

MOTION OF THE COUNCIL OF ALLEGHENY COUNTY

Urging the General Assembly to enact, with all deliberate speed, the provisions of S.B. 400, introduced on April 26, 2023, and providing for the institution of a semi-open Primary Election voting process in the Commonwealth.

WHEREAS, Pennsylvania is one of only nine of the United States that continues to utilize a “closed” Primary Election voting system, in which only members of the two major parties may cast ballots for their own parties’ candidates for elected office, and independent and unaffiliated voters are limited to voting only on ballot questions; and

WHEREAS, because of this “closed” Primary Election voting system (which has been in place in Pennsylvania since 1937), over 1.2 million voters in the Commonwealth are statutorily forbidden from voting for any candidate(s) in any primary election, with about 1.1 million of these voters being registered as “independent” otherwise unaffiliated with any party; and

WHEREAS, as noted in a co-sponsorship memorandum circulated by the two primary sponsors of S.B. 400, Senators Boscola (D – Northampton) and Laughlin (R – Erie) in December of 2022, independent and/or unaffiliated voters likely include disproportionate numbers of Pennsylvania veterans, since half of all veterans are political independents, along with a high number of young voters, Latino and Asian-American voters, who on average are much more likely to register as independents; and

WHEREAS, a “closed” primary system therefore likely disadvantages these demographic groups disproportionately, by forbidding those that register as independent or unaffiliated from having any say in any candidate’s presence on a General Election ballot; and

WHEREAS, Senators Boscola and Laughlin also note that “closed primaries constitute a form of taxation without representation, as all taxpayers pay for primary elections but not all are allowed to participate.” See, co-sponsorship memorandum of December 22, 2022; and

WHEREAS, Senator Boscola has additionally indicated that Gallup polling conducted in march of 2023 indicated that 49% of U.S. residents surveyed consider themselves as politically independent, which is the highest level in more than two years and the second-highest in 19 years of Gallup survey data on the question; See, Turner, *“There’s a new push to make Pennsylvania’s primary elections open to independents,”* Pittsburgh Post-Gazette, April 27, 2023; and

WHEREAS, as indicated in that same published report, Senator Boscola and other co-sponsors are of the considered opinion that “closed” Primary Systems at least implicitly

encourage candidates for office to attempt to appeal to more polarized viewpoints, in an effort to distinguish themselves from their opponents, who are of the same party affiliation; and

WHEREAS, Senators Boscola and Laughlin have both indicated that a semi-open primary system in which independent and unaffiliated voters would be permitted to vote for candidates in primary elections would necessarily require Democratic and Republican Primary Election candidates to reach out to a broader cross-section of voters, rather than being virtually forced to seek the support of only the extreme right or extreme left of the electorate. See, Turner, Id.; and

WHEREAS, it is the considered opinion of Council that the General Assembly should modernize the Commonwealth’s antiquated “closed” primary system in an effort to mitigate polarization in our primary election process;

NOW THEREFORE, IT IS MOVED, BY THE COUNCIL OF ALLEGHENY COUNTY, THAT

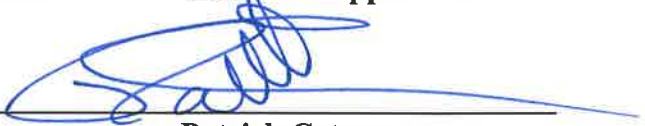
Council hereby urges the General Assembly to enact, with all deliberate speed, the provisions of S.B. 400, introduced on April 26, 2023, and providing for the institution of a semi-open Primary Election voting process in the Commonwealth.

PRIMARY SPONSOR: COUNCIL MEMBER DUERR


CO-SPONSOR(S):

In Council May 23rd 2023.

Read and Approved.



**Patrick Catena
President of Council**

Attest: 
**Jared Barker, Chief Clerk
Allegheny County Council**

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 400 Session of 2023

INTRODUCED BY LAUGHLIN, BOSCOLA, COLLETT, DiSANTO, HAYWOOD,
PENNYCUICK, CAPPELLETTI, SANTARSIERO, COMMITTA, STEFANO,
COSTA, KEARNEY, BARTOLOTTA, SCHWANK AND STREET,
APRIL 26, 2023

REFERRED TO STATE GOVERNMENT, APRIL 26, 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 preliminary provisions, further providing for
12 definitions; in qualifications of electors, further providing
13 for qualifications of electors at primaries; in party
14 organization, further providing for only enrolled electors to
15 vote at primaries or hold party offices; in nomination of
16 candidates, further providing for candidates to be nominated
17 and party officers to be elected at primaries and providing
18 for procedure for unenrolled electors to cast primary
19 ballots; and, in preparation for and conduct of primaries and
20 elections, further providing for manner of applying to vote,
21 persons entitled to vote, voter's certificates, entries to be
22 made in district register, numbered lists of voters and
23 challenges.

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

26 Section 1. Section 102 of the act of June 3, 1937 (P.L.1333,
27 No.320), known as the Pennsylvania Election Code, is amended by

1 adding a definition to read:

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

5 * * *

6 (z.7) The words "unenrolled elector" shall mean a person who
7 is registered to vote within an election district having
8 selected "none or no affiliation" or "independent" in regard to
9 a political party on their Pennsylvania voter registration
10 application.

11 Section 2. Sections 702, 802 and 902 of the act are amended
12 to read:

13 Section 702. Qualifications of Electors at Primaries.--(a)
14 The qualifications of electors entitled to vote at primaries
15 shall be the same as the qualifications of electors entitled to
16 vote at elections within the election district where the primary
17 is held[, provided that no elector who is not registered and
18 enrolled as a member of a political party, in accordance with
19 the provisions of this act, shall be permitted to vote the
20 ballot of such party or any other party ballot at any primary].

21 (b) Unenrolled electors shall be permitted to vote in
22 primary elections in accordance with the procedures specified in
23 sections 902.1 and 1231.

24 Section 802. Only Enrolled Electors to [Vote at Primaries
25 or] Hold Party Offices.--No person who is not registered and
26 enrolled as a member of a political party shall be entitled to
27 [vote at any primary of such party or to] be elected or serve as
28 a party officer, or a member or officer of any party committee,
29 or delegate or alternate delegate to any party convention.

30 Section 902. Candidates to Be Nominated and Party Officers

1 to Be Elected at Primaries.--All candidates of political
2 parties, as defined in section 801 of this act, for the offices
3 of President of the United States, United States Senator,
4 Representative in Congress and for all other elective public
5 offices within this State, except that of presidential electors,
6 shall be nominated, and party delegates and alternate delegates,
7 committeemen and officers who, under the provisions of Article
8 VIII of this act or under the party rules, are required to be
9 elected by the party electors, shall be elected at primaries
10 held in accordance with the provisions of this act[, except as
11 otherwise provided in this act. In the years when candidates for
12 the office of President of the United States are to be
13 nominated, every registered and enrolled member of a political
14 party shall have the opportunity at the Spring primary in such
15 years to vote his preference for one person to be the candidate
16 of his political party for President.]. In a primary election
17 conducted in this Commonwealth, all unenrolled electors shall
18 have the opportunity to vote in accordance with the procedures
19 set forth in section 902.1.

20 Section 3. The act is amended by adding a section to read:
21 Section 902.1. Procedure for Unenrolled Electors to Cast
22 Primary Ballots.--(a) Upon confirming an unenrolled elector's
23 status as a registered elector, the elections officer shall ask
24 the unenrolled elector in which political party's primary the
25 unenrolled elector desires to vote, and the elections officer
26 upon reply shall record the unenrolled elector's selection upon
27 the unenrolled elector's certificate and for the purpose of that
28 ballot only shall be deemed enrolled in that party. The
29 unenrolled elector shall not sign the voter's certificate until
30 the elections officer has recorded the unenrolled elector's

1 desired political party on the certificate.

2 (b) The ballot provided to an unenrolled elector shall not
3 include a selection for a political party officer or a member or
4 officer of a party committee.

5 (c) The Secretary of the Commonwealth shall provide guidance
6 to the county boards of elections on how to prepare and
7 distribute voter registration materials and the requisite ballot
8 information and printing requirements regarding unenrolled
9 electors voting in a primary election.

10 (d) The county boards of elections shall prepare cards of
11 instruction and related materials in accordance with the
12 requirements of section 1202 and this section for unenrolled
13 electors voting in a primary election. The county boards of
14 elections shall prepare and deliver the official ballots and
15 related materials governing the participation of unenrolled
16 electors in a primary election to the judges of election in the
17 election districts in accordance with section 1204 and this
18 section.

19 (e) The Secretary of the Commonwealth in collaboration with
20 the county boards of elections shall provide information and
21 training to assist poll workers in understanding the
22 requirements of this act regarding the participation of
23 unenrolled electors in a primary election.

24 (f) The Secretary of the Commonwealth in collaboration with
25 the county boards of elections shall adjust absentee and mail-in
26 ballots and the applications for absentee and mail-in ballots
27 for unenrolled electors participating in a specific primary
28 election in accordance with the provisions of this act.

29 (g) The Department of State of the Commonwealth shall modify
30 the SURE system to ensure an unenrolled elector's ballot choice

1 in a specific primary election is properly documented and the
2 voter's unenrolled status is retained in subsequent primary
3 elections and not identified with a particular party affiliation
4 based on which political party's primary the unenrolled elector
5 selected in a prior primary election.

6 Section 4. Section 1210(d) of the act is amended to read:

7 Section 1210. Manner of Applying to Vote; Persons Entitled
8 to Vote; Voter's Certificates; Entries to Be Made in District
9 Register; Numbered Lists of Voters; Challenges.--* * *

10 (d) No person, except a qualified elector who is in actual
11 military or naval service under a requisition of the President
12 of the United States or by the authority of this Commonwealth,
13 and who votes under the provisions of Article XIII of this act,
14 shall be entitled or permitted to vote at any primary or
15 election at any polling place outside the election district in
16 which [he] the person resides, nor shall [he] the person be
17 permitted to vote in the election district in which [he] the
18 person resides, unless [he] the person has been personally
19 registered as an elector and [his] the person's registration
20 card appears in the district register of such election district,
21 except by order of the court of common pleas as provided in this
22 act, and any person, although personally registered as an
23 elector, may be challenged by any qualified elector, election
24 officer, overseer, or watcher at any primary or election as to
25 [his] identity, as to [his] continued residence in the election
26 district or as to any alleged violation of the provisions of
27 section 1210 of this act, and if challenged as to identity or
28 residence, [he] the person shall produce at least one qualified
29 elector of the election district as a witness, who shall make
30 affidavit of [his] the person's identity or continued residence

1 in the election district: Provided, however, That no person
2 shall be entitled to vote as a member of a party at any primary,
3 unless [he] the person is:

4 (1) registered and enrolled as a member of such party upon
5 the district register, which enrollment shall be conclusive as
6 to [his] party membership and shall not be subject to challenge
7 on the day of the primary[.]; or

8 (2) an unenrolled elector, in which case the person may vote
9 for the candidates of the party of the unenrolled elector's
10 choice in accordance with the procedures set forth in section
11 902.1. The unenrolled elector's choice of party at one primary
12 election shall not preclude the unenrolled elector from choosing
13 a different party in a subsequent primary election.

14 * * *

15 Section 5. This act shall apply to the next municipal or
16 general primary election held no less than 180 days after the
17 effective date of this section.

18 Section 6. This act shall take effect immediately.