of the act, amended February 13, 1998 (P.L.72, No.18), is amended to read:

Section 1302. Applications for Official Absentee Ballots.—\* \* \*

(c) The application of any qualified [military] elector, as defined in [preceding section 1301 subsection (a)] section 1301(a), (b), (c), (d), (e), (f), (g) and (h), for an official absentee ballot in any primary or election may not be made over the signature of any person, other than the qualified elector or an adult member of his immediate family, as required in the preceding subsection. A qualified absentee military or overseas elector, as defined by the Uniformed and Overseas Citizens Absentee Voting Act (Public Law 99-410, 100 Stat. 924), may submit his application for an official absentee ballot by facsimile method if the original application is received prior to the election by the county election office. The absentee ballot of the qualified military or overseas elector shall not be counted unless the elector's original application is received prior to the election by the county election office. The facsimile method shall not be acceptable for the official absentee ballot.

\* \* \*

Section 15. Section 1306.1 of the act, added August 13, 1963 (P.L.707, No.379), is amended to read:

Section 1306.1. Assistance in Voting by Certain Absentee Electors.—

Any elector qualified to vote an official absentee ballot in accordance with the provisions of section 1301, subsection (k), may receive assistance in voting (1) if there is recorded on his registration card his declaration that he has a physical disability which renders him unable to see or mark the official absentee ballot, the exact nature of such disability being recorded on such registration card; (2) if such elector requiring assistance submits with his application for an official absentee ballot, a statement setting forth the precise nature of the disability which renders him unable to see or mark the official absentee ballot and that to the best of his knowledge and belief he will still suffer from the said physical disability at the time of voting his official absentee ballot. He shall acknowledge the same before an officer qualified to take acknowledgement of deeds. Such statement shall be in substantially the following form:

Statement of Absentee Elector Requiring Assistance

I, ....., hereby state

(Name of voter requiring assistance)

that I require assistance in marking the official absentee ballot for the primary or election held .....

(Date)

19..., that will be issued to me for the following reason:

.....

(Insert nature of disability)

.....

(Signature or mark of elector)

.....

(Date of signature or mark)

Commonwealth of Pennsylvania:

SS

County of .....

On this.....day of....., 19...., before me, ..... the undersigned officer personally appeared....., known to me (or satisfactorily proven) to be the person whose signature or mark appears on the within instrument and acknowledged the same for the purposes therein contained.

In witness whereof, I have hereunto set my hand and official seal

.....  
(Title of Officer)

Upon receipt of the official absentee ballot, such elector requiring assistance may select [an adult] a person to assist him in voting, such assistance to be rendered in secret[.]: *Provided, however, That the person rendering assistance may not be the elector's employer or an agent of the employer or an officer or agent of the elector's union.* The [adult] person rendering the assistance in voting [should be required to fill out] *shall complete*, date and sign the declaration in such form approved by the Secretary of the Commonwealth, or substantially in the form as set forth below, [as he] *that the person* has caused the elector's ballot to be marked in accordance with such elector's desires and instruction. Such declaration form shall be returned to the county board of elections in the mailing envelope addressed to the county board of elections within which the small "official absentee ballot" is returned.

Declaration of Person Rendering Assistance

I, ....., [an adult person]  
(Name of Person rendering assistance)

hereby declare that I have witnessed the aforesaid elector's signature or mark and that I have caused the aforesaid elector's ballot to be marked in accordance with the desires and instructions of the aforesaid elector.

.....  
(Signature of Person Rendering Assistance)

.....  
(Address)

Section 16. Section 1308(b.1) of the act, added July 11, 1980 (P.L.600, No.128), is amended to read:

Section 1308. Canvassing of Official Absentee Ballots.—

\* \* \*

(b.1) [(1) In the event that an electronic voting system provides for central tabulations of ballots, such absentee ballots shall be opened and deposited in the ballot box without being counted except as to the number of absentee ballots cast. The absentee ballots shall be counted

along with the other ballots from the election district at the location and in the manner specified by the county board of elections and provided for by the electronic voting system utilized.

(2) In the event that an electronic voting system provides for tabulation of votes at the election district, such] *In all election districts in which electronic voting systems are used*, absentee ballots shall be opened *at the election district*, checked for write-in votes in accordance with section 1113-A and then either hand-counted or counted by means of the automatic tabulation equipment, whatever the case may be.

\* \* \*

Section 17. Section 1642 of the act, added October 4, 1978 (P.L.893, No.171), is amended to read:

Section 1642. Enforcement.—

(a) The Attorney General shall have prosecutorial jurisdiction over all violations [connected with any statement or report and the contents thereof which is to be filed with the Secretary of the Commonwealth.

(b) The district attorneys of the respective counties shall have jurisdiction over any other violations] committed under this act.

(c) The district attorney of any county in which a violation[, referred to in subsection (a) occurs,] *occurred* has concurrent powers and responsibilities with the Attorney General over such violations.

Section 18. The following acts are repealed:

(1) All acts and parts of acts are repealed insofar as they are inconsistent with the amendment of sections 402 and 405 of the act.

(2) The provisions of 25 Pa.C.S. Ch. 7 Subch. B are repealed.

Section 19. The addition of section 412.2 of the act shall be applicable as constitutionally permissible.

Section 20. Section 201 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law, shall not apply to regulations under section 2 of the act of January 31, 2002 (P.L.18, No.3), entitled "An act amending Title 25 (Elections) of the Pennsylvania Consolidated Statutes, codifying provisions relating to compensation of clerks of election and machine operators; codifying the Pennsylvania Voter Registration Act by providing for absentee ballots and for voter registration and by establishing a Statewide uniform registry of electors; imposing powers and duties on the Secretary of the Commonwealth and the Legislative Reference Bureau; and making repeals."

Section 21. This act shall take effect as follows:

(1) The following provisions shall take effect immediately:

- (i) The addition of section 102(g.1) of the act.
- (ii) The addition of section 204 of the act.
- (iii) The addition of section 205 of the act.
- (iv) The amendment of section 402 of the act.
- (v) The amendment of section 405 of the act.
- (vi) The addition of section 412.2 of the act.

- (vi.1) The addition of section 506 of the act.
  - (vii) The amendment of section 1103-A of the act.
  - (viii) The amendment of section 1105-A of the act.
  - (ix) The amendment of section 1106-A of the act.
  - (x) The amendment of section 1302 of the act.
  - (xi) The amendment of section 1642 of the act.
  - (xii) Sections 18(2), 19 and 20 of this act.
  - (xiii) This section.
- (2) The following provisions shall take effect in one year:
- (i) The addition of section 201(h) of the act.
  - (ii) The amendment of section 908 of the act.
  - (iii) The amendment of section 951 of the act.
  - (iv) The amendment of section 1206 of the act.
  - (v) The addition of section 1206.2 of the act.
  - (vi) The amendment or addition of section 1210(a), (a.1), (a.2), a.3 and (a.4) of the act.
- (3) The remainder of this act shall take effect in 60 days.

APPROVED—The 9th day of December, A.D. 2002.

**MARK S. SCHWEIKER**