

COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF STATE

PROCEDURES TO ASSURE COMPLIANCE WITH THE VOTING ACCESSIBILITY FOR THE ELDERLY AND HANDICAPPED ACT AND OTHER LAWS ASSURING THE VOTING RIGHTS OF INDIVIDUALS WITH DISABILITIES AND LANGUAGE NEEDS

§ 1. The Voting Accessibility for the Elderly and Handicapped Act.

(a) *Purpose.* The U.S. Congress enacted the Voting Accessibility for the Elderly and Handicapped Act, P.L. 98-435 [42 U.S.C. §§ 1973ee—1973ee-6] (Act) in 1984 “to promote the fundamental right to vote by improving access for the handicapped and elderly individuals to registration facilities and polling places for Federal elections.” 42 U.S.C. § 1973ee.

(b) *Definitions.* As used in the Act, the following terms have the meanings described:

(1) “Accessible” means “accessible to handicapped and elderly individuals for the purpose of voting or registration as determined under guidelines established by the [Secretary of the Commonwealth].” 42 U.S.C. § 1973ee-6(1).

(2) “Elderly” means “65 years of age or older.” 42 U.S.C. § 1973ee-6(2).

(3) “Handicapped” means “having a temporary or permanent physical disability.” 42 U.S.C. § 1973ee-6(4).

(c) *Selection of polling places.*

(1) Under section 3(a) of the Act, the county boards of elections are required to “assure that *all* polling places for Federal elections are accessible to handicapped and elderly voters,” except as provided by section 3(b) of the Act. 42 U.S.C. § 1973ee-1(a)(emphasis added).

(2) Section 3(b) of the Act [42 U.S.C. § 1973ee-1(b)] relieves a county board of elections of the mandate prescribed by section 3(a) for those polling places as to which one of the following conditions apply:

(i) The Secretary of the Commonwealth has determined that an emergency exists such that the county board of elections cannot reasonably provide an accessible polling place for one or more election districts.

(ii) The Secretary of the Commonwealth has:

(A) Based on information provided by the county board of elections, determined that all potential polling places have been surveyed and no such accessible place is available and the county board of elections is unable to make one temporarily available in the election district; *and*

(B) Assured that any handicapped or elderly voter assigned to an inaccessible polling place, *upon advance request of the voter* under procedures prescribed by the Secretary of the Commonwealth, either:

(I) Will be assigned to an accessible polling place; *or*

(II) Will be provided with an alternative means for casting a ballot on the day of the election.

(d) *Voting aids.*

(1) *Instructions.* The Commonwealth is required by section 5(a) of the Act to make available voting aids for Federal elections for handicapped and elderly individuals that include instructions, printed in large type, conspicuously displayed at each polling place and information by telecommunications devices for the deaf. 42 U.S.C. § 1973ee-3(a). The Commonwealth fulfills its duties under section 5(a) of the Act primarily through the actions of county boards of elections.

(2) *Notice of availability of aids.* The Secretary of the Commonwealth is required by section 5(c) of the Act to “provide public notice, calculated to reach elderly and handicapped voters, of the availability of aids under [section 5 of the Act], assistance under

section 208 of the Voting Rights Act of 1965 (42 U.S.C. § 1973aa-6), and the procedures for voting by absentee ballot, not later than general public notice of registration and voting is provided.” 42 U.S.C. § 1973e-3(c). The Secretary of the Commonwealth fulfills his duties under section 5(c) of the Act primarily through direction to and actions of the county boards of elections.

§ 2. Use in non-Federal elections.

Though the Act applies only to elections for Federal office, the Secretary of the Commonwealth has determined that to assure compliance with the Americans with Disabilities Act of 1990 [42 U.S.C. § 12101 *et seq.*], elections officials (including the county boards of elections) should follow the policies and procedures adopted under the Act for *all* elections, including Municipal Primaries, Municipal Elections and Special Elections when no elections for Federal office are usually on the ballot.

§ 3. Accessibility survey.

(a) *Policy.* To comply with section 3(a) of the Act [42 U.S.C. § 1973ee-1(a)], the Secretary of the Commonwealth periodically directs the county boards of elections to conduct a survey of their polling places to determine the accessibility of the polling places under guidelines issued by the Secretary of the Commonwealth, and to make good faith efforts on an ongoing basis to identify accessible polling places (or polling places that can be made accessible for voting on Election Day) for each election district in the county.

(b) *Designation of inaccessibility.* For those county boards of elections that inform the Secretary of the Commonwealth that, despite their good faith efforts to survey all potential polling places in each election district, they have been unable to locate an accessible polling

place for every election district in the county or to make the polling places temporarily accessible for Election Day, the Secretary of the Commonwealth has directed the county boards of elections formally to designate as “inaccessible” those polling places that do not satisfy the guidelines issued by the Secretary of the Commonwealth for accessibility.

(c) *Voting systems.* A polling place may be designated as inaccessible only if the means of access to the polling place do not meet the accessibility standards issued by the Secretary of the Commonwealth. A polling place should not be deemed inaccessible because the voting systems used in the polling place cannot be used by all voters without assistance.

(d) *Notice.* The county board of elections should include in their election notices published in the newspaper(s) and posted in other locations (including the county’s web site) the polling places that the county board of elections has deemed to be inaccessible. In addition, the Department of State recommends that the county board of elections include in its public notices regarding inaccessible polling places a statement indicating that though a polling place is accessible, the voting system used in that polling place might not be accessible to individuals with disabilities without assistance. For those who are unable to vote without assistance on the county’s voting system, the voter may receive assistance in voting or may apply to vote by Absentee Ballot.

§ 4. The Alternative Ballot.

(a) *Policy.* In recognition that some county boards of elections, despite their good faith survey efforts, would not be able to identify accessible polling places in all election districts, the Secretary of the Commonwealth acted under the Act to assure that any handicapped or elderly voter assigned to a polling place deemed inaccessible by the county board of elections would have another means to cast a ballot on or before Election Day. Opting to act as provided

by section 3(b)(2)(B)(ii) of the Act [42 U.S.C. § 1973ee-1(b)(2)(B)(ii)], the Secretary of the Commonwealth declared that any qualified elector who is handicapped or elderly and assigned by his or her county board of elections to an inaccessible polling place has the right, upon advance request of the elector, to cast an Alternative Ballot on or before Election Day.

(b) *Alternative polling place not permitted.* In consideration of the strict procedures prescribed by the Election Code for voting at a polling place, the Secretary of the Commonwealth has opted *not* to require or authorize county boards of elections to assign handicapped and elderly qualified electors to an accessible polling place other than the polling place to which they have been assigned based on their residence address – an option permitted, *but not required*, by section 3(b)(2)(B)(i) of the Act [42 U.S.C. § 1973ee-1(a)(2)(B)(i)].

(c) *“Curbside voting” and other alternative means (including the provisional ballot) not permitted.* The Alternative Ballot is the *sole means* that a qualified elector entitled to vote under the Act might vote on Election Day by alternative means. No qualified elector may vote at the polling place by means of a “curbside” voting process outside the polling place or any other means outside the polling place except by Alternative Ballot. The Provisional Ballot also is *not* an authorized means for a voter with a disability to vote – either inside or outside the polling place – unless the voter otherwise qualifies to vote by Provisional Ballot under statute.

(d) *Elector assigned to an accessible polling place.* Irrespective of an elector’s age or disability status, a qualified elector assigned to a polling place that the county board of elections has determined to be accessible under the standards prescribed by the Secretary of the Commonwealth is *not* eligible to apply for or to vote by Alternative Ballot. Qualified electors who are assigned to an accessible polling place but who cannot attend the polling place because of illness or a disability are eligible to apply for and vote by Absentee Ballot. *See* § 5 (relating to absentee ballot voting by individuals with disabilities).

§ 5. Absentee ballot voting by individuals with disabilities.

(a) *Right to vote by absentee ballot.* Irrespective of the accessibility of a qualified elector's polling place, a qualified elector who is unable, because of a permanent or temporary disability or illness, to attend the polling place or to operate the voting system provided at the polling place without assistance, has the right under the Pennsylvania Election Code to apply for and vote by Absentee Ballot. *See* 25 P.S. §§ 2602(w) and 3146.1(i) & (k).

(b) *Assistance in voting an absentee ballot.* Voters who need assistance in voting an absentee ballot are entitled to receive assistance in accordance with sections 1302(e) & (e.1) and 1306.1 of the Pennsylvania Election Code, 25 P.S. §§ 3146.2(e) & (e.1) and 3146.6a.

(c) *Restrictions on absentee ballot voting.* Unlike an elector voting by Alternative Ballot:

(i) A qualified elector who chooses to vote by Absentee Ballot cannot apply for the Absentee Ballot on an emergency basis after 5:00 P.M. on the Friday before Election Day; and

(ii) The county board of elections must receive the Absentee Ballot no later than 5:00 P.M. on the Friday before Election Day.

(d) *Seeking to vote by absentee ballot after the statutory deadline.*

(1) A qualified elector who is assigned to an accessible polling place and who becomes ill or disabled after 5:00 P.M. on the Friday before Election Day – the statutory deadline for making an emergency application for an absentee ballot – does *not* have a right under the Act or the Election Code to apply either for an Alternative Ballot or an Absentee Ballot.

(2) A qualified elector in the circumstances described in paragraph (1) may apply to the Court of Common Pleas for an order directing the county board of elections to issue an absentee ballot to the elector and to direct the manner of delivery of the absentee ballot to the elector and the return of the voted absentee ballot to the county board of elections.

(3) If a qualified elector is authorized by order of court to vote by absentee ballot after the deadline prescribed by the Election Code (as described in paragraph (2)), the county board of elections should treat the absentee ballot as a provisional ballot, in accordance with section 1210(a.4)(1) of the Election Code, 25 P.S. § 3050(a.4)(1).

(e) *Recommended practice.* The Department of State recommends that the county boards of elections adopt policies, practices and procedures designed to accomplish the following:

(i) Qualified electors who are elderly or handicapped and assigned to an inaccessible polling place understand their rights to vote by Alternative Ballot and the substantial differences between an Absentee Ballot and an Alternative Ballot – particularly respecting the earlier time by which an Absentee Ballot must be received by the county board of elections, *i.e.*, 5:00 P.M. on the Friday preceding Election Day, in contrast to an Alternative Ballot, which can be returned up to the close of the polls on Election Day.

(ii) Applications for Absentee Ballot include with them a notice that qualified electors who are elderly or handicapped and assigned to an inaccessible polling place have the right to vote by Alternative Ballot and instructions as to how to apply for an Alternative Ballot.

§ 6. Assistance at the polling place for individuals with disabilities and language needs.

(a) Under 25 Pa.C.S. § 1504(a)(4), if a registered elector by reason of blindness, disability or inability to read or write (i) is unable to read the names on the ballot or on the voting

machine labels or to read and understand ballot questions and other election material; or (ii) the elector is unable to see or mark the ballot or operate the voting machine or to enter the voting compartment or voting machine booth without assistance; or (iii) the elector is unable to read or write English sufficiently well to participate in the electoral process, the elector is entitled to receive assistance. *See also* 42 U.S.C. § 1973aa-6.

(b) Except as provided by subsection (c) below, no voter is permitted to receive assistance in voting unless (i) there is recorded upon his voter registration card the voter's 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 to read and understand ballot questions and other election material, or that the elector 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, or the elector is unable to read or write English sufficiently well to participate in the electoral process; (ii) the exact nature of the condition has been recorded on the registration card; and (iii) the election officers are satisfied that the voter still suffers from the same condition. 25 P.S. § 3058(c); 25 Pa.C.S. § 1504(a).

(c) If the disability or the need for language assistance of a voter is not entered on the voter registration card, the elector may receive assistance if he or she completes a declaration in the polling place. Following the election the registration commission will examine declarations completed at the polling place and update the elector's voter registration card to reflect the need for assistance and the nature of the disability. 25 Pa.C.S. §§ 1504(a)(4) & (5).

(d) An elector who is entitled to receive assistance in voting under the election laws must 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. The assistance to be rendered inside the voting compartment or voting machine booth may not be rendered by the

judge of election, the elector's employer or an agent of the employer or an officer or agent of the elector's union. 25 P.S. § 3058(b); *see also* 42 U.S.C. § 1973aa-6.

(e) In every case of assistance rendered to a voter, the judge of election must enter in 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 judge of election must return the record of assisted voters to the county board of elections, and the county board shall permit the record to be examined only upon the written order of a judge of the court of Common Pleas. 25 P.S. § 3058(c).

§ 7. Form. An Alternative Ballot is a paper ballot that appears in substantially the same form as an Official Absentee Ballot.

§ 8. Application.

(a) *Availability.* Applications for an Alternative Ballot and other information regarding Alternative Ballots may be obtained from the county board of elections in the elector's county of residence. The county board of elections should make the Application for Alternative Ballot available (i) in person at one or more accessible locations within the county; (ii) on the Internet; (iii) through mail and other means of delivery; and (iv) any other means that the county board of elections might deem advisable.

(b) *Public notice.* The county board of elections should publicize the availability of applications for an Alternative Ballot to the qualified electors of the county by all means available, including at a minimum:

- (i) Timely advertisements in newspapers of general circulation in the county.
- (ii) Notice through the Internet web site of the county board of elections.

(iii) Public service announcements.

(iv) Notices and the provision of application forms to locations, organizations and other outlets designed to reach senior citizens and individuals with disabilities, such as homes for and organizations that serve senior citizens and individuals with disabilities.

(c) *Form.* An Application for an Alternative Ballot should be in substantially the form prescribed in the Appendix. However, in the discretion of the county board of elections, an application for an Alternative Ballot may be combined with the Application for Absentee Ballot, in such forms that are approved by the Secretary of the Commonwealth.

(d) *Time.*

(1) *General rule.* An application for Alternative Ballot should be returned to the county board of elections at least seven (7) days before Election Day.

(2) *Emergency application.* Where circumstances arise unexpectedly, including those circumstances when a handicapped or elderly qualified elector learns after the application deadline that the polling place to which he or she has been assigned is inaccessible, the qualified elector may make an Emergency Application for Alternative Ballot at any time until the date and time that the polls close on Election Day.

(A) The Emergency Application for Alternative Ballot should be in the form prescribed in the Appendix.

(B) The applicant for an Emergency Alternative Ballot should state on the application the reason that he or she is applying for an Alternative Ballot after the regular time for doing so (*e.g.*, the elector discovered after the deadline that the polling place to which he or she is assigned is inaccessible).

(C) No elector assigned to an accessible polling place is eligible to apply for or to vote by Alternative Ballot.

§ 9. Voting and delivery of the Alternative Ballot.

(a) *Voting the Alternative Ballot.* An Alternative Ballot may be cast (i) in person at the offices of the county board of elections or such other accessible location(s) that the county board might designate; or (ii) outside the offices or accessible locations designated by the county board of elections and timely delivered or mailed to the office of the county board of elections or delivered to such other accessible location(s) that the county board might designate.

(b) *Voting in person.* On any business day before Election Day, and from 7:00 A.M. until 8:00 P.M. on Election Day, a qualified elector who seeks to vote by an Alternative Ballot may appear at any accessible location designated by the county board of elections (at least one of which must be centrally located within the county) to cast an Alternative Ballot. If the elector's application has been approved, the voter must be able to cast an Alternative Ballot in secret at the accessible location designated by the county board of elections.

(c) *Voting off-site.* A qualified elector whose application for Alternative Ballot has been approved, at the direction of the elector, may be delivered to the elector personally, mailed to the elector at the address designated by the elector, or delivered to an authorized agent of the qualified elector. In delivering the Alternative Ballot, the county board of elections should use envelopes and include appropriate instructions that are substantially the same as those used for absentee ballots under section 1304 of the Election Code [25 P.S. § 3146.4], except that the outer envelopes and instruction material should be clearly labeled "Alternative Ballot". The elector should be instructed to cast his ballot in a manner substantially as an absentee elector casts an absentee ballot, *see* 25 P.S. § 3146.6, except that the Alternative Ballot may be mailed or delivered to the county board of elections for receipt no later than 8:00 P.M. on Election Day.

(d) *Envelopes.* A completed Alternative Ballot must be enclosed inside a sealed inner (or secrecy) envelope marked “Official Ballot,” with no other markings and no contents other than the completed Alternative Ballot. The secrecy envelope must be enclosed and sealed inside an outer envelope that indicates the election district of the elector whose completed Alternative Ballot is enclosed, along with the elector’s declaration that is consistent with the form prescribed under section 1304 of the Election Code for an absentee elector, but that is modified as necessary and appropriate for an elector voting by Alternative Ballot. The outer envelope should be clearly labeled as an Alternative Ballot.

(e) *Time.* Upon receipt and approval of an Application for Alternative Ballot by a qualified elector who requests that his or her Alternative Ballot be delivered to a specified address, the county board of elections should deliver or mail the Alternative Ballot material to the elector no later than the second Tuesday before Election Day. As such additional applications are received and approved, the board shall deliver or mail the Alternative Ballot materials within 48 hours.

(f) *Delivery of the Alternative Ballot to the county board of elections.* An elector casting an Alternative Ballot other than in person should deliver the completed Alternative Ballot to the county board of election (i) in person; (ii) by U.S. Mail; or (iii) through a representative whom the elector has authorized in writing to deliver the Alternative Ballot to the county board of elections.

(g) *Conformity to absentee balloting process.* As a general rule, unless otherwise provided, the procedure for the casting, delivery and handling of an Alternative Ballot should conform to the procedures prescribed for voting by qualified absentee electors, *see* 25 P.S. §§ 3146.1-3146.9, so long as they are consistent with the Act.

§ 10. Canvassing Alternative Ballots.

(a) *General rule.* Except as otherwise provided, the canvassing of Alternative Ballots should conform to the procedures prescribed by section 1308 of the Election Code [25 P.S. § 3146.8] for the canvassing of official absentee ballots.

(b) *Alternative Ballots received after 5:00 P.M. on the Friday before Election Day.* Alternative Ballots received by the board of elections after 5:00 P.M. on the Friday before Election Day and by 8:00 P.M. on Election Day should be retained by the county board of elections and not be delivered to the polling places. The ballots shall be safely kept in sealed or locked containers until the time set by the county board of elections to begin the official computation of the returns. The county board of elections, at a time and place announced in advance by the board, should proceed to canvass the Alternative Ballots that were retained by the board in a manner consistent with the procedures prescribed by section 1308 of the Election Code [25 P.S. § 3146.8] for the canvassing of absentee ballots by the district boards of elections at the polling place.