

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 36 Session of 2023

INTRODUCED BY MUSTELLO, FINK, GILLEN, HAMM, JAMES, KEEFER,  
M. MACKENZIE, R. MACKENZIE, ROWE AND STAATS, MARCH 7, 2023

REFERRED TO COMMITTEE ON STATE GOVERNMENT, MARCH 7, 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," in district election officers, further providing  
 12 for election officers to be sworn; in dates of elections and  
 13 primaries and special elections, further providing for  
 14 affidavits of candidates; in nomination of candidates,  
 15 further providing for petition may consist of several sheets  
 16 and statement of circulator, for affidavits of candidates,  
 17 for examination of nomination petitions, certificates and  
 18 papers and return of rejected nomination petitions,  
 19 certificates and papers, for vacancy in party nomination by  
 20 failure to pay filing fee or for failure to file loyalty  
 21 oath, for affidavits of candidates, for filling of certain  
 22 vacancies in public office by means of nomination  
 23 certificates and nomination papers and for substituted  
 24 nominations to fill certain vacancies for a November  
 25 election; in ballots, further providing for form of ballots  
 26 and printing ballots, in returns of primaries and elections  
 27 further providing for manner of computing irregular ballots;  
 28 and replacing references to "justice of the peace" with  
 29 "magisterial district judge."

30 The General Assembly of the Commonwealth of Pennsylvania

31 hereby enacts as follows:

1 Section 1. Sections 406, 630.1, 909, 910, 976, 978.1, 981.1,  
2 993(a) and (b), 998(a) and (b), 1004 and 1405 of the act of June  
3 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election  
4 Code, are amended to read:

5 Section 406. Election Officers to Be Sworn.--All judges,  
6 inspectors, clerks of election and machine inspectors shall,  
7 before entering upon their duties at any primary or election, be  
8 duly sworn in the presence of each other and of the watchers and  
9 overseers, if any. The judge shall first be sworn by the  
10 minority inspector or by a magistrate, alderman or [justice of  
11 the peace] magisterial district judge, and the inspectors,  
12 clerks and machine inspectors shall then be sworn by the judge.  
13 Each of them shall forthwith sign in duplicate the oath taken by  
14 him upon forms to be furnished by the county board, and the same  
15 shall be attested by the officer who administered the oath.

16 Section 630.1. Affidavits of Candidates.--Each candidate for  
17 any State, county, city, borough, incorporated town, township,  
18 school district or poor district office, or for the office of  
19 United States Senator or Representative in Congress, selected as  
20 provided in section 630 of this act, shall file with the  
21 nomination certificate an affidavit stating--(a) his residence,  
22 with street and number, if any, and his post-office address; (b)  
23 his election district, giving city, borough, town or township;  
24 (c) the name of the office for which he consents to be a  
25 candidate; (d) that he is eligible for such office; (e) that he  
26 will not knowingly violate any provision of this act, or of any  
27 law regulating and limiting election expenses and prohibiting  
28 corrupt practices in connection therewith; (f) unless he is a  
29 candidate for judge of a court of common pleas, the Philadelphia  
30 Municipal Court [or for the office of school board in a district

1 where that office is elective] or for the office of [justice of  
2 the peace] magisterial district judge, that he is not a  
3 candidate for the same office of any party or political body  
4 other than the one designated in such certificate; (g) that he  
5 is aware of the provisions of section 1626 of this act requiring  
6 election and post-election reporting of campaign contributions  
7 and expenditures; and (h) that he is not a candidate for an  
8 office which he already holds, the term of which is not set to  
9 expire in the same year as the office subject to the affidavit.

10 Section 909. Petition May Consist of Several Sheets;  
11 Statement of Circulator.--Said nomination petition may be on one  
12 or more sheets, and different sheets must be used for signers  
13 resident in different counties. If more than one sheet is used,  
14 they shall be bound together when offered for filing if they are  
15 intended to constitute one petition, and each sheet shall be  
16 numbered consecutively beginning with number one, at the foot of  
17 each page. In cases of petitions for delegate or alternate  
18 delegate to National conventions, each sheet shall contain a  
19 notation indicating the presidential candidate to whom he is  
20 committed or the term "uncommitted." Each sheet shall have  
21 appended thereto the statement of the circulator of each sheet,  
22 setting forth, subject to the penalties of 18 Pa.C.S. § 4904  
23 (relating to unsworn falsification to authorities)--(a) that he  
24 or she is a qualified elector of the Commonwealth, who is duly  
25 registered and enrolled as a member of the party designated in  
26 said petition, unless said petition relates to the nomination of  
27 a candidate for a court of common pleas, for the Philadelphia  
28 Municipal Court or for [justice of the peace] magisterial  
29 district judge, in which event the circulator need not be a duly  
30 registered and enrolled member of the designated party; (b) his

1 residence, giving city, borough or township, with street and  
2 number, if any; (c) that the signers thereto signed with full  
3 knowledge of the contents of the petition; (d) that their  
4 respective residences are correctly stated therein; (e) that  
5 they all reside in the county named in the statement; (f) that  
6 each signed on the date set opposite his name; and (g) that, to  
7 the best of the circulator's knowledge and belief, the signers  
8 are qualified electors and duly registered and enrolled members  
9 of the designated party of the State, or of the political  
10 district, as the case may be.

11 Section 910. Affidavits of Candidates.--Each candidate for  
12 any State, county, city, borough, incorporated town, township,  
13 ward, school district, poor district, election district, party  
14 office, party delegate or alternate, or for the office of United  
15 States Senator or Representative in Congress, shall file with  
16 his nomination petition his affidavit stating--(a) his  
17 residence, with street and number, if any, and his post-office  
18 address; (b) his election district, giving city, borough, town  
19 or township; (c) the name of the office for which he consents to  
20 be a candidate; (d) that he is eligible for such office; (e)  
21 that he will not knowingly violate any provision of this act, or  
22 of any law regulating and limiting nomination and election  
23 expenses and prohibiting corrupt practices in connection  
24 therewith; (f) unless he is a candidate for judge of a court of  
25 common pleas, the Philadelphia Municipal Court [or for the  
26 office of school director in a district where that office is  
27 elective] or for the office of [justice of the peace]  
28 magisterial district judge that he is not a candidate for  
29 nomination for the same office of any party other than the one  
30 designated in such petition; (g) if he is a candidate for a

1 delegate, or alternate delegate, member of State committee,  
2 National committee or party officer, that he is a registered and  
3 enrolled member of the designated party; (h) if he is a  
4 candidate for delegate or alternate delegate the presidential  
5 candidate to whom he is committed or the term "uncommitted"; (i)  
6 that he is aware of the provisions of section 1626 of this act  
7 requiring pre-election and post-election reporting of campaign  
8 contributions and expenditures; and (j) that he is not a  
9 candidate for an office which he already holds, the term of  
10 which is not set to expire in the same year as the office  
11 subject to the affidavit. In cases of petitions for delegate and  
12 alternate delegate to National conventions, the candidate's  
13 affidavit shall state that his signature to the delegate's  
14 statement, as hereinafter set forth, if such statement is signed  
15 by said candidate, was affixed to the sheet or sheets of said  
16 petition prior to the circulation of same. In the case of a  
17 candidate for nomination as President of the United States, it  
18 shall not be necessary for such candidate to file the affidavit  
19 required in this section to be filed by candidates, but the  
20 post-office address of such candidate shall be stated in such  
21 nomination petition.

22 Section 976. Examination of Nomination Petitions,  
23 Certificates and Papers; Return of Rejected Nomination  
24 Petitions, Certificates and Papers.--When any nomination  
25 petition, nomination certificate or nomination paper is  
26 presented in the office of the Secretary of the Commonwealth or  
27 of any county board of elections for filing within the period  
28 limited by this act, it shall be the duty of the said officer or  
29 board to examine the same. No nomination petition, nomination  
30 paper or nomination certificate shall be permitted to be filed

1 if--(a) it contains material errors or defects apparent on the  
2 face thereof, or on the face of the appended or accompanying  
3 affidavits; or (b) it contains material alterations made after  
4 signing without the consent of the signers; or (c) it does not  
5 contain a sufficient number of signatures as required by law;  
6 Provided, however, That the Secretary of the Commonwealth or the  
7 county board of elections, although not hereby required so to  
8 do, may question the genuineness of any signature or signatures  
9 appearing thereon, and if he or it shall thereupon find that any  
10 such signature or signatures are not genuine, such signature or  
11 signatures shall be disregarded in determining whether the  
12 nomination petition, nomination paper or nomination certificate  
13 contains a sufficient number of signatures as required by law;  
14 or (d) in the case of nomination petitions, if nomination  
15 petitions have been filed for printing the name of the same  
16 person for the same office, except the office of judge of a  
17 court of common pleas, the Philadelphia Municipal Court [or the  
18 office of school director in districts where that office is  
19 elective] or the office of [justice of the peace] magisterial  
20 district judge upon the official ballot of more than one  
21 political party; or (e) in the case of nomination papers, if the  
22 candidate named therein has filed a nomination petition for any  
23 public office for the ensuing primary, or has been nominated for  
24 any such office by nomination papers previously filed; or (f) if  
25 the nomination petitions or papers are not accompanied by the  
26 filing fee or certified check required for said office; or (g)  
27 in the case of nomination papers, the appellation set forth  
28 therein is identical with or deceptively similar to the words  
29 used by any existing party or by any political body which has  
30 already filed nomination papers for the same office, or if the

1 appellation set forth therein contains part of the name, or an  
2 abbreviation of the name or part of the name of an existing  
3 political party, or of a political body which has already filed  
4 nomination papers for the same office. The invalidity of any  
5 sheet of a nomination petition or nomination paper shall not  
6 affect the validity of such petition or paper if a sufficient  
7 petition or paper remains after eliminating such invalid sheet.  
8 The action of said officer or board in refusing to receive and  
9 file any such nomination petition, certificate or paper, may be  
10 reviewed by the court upon an application to compel its  
11 reception as of the date when it was presented to the office of  
12 such officer or board: Provided, however, That said officer or  
13 board shall be entitled to a reasonable time in which to examine  
14 any petitions, certificates or papers, and to summon and  
15 interrogate the candidates named therein, or the persons  
16 presenting said petitions, certificates or papers, and his or  
17 their retention of same for the purpose of making such  
18 examination or interrogation shall not be construed as an  
19 acceptance or filing.

20       Upon completion of any examination, if any nomination  
21 petition, certificate or paper is found to be defective, it  
22 shall forthwith be rejected and returned to the candidate or one  
23 of the candidates named therein, together with a statement of  
24 the reasons for such rejection:

25       Provided further, That no nomination petition, nomination  
26 paper or nomination certificate shall be permitted to be filed,  
27 if the political party or political body referred to therein  
28 shall be composed of a group of electors whose purposes or aims,  
29 or one of whose purposes or aims, is the establishment, control,  
30 conduct, seizure or overthrow of the Government of the

1 Commonwealth of Pennsylvania or the United States of America by  
2 the use of force, violence, military measure or threats of one  
3 or more of the foregoing. The authority to reject such  
4 nomination petition, paper or certificate for this reason shall,  
5 when filed with the Secretary of the Commonwealth, be vested in  
6 a committee composed of the Governor, the Attorney General and  
7 the Secretary of the Commonwealth, and when filed with any  
8 county board of elections shall be vested in such board. If in  
9 such case the committee or board, as the case may be, shall  
10 conclude that the acceptance of such nomination petition, paper  
11 or certificate should be refused, it shall within two days of  
12 the filing of such nomination petition, paper or certificate fix  
13 a place and a time five days in advance for hearing the matter,  
14 and notice thereof shall be given to all parties affected  
15 thereby. At the time and place so fixed the committee or board,  
16 as the case may be, shall hear testimony, but shall not be bound  
17 by technical rules of evidence. The testimony presented shall be  
18 stenographically recorded and made a part of the record of the  
19 committee or board. Within two days after such hearing the  
20 committee or board, if satisfied upon competent evidence that  
21 the said nomination petition, paper or certificate is not  
22 entitled to be accepted and filed, it shall announce its  
23 decision and immediately notify the parties affected thereby.  
24 Failure to announce decision within two days after such hearing  
25 shall be conclusive that such nomination petition, paper or  
26 certificate has been accepted and filed. The decision of said  
27 committee or board in refusing to accept and file such  
28 nomination petition, paper or certificate may be reviewed by the  
29 court upon an application to compel its reception as of the date  
30 when presented to the Secretary of the Commonwealth or such

1 board. The application shall be made within two days of the time  
2 when such decision is announced. If the application is properly  
3 made, any judge of said court may fix a time and place for  
4 hearing the matter in dispute, of which notice shall be served  
5 with a copy of said application upon the Secretary of the  
6 Commonwealth or the county board of elections, as the case may  
7 be. At the time so fixed, the court, or any judge thereof  
8 assigned for the purpose, shall hear the case de novo. If after  
9 such hearing the said court shall find that the decision of the  
10 committee or the board was erroneous, it shall issue its mandate  
11 to the committee or board to correct its decision and to accept  
12 and file the nomination paper, petition or certificate. From any  
13 decision of the court an appeal may be taken within two days  
14 after the entry thereof. It shall be the duty of the said court  
15 to fix the hearing and to announce its decision within such  
16 period of time as will permit the Secretary of the Commonwealth  
17 or the county board of elections to permit the names of the  
18 candidates affected by the court's decision to be printed on the  
19 ballot, if the court should so determine.

20 Section 978.1. Vacancy in Party Nomination by Failure to Pay  
21 Filing Fee or for Failure to File Loyalty Oath.--Every person  
22 nominated at any primary election as the candidate of any  
23 political party for any office, other than a borough, town,  
24 township, school district or poor district office, or the office  
25 of [justice of the peace] magisterial district judge, or  
26 constable, who has not paid the filing fee required by section  
27 nine hundred thirteen of this act, as amended, for the filing of  
28 a nomination petition for such office, or who has not filed the  
29 loyalty oath required by section 14, act of December 22, 1951  
30 (P.L.1726), known as the "Pennsylvania Loyalty Act," as last

1 amended June 19, 1961 (P.L.446), shall pay the amount of such  
2 fee to and file such oath with the Secretary of the  
3 Commonwealth, or the county board of elections, as the case may  
4 be, at least eighty-five (85) days previous to the day of the  
5 general or municipal election at which such candidate's name  
6 would appear on the ballot. Failure to pay such fee or file such  
7 oath within the time herein prescribed shall result in a vacancy  
8 in such party nomination. Such vacancy shall be filled in the  
9 manner hereinafter provided for the filling of such vacancies  
10 happening by reason of the death or withdrawal of any candidate.

11 Section 981.1. Affidavits of Candidates.--Each candidate for  
12 any State, county, city, borough, incorporated town, township,  
13 ward, school district, poor district or election district  
14 office, or for the office of United States Senator or  
15 Representative in Congress, selected as provided in sections 979  
16 and 980 of this act, shall file with the substituted nomination  
17 certificate an affidavit stating--(a) his residence, with street  
18 and number, if any, and his post-office address; (b) his  
19 election district, giving city, borough, town or township; (c)  
20 the name of the office for which he consents to be a candidate;  
21 (d) that he is eligible for such office; (e) that he will not  
22 knowingly violate any provision of this act, or of any law  
23 regulating and limiting election expenses and prohibiting  
24 corrupt practices in connection therewith; (f) unless he is a  
25 candidate for judge of a court of common pleas, the Philadelphia  
26 Municipal Court [or for the office of school board in a district  
27 where that office is elective] or for the office of [justice of  
28 the peace] magisterial district judge, that he is not a  
29 candidate for the same office of any party or political body  
30 other than the one designated in such certificate; (g) that he

1 is aware of the provisions of section 1626 of this act requiring  
2 election and post-election reporting of campaign contributions  
3 and expenditures; and (h) that he is not a candidate for an  
4 office which he already holds, the term of which is not set to  
5 expire in the same year as the office subject to the affidavit.

6 Section 993. Filling of Certain Vacancies in Public Office  
7 by Means of Nomination Certificates and Nomination Papers.--(a)  
8 In all cases where a vacancy shall occur for any cause in an  
9 elective public office, including that of judge of a court of  
10 record, at a time when such vacancy is required by the  
11 provisions of the Constitution or the laws of this Commonwealth  
12 to be filled at the ensuing election but at a time when  
13 nominations for such office cannot be made under any other  
14 provision of this act, nominations to fill such vacancies shall  
15 be made by political parties in accordance with party rules  
16 relating to the filling of vacancies by means of nomination  
17 certificates in the form prescribed in section nine hundred  
18 ninety-four of this act, and by political bodies by means of  
19 nomination papers in accordance with the provisions of sections  
20 nine hundred fifty-one, nine hundred fifty-two and nine hundred  
21 fifty-four of this act. No such nomination certificate shall  
22 nominate any person who has already been nominated by any other  
23 political party or by any political body for the same office  
24 unless such person is a candidate for the office of judge of a  
25 court of common pleas, the Philadelphia Municipal Court [or for  
26 the office of school director in districts where that office is  
27 elective] or for the office of [justice of the peace]  
28 magisterial district judge. No such nomination papers shall  
29 nominate any person who has already been nominated by any  
30 political party or by any other political body for any office to

1 be filled at the ensuing November election, unless such person  
2 is a candidate for the office of judge of a court of common  
3 pleas, the Philadelphia Municipal Court [or for the office of  
4 school director in districts where that office is elective] or  
5 for the office of [justice of the peace] magisterial district  
6 judge.

7 (b) Said nomination certificates and nomination papers for  
8 State public offices and judges of courts of records shall be  
9 filed in the office of the Secretary of the Commonwealth at  
10 least fifty (50) days prior to a general or municipal election,  
11 as the case may be. Nomination certificates and nomination  
12 papers for public offices in counties, cities, boroughs, towns,  
13 townships, wards and school districts and for the offices of  
14 aldermen and [justices of the peace] magisterial district judges  
15 shall be filed in the office of the county board of elections at  
16 least fifty (50) days prior to a municipal election.

17 \* \* \*

18 Section 998. Substituted Nominations to Fill Certain  
19 Vacancies for a November Election.--(a) Any vacancy happening  
20 or existing in any party nomination made in accordance with the  
21 provisions of section nine hundred ninety-three of this act for  
22 a November election by reason of the death or withdrawal of any  
23 candidate may be filled by a substituted nomination made by such  
24 committee as is authorized by the rules of the party to make  
25 nominations in the event of vacancies on the party ticket, in  
26 the form prescribed by section nine hundred ninety-four of this  
27 act. But no substituted nomination certificate shall nominate  
28 any person who has already been nominated by any other political  
29 party or by any political body for the same office, unless such  
30 person is a candidate for the office of judge of a court of

1 common pleas, the Philadelphia Municipal Court [or for the  
2 office of school director in districts where that office is  
3 elective] or for the office of [justice of the peace]  
4 magisterial district judge.

5 (b) In case of the death or withdrawal of any candidate  
6 nominated by a political body for an election, the committee  
7 named in the original nomination papers may nominate a  
8 substitute in his place by filing a substituted nomination  
9 certificate in the form and manner prescribed by section nine  
10 hundred eighty of this act. In the case of a vacancy caused by  
11 the death of any candidate, said nomination certificate shall be  
12 accompanied by a death certificate properly certified. No  
13 substituted nomination certificate shall nominate any person who  
14 has already been nominated by any political party or by any  
15 other political body for any office to be filled at the ensuing  
16 November election, unless such person is a candidate for the  
17 office of judge of a court of common pleas, the Philadelphia  
18 Municipal Court [or for the office of school director in  
19 districts where that office is elective] or for the office of  
20 [justice of the peace] magisterial district judge.

21 \* \* \*

22 Section 1004. Form of Ballots; Printing Ballots.--From the  
23 lists furnished by the Secretary of the Commonwealth under the  
24 provisions of sections 915 and 984, and from petitions and  
25 papers filed in their office, the county election board shall  
26 print the official primary and election ballots in accordance  
27 with the provisions of this act: Provided, however, That in no  
28 event, shall the name of any person consenting to be a candidate  
29 for nomination for any one office, except the office of judge of  
30 a court of common pleas, the Philadelphia Municipal Court [or

1 the office of school director in districts where that office is  
2 elective] or the office of [justice of the peace] magisterial  
3 district judge be printed as a candidate for such office upon  
4 the official primary ballot of more than one party. All ballots  
5 for use in the same election district at any primary or election  
6 shall be alike.

7 Section 1405. Manner of Computing Irregular Ballots.--The  
8 county board, in computing the votes cast at any primary or  
9 election, shall compute and certify votes cast on irregular  
10 ballots exactly as such names were written, stamped or deposited  
11 in or on receptacles for that purpose, and as they have been so  
12 returned by the election officers. In districts in which paper  
13 ballots or ballot cards are electronically tabulated, stickers  
14 or labels may not be used to mark ballots. A vote cast by means  
15 of a sticker or label affixed to a ballot or ballot card shall  
16 be void and may not be counted. In the primary the Secretary of  
17 the Commonwealth shall not certify the votes cast on irregular  
18 ballots for any person for a National office including that of  
19 the President of the United States, United States Senator and  
20 Representative in Congress; or for any State office including  
21 that of Governor and Lieutenant Governor, Auditor General, State  
22 Treasurer, Senator and Representative in the General Assembly,  
23 justices and judges of courts of record or for any party office  
24 including that of delegate or alternate delegate to National  
25 conventions and member of State committee unless the total  
26 number of votes cast for said person is equal to or greater than  
27 the number of signatures required on a nomination petition for  
28 the particular office. In the primary the county board shall not  
29 certify the votes cast on irregular ballots for any person for a  
30 [justice of the peace] magisterial district judge, constable,

1 National, State, county, city, borough, town, township, ward,  
2 school district, election or local party office unless the total  
3 number of votes cast for said person is equal to or greater than  
4 the number of signatures required on a nomination petition for  
5 the particular office.

6 Section 2. This act shall take effect in 60 days.