

LUZERNE COUNTY BOARD OF ELECTIONS AND REGISTRATION

AGENDA

January 18, 2023 at 5:00 P.M.

Council Meeting Room

Luzerne County Courthouse

200 N. River Street Wilkes-Barre, PA 18701

And

Video/Teleconference via ZOOM

CALL TO ORDER

PLEDGE OF ALLEGIANCE & MOMENT OF SILENCE

ROLL CALL

ADOPTION OF AGENDA

PUBLIC COMMENT ON AGENDA ITEMS

This is an opportunity for members of the public to address the Board on matters listed on the agenda. (Limited to 3 minutes & one comment time per person) Please refer to the Board of Elections and Registration Online page of County's Website at <https://www.luzernecounty.org/1282/ABC-Meetings-Online> for information on how to participate in Public Comment via technology.

APPROVAL OF MEETING MINUTES FROM: Regular Meeting on January 4, 2023 (pp. 3-6)

Bureau

1. **January 31, 2023 Special Election Update:** Information

Board

1. **Best Practices for Luzerne County Election Board and Election Bureau Cooperation in Election Matters : Budget Review, Election Equipment Purchases, Hiring Process Input** (DW): Information, Discussion, Possible Board Vote
2. **April 6, 2022 Complaint Filed by Cynthia DeLuca to Luzerne County Board of Elections:** (DW): Information
3. **2023 Primary Election Ballot Drop Box Sites:** (DW): Information, Discussion, Possible Board Vote
4. **Creation of Board of Elections & Registration By-Laws:** Information, Discussion, Possible Board Vote
5. **Naming a Clerk to the Board with Designee:** (AF): Information, Discussion, Possible Board Vote

6. **Hazleton Area Election Day Chain of Custody Concerns:** (AF): Information, Discussion, Possible Board Vote
7. **Policies and Procedures of Bureau and Manual:** (AF): Information, Discussion, Possible Board Vote
 - a. **Possible Committee Creation:** Information, Discussion, Possible Board Vote
8. **Voting Machine Deployment Procedures Checklist (p. 7):** (AF): Information, Discussion, Possible Board Vote
9. **Mail-in Surrender/Provisional Ballots (pp. 8-14):** (AF): Information, Discussion, Possible Board Vote
10. **Processing of items in Judge 's Bags Following the Election:** (AF): Information, Discussion, Possible Board vote

COMMENT ON NON-AGENDA ITEMS

This is an opportunity for members of the public to address the Board on matters not listed on the agenda but which must be within the subject matter jurisdiction of the Board. (Limited to 3 minutes & one comment time per person) Please refer to the Board of Elections and Registration Online page of County's Website at <https://www.luzernecounty.org/1282/ABC-Meetings-Online> for information on how to participate in Public Comment via technology.

MOTION TO ADJOURN

ADJOURNMENT

LUZERNE COUNTY BOARD OF ELECTIONS

AND REGISTRATIONS MEETING MINUTES

LUZERNE COUNTY COURTHOUSE COUNCIL ROOM

JANUARY 4, 2023

CALL TO ORDER 5:06 PM

PLEDGE OF ALLEGIANCE AND MOMENT OF SILENCE

EXECUTIVE SESSION

An executive session was held on January 3, 2023 10:00-10:42 AM to discuss litigation regarding undated ballots. No deliberations took place.

ROLL CALL

Alyssa Fusaro yes, Jim Mangan yes, Danny Schramm yes, Audrey Serniak yes,

Denise Williams yes

APPROVAL OF AGENDA

Motion to approve Alyssa Fusaro 2nd jim Mangan, unanimous

PUBLIC COMMENTS (3 minutes)

Walter Griffith was cut off; will move forward and resume his comment later. No other comments.

MINUTES

Motion to approve the minutes from December 14, 2023 Jim Mangan 2nd Danny Schramm, unanimous

SOLICITOR'S REPORT

Paula Radick advised that \$20 is the maximum to be paid to JoEs for transport and delivery of election materials; the current mileage is \$.0625; recommended the Board follow the statute

BUREAU OF ELECTIONS REPORT

Electronic Poll Books-Beth McBride reported that the test she and Emily Cook performed went well; they will bring in ES&S for L&A testing late January; paper poll books will be available as a back up

Special Election Update-Beth McBride reported that the Bureau received confirmation from the Dept of State that the Libertarian candidate would not be on the ballot; today the candidate filed a court action to be included; proceeding as planned unless they hear otherwise; no court date has been set

L&A testing began today; will proceed with printing the ballots when testing completed;

hiring temporary workers for canvassing and hope to use workers previously hired for the 2022

General; poll worker training will begin this weekend; military/overseas ballots have gone out

Regarding the Hazleton drop box, Jen Pecora will be a meeting on Friday to set up cameras; target for mail in ballots to go out is next week

Alyssa Fusaro-picture on the ballot still shows a marker not a pen

Beth McBride advises we vote on the ballot now; the deadline is January 17th for the ballot; too late to change the picture for the Special Election; it can be done for the primary

Alyssa Fusaro-Board voted to change the picture again April 27, 2022

Beth McBride-ballot was received last week for review and nothing was said

Denise Williams moved to approve the ballot with picture of pen if possible 2nd Jim Mangan,

4 yes 1 no (Alyssa Fusaro) motion passes

BOARD OF ELECTIONS REPORT

Payment to JoEs-Bureau Adminins determine the mileage from the poll to Penn Place or Hazleton Commons; recommends the JoE's determine their own mileage but is still working on that

Paula Radick advised the Board vote using the federal mileage rate rather than the current \$.0625

Alyssa Fusaro moved to approve mileage based on the federal mileage rate for JoEs

2nd Danny Schramm,

Jim Mangan yes, Danny Schramm yes, Audrey Serniak yes, Alyssa Fusaro yes,

Denise Williams yes; unanimous

Denise Williams moved that the payment to JoEs for pick up and delivery of supplies will be \$20 in alignment with the statute 2nd Alyssa Fusaro,

Danny Schramm yes, Audrey Serniak yes, Alyssa Fusaro yes, Jim Mangan yes,

Denise Williams yes; unanimous

Curing-Audrey Serniak moved that the Board use the curing process in place for the Special Election 2nd Jim Mangan,

Audrey Serniak yes, Alyssa Fusaro no, Jim Mangan yes, Danny Schramm yes,

Denise Williams yes; 4 yes 1 no, motion passes

Procedures for Sealing and Deploying Machines-Alyssa Fusaro suggests a regulatory committee or Board work session to review and changes procedures if necessary; better accountability is needed with signatures and dates so that responsibility for procedures is taken; the Board needs to be proactive

Denise Williams-Board received the information requested and can suggest changes or have them added to the agenda; doesn't think a committee or addition meetings are necessary; procedures have been pushed off with the changes in leadership and special elections

Jim Mangan-follow the policies and procedures in place;can't just try but must follow them

Audrey Serniak-can always ask to see the procedures; there has been a culture of not writing procedures down and losing the institutional knowledge when there is a change in personnel; the election integrity committee advised there is a need for a policy and procedures manual; Emily Cook has done a lot of work on this

Danny Schramm-we don't have to complicate things

Jim Mangan-we need prevention; doesn't want another election like the last one; would like to see the manual; procedures that can be spot checked

Alyssa Fusaro-we've been talking about a manual for a long time; would like to make a motion

Audrey Serniak-can't vote because not on the agenda

Denise Williams-Sunshine Law and can be put on agenda for next meeting

Jim Mangan-need to know what exists

Provisional Ballot Review-Alyssa Fusaro-this is not necessary for the special election but will be for the primary; needs to know that the information from the provisional ballots that have been flagged because of any changes in registration or address have been updated in SURE

Beth McBride-the information is updated in SURE

Denise Williams-this is to be done for both rejected and accepted provisionals

Board Bylaws-Alyssa Fusaro pointed out that Council has bylaws and that it might be a good idea for the Board to adopt them; doesn't have to be extensive-procedures for operations and best practices

Jim Mangan-how much latitude do we have given the level of intervention by the state

Alyssa Fusaro-more of what rules to follow during a meeting, personnel matters, how we conduct ourselves, guidelines on how we operate and behave; would be helpful for new members

Denise Williams-can we create our own bylaws?

Paula Radick-would have to look into this; cannot conflict with the charter and the administrative code

Denise Williams-sees merit in a code of conduct-talking to the media, interaction with Bureau employees, recommends other Board members look at the bylaws of other county committees;

How do we do this? Process should be public and not through emails

PUBLIC COMMENTS (3 minutes)

Walter Griffiths-the reimbursement forms for the Special Election need to be approved by the Board before they are submitted; regarding a procedures manual one was created by the Election Group so one should exist; campaign finance reports need to be put online and should be preparing for this because the primary is a local one; should use the county form for mileage reimbursement; bylaws are a good idea-rules regarding how a meeting is run

Alyssa Fusaro-the manual was part of an additional package costing \$15,000 which we did not purchase

Claudia Glennon, Salem Township-excellent idea for a procedure manual for the Bureau; bylaws should be standard across the board; maybe county should take it on and then the Board or a committee customize it for the Board; no need to reinvent the wheel

MOTION TO ADJOURN

Alyssa Fusara 2nd Jim Mangan, unanimous

ADJOURNED 6:41 PM

SEAL TEAM

Prep machines

- Fill printer paper trays in all Ballot Marking Devices (ICX).
- Load additional paper in the ADA machine for each precinct.
- Place power cord and extension cord in ADA machine for each precinct.
- Replace thermal rolls for ICP.
- Check for test ballots left behind during LAT.
- Print identifying cards for the red ballot bags.
- Insert cards into bags, then build the bags, and place them in the corresponding machine. (Every machine is labeled)

Sealing machines

*Scan the barcodes on the seals in the order they are written. IT holds the scanners, and creates the tracking spreadsheet

ICX (Ballot Marking Device)

- Scan machine ID (on the back of the Tablet).
- Seal the top doors on both sides of the tablet.
- Seal the front door.
- Seal the back door.
- Seal the lid.

Enter the municipality to the tracking spreadsheet.

ICP (Precinct scanner)

- Scan machine ID (on the right side of the machine).
- Seal side door
- Seal locking mechanism for the Scanner.
- Seal top side access point (on the right).
- Seal Poll Worker access point
- Seal Admin access point

§ 3050. Manner of applying to vote; persons entitled to vote;..., PA ST 25 P.S. § 3050

KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Prior Version Held Unconstitutional by [Applewhite v. Com.](#), Pa.Cmwlt., Jan. 17, 2014 KeyCite Yellow Flag - Negative Treatment Proposed Legislation

25 P.S. § 3050

§ 3050. Manner of applying to vote; persons entitled to vote; voter's certificates; entries to be made in district register; numbered lists of voters; challenges

Effective: March 27, 2020 [Currentness](#)

(a) At every primary and election each elector who appears to vote and who desires to vote shall first present to an election officer proof of identification. The election officer shall examine the proof of identification presented by the elector and sign an affidavit stating that this has been done.

(a.1) Deleted by [2012, March 14, P.L. 195, No. 18, § 3](#), imd. Effective.

(a.2) If any of the following apply, the elector shall be permitted to cast a provisional ballot in accordance with subsection (a.4):

(1) The elector is unable to produce proof of identification:

- i. on the grounds that the elector is indigent and unable to obtain proof of identification without the payment of a fee; or
- ii. on any other grounds.

(2) The elector's proof of identification is challenged by the judge of elections.

(a.3)(1) All electors, including any elector that shows proof of identification pursuant to subsection (a), shall subsequently sign a voter's certificate in blue, black or blue-black ink with a fountain pen or ball point pen, 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.

(2) 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,

§ 3050. Manner of applying to vote; persons entitled to vote;..., PA ST 25 P.S. § 3050

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.

(3) 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 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.

(4) 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, 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.

(5) 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 district 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 appear to vote shall be required to produce proof of identification pursuant to subsection (a) 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

Check the Reason for Casting the Provisional Ballot.

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 seven calendar days of the election, the county board of elections shall examine each provisional ballot envelope that is received to determine if the individual voting that ballot was entitled to vote at the election district in the election. One

§ 3050. Manner of applying to vote; persons entitled to vote;..., PA ST 25 P.S. § 3050

authorized representative of each candidate in an election and one representative from each political party shall be permitted to remain in the room in which the determination is being made. Representatives shall be permitted to keep a list of those persons who cast a provisional ballot and shall be entitled to challenge any determination of the county board of elections with respect to the counting or partial counting of the ballot under this section. Upon challenge of any provisional ballot under this clause, the ballot envelope shall be marked “challenged” together with the reason for the challenge, and the provisional ballot shall be set aside pending final determination of the challenge according to the following procedure:

(i) Provisional ballots marked “challenged” shall be placed unopened in a secure, safe and sealed container in the custody of the county board of elections until it shall fix a time and place for a formal hearing of all such challenges, and notice shall be given where possible to all provisional electors thus challenged and to every attorney, watcher or candidate who made the challenge.

(ii) The time for the hearing shall not be later than seven days after the date of the challenge.

(iii) On the day fixed for the hearing, the county board shall proceed without delay to hear the challenges and, in hearing the testimony, the county board shall not be bound by the Pennsylvania Rules of Evidence.

(iv) The testimony presented shall be stenographically recorded and made part of the record of the hearing.

(v) The decision of the county board in upholding or dismissing any challenge may be reviewed by the court of common pleas of the county upon a petition filed by any petitioner aggrieved by the decision of the county board. The appeal shall be taken, within two days after the decision was made, whether the decision was reduced to writing or not, to the court of common pleas setting forth the objections to the county board's decision and praying for an order reversing the decision.

(vi) Pending the final determination of all appeals, the county board shall suspend any action in canvassing and computing all challenged provisional ballots irrespective of whether or not an appeal was taken from the county board's decision.

(vii) Upon completion of the computation of the returns of the county, the votes cast upon the challenged official provisional ballots shall be added to the other votes cast within the county.

(5)(i) Except as provided in subclause (ii), 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, shall count the ballot if the county board of elections confirms that the individual did not cast any other ballot, including an absentee ballot, in the election.

(ii) A provisional ballot shall not be counted if:

(A) either the provisional ballot envelope under clause (3) or the affidavit under clause (2) is not signed by the individual;

(B) the signature required under clause (3) and the signature required under clause (2) are either not genuine or are not executed by the same individual;

§ 3050. Manner of applying to vote; persons entitled to vote;..., PA ST 25 P.S. § 3050

(C) a provisional ballot envelope does not contain a secrecy envelope;

(D) in the case of a provisional ballot that was cast under subsection (a.2)(1)(i), within six calendar days following the election the elector fails to appear before the county board of elections to execute an affirmation or the county board of elections does not receive an electronic, facsimile or paper copy of an affirmation affirming, under penalty of perjury, that the elector is the same individual who personally appeared before the district election board on the day of the election and cast a provisional ballot and that the elector is indigent and unable to obtain proof of identification without the payment of a fee;

(E) in the case of a provisional ballot that was cast under subsection (a.2)(1)(ii), within six calendar days following the election, the elector fails to appear before the county board of elections to present proof of identification and execute an affirmation or the county board of elections does not receive an electronic, facsimile or paper copy of the proof of identification and an affirmation affirming, under penalty of perjury, that the elector is the same individual who personally appeared before the district election board on the day of the election and cast a provisional ballot; or

(F) the elector's absentee ballot or mail-in ballot is timely received by a county board of elections.

(iii) One authorized representative of each candidate in an election and one representative from each party shall be permitted to remain in the room in which deliberation or determination of subclause (ii) is being made.

(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) The following shall apply:

(i) Except as provided in clause (ii), if it is determined that the individual voting the provisional ballot was eligible to vote in the county in which the ballot was cast 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 if:

(A) the county board of elections confirms that the individual did not cast any other ballot, including an absentee ballot, in the election; and

(B) the individual casting the provisional ballot is a resident of the county in which the provisional ballot was cast.

(ii) In the event that the individual casting the provisional ballot is not found to be a resident of the county in which the provisional ballot was cast, the ballot shall not be counted.

(iii) In the event that the board of elections determines, based on an evidentiary record, that the individual intentionally and wilfully cast a provisional ballot in an election district in which the individual was not eligible to vote, the ballot shall not be counted.

§ 3050. Manner of applying to vote; persons entitled to vote;..., PA ST 25 P.S. § 3050

(8) On election night, immediately upon completion of the count and tabulation of the votes cast, the judge of election shall prepare and certify under oath a tally displaying the number of provisional ballots received from the election board and the number of provisional ballots cast and transmitted to the county board of elections. The judge of election shall record on the tabulation the name of the individual into whose possession the provisional ballots were passed for transmission to the county board of elections.

(9) All provisional ballots and the tally of provisional ballots tabulated under clause (8) in the possession of an election board official shall be promptly returned by the judge of election to the custody of the proper county election board in accordance with sections 1113-A(j),¹ 1225(b)² and 1228(a)³

(10) One authorized representative of each candidate in an election and one representative from each political party shall be permitted to remain in the room where provisional ballots are received by the county board of elections.

(11) 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.

(12) 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 XIII⁴ 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 1210⁵ 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.

§ 3050. Manner of applying to vote; persons entitled to vote;..., PA ST 25 P.S. § 3050

(e) A person who wilfully commits fraud or who conspires to wilfully commit fraud in relation to any of the provisions of this section commits a felony of the third degree and, upon conviction, shall be sentenced to pay a fine not exceeding fifteen thousand dollars (\$15,000) or to undergo a term of imprisonment of not more than seven years, or both. An individual convicted under this subsection shall be barred for life from serving as a judge, inspector or clerk of election, machine inspector translator, county election board official, poll watcher or in any other official capacity relating to the sanctity, observation or conduct of Pennsylvania elections.

(f) As used in this section, “care facility” means any of the following:

(1) A long-term care nursing facility as defined in section 802.1 of the act of July 19, 1979 (P.L. 130, No. 48),⁶ known as the “Health Care Facilities Act.”

(2) An assisted living residence or a personal care home as defined in section 1001 of the act of June 13, 1967 (P.L. 31, No. 21),⁷ known as the “Public Welfare Code.”

Credits

1937, June 3, P.L. 1333, art. XII, § 1210. Amended 1982, June 10, P.L. 458, No. 135, § 2, effective in 60 days; [2002, Dec. 9, P.L.1246, No. 150, § 12](#), effective in 1 year; [2004, Oct. 8, P.L. 807, No. 97, § 5.1](#); [2006, May 11, P.L. 178, No. 45, § 10](#), effective July 1, 2006; [2012, March 14, P.L. 195, No. 18, § 3](#), imd. effective; [2019, Oct. 31, P.L. 552, No. 77, § 3.2](#), imd. effective; [2019, Nov. 27, P.L. 673, No. 94, § 5](#), imd. effective; [2020, March 27, P.L. 41, No. 12, § 6](#), imd. effective.

Editors' Notes

VALIDITY

<25 P.S. § 3050 was held unconstitutional, and enforcement of its in-person photographic identification provisions permanently enjoined, by [Applewhite v. Com., 2014 WL 184988 \(Pa.CmwltH. 2014\)](#).>

[Notes of Decisions \(22\)](#)

Footnotes

[1](#) [25 P.S. § 3031.13](#).

[2](#) [25 P.S. § 3065](#).

[3](#) [25 P.S. § 3068](#).

[4](#) [25 P.S. § 3146.1 et seq.](#)

[5](#) This section.

[6](#) [35 P.S. § 448.802a](#).

§ 3050. Manner of applying to vote; persons entitled to vote;..., PA ST 25 P.S. § 3050

[7 62 P.S. § 1001 et seq.](#)

25 P.S. § 3050, PA ST 25 P.S. § 3050

Current through 2022 Regular Session Act 166. Some statute sections may be more current, see credits for details.

End of Document

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