

ACLU-PA Position: Opposes

Bill summary

[SB 106](#) (P.N. 1279) proposes separate amendments to the Pennsylvania Constitution that would make changes to voting and elections procedures, including: requiring voters to present “valid identification” prior to voting; shifting the authority to audit elections from counties to the Auditor General; changing how candidates for PA Lieutenant Governor are chosen; and making technical changes to voting age and residency requirements. Furthermore, SB 106 proposes limiting the duration of executive orders to 21 days and permitting the legislature to reject, by a simple majority, any executive branch regulation.

What the bill proposes

If adopted by the voters, [SB 106](#) (P.N. 1279) would:

****Note:** *bullet points with a star indicate ACLU-PA comments and/or concerns.*

Require voters to present “valid identification” prior to voting, regardless of the voting method.

- SB 106 would add a voter identification requirement under [Article VII, Section 1](#) (Qualifications of electors) to:
 - Require that all voters must present “valid identification” regardless of voting method.
 - Define valid identification as “any unexpired government-issued identification, unless otherwise authorized by statute.”
 - If a voter does not have “valid identification,” the voter must request and be furnished with a government-issued Identification at no cost to the voter.
- ★ As is often the problem with the General Assembly attempting to legislate by constitutional amendment, SB 106 proposes changes that are unclear, lack necessary detail, and are better accomplished through statutory, not constitutional, changes. For example:
 - ★ SB 106 does not specify what counts as a government-issued ID. Would a SEPTA ID with a picture count? A school district ID? A township or county employee ID? SB 106 leaves the door open for the legislature to narrow, or perhaps expand, the types of ID that would comply with the amendment.
 - ★ SB 106 does not provide guidance around the process for requesting and furnishing the free, government-provided ID. This lack of clarity could sow confusion at the polls. If a voter doesn’t have an approved form of ID at the polls, can the voter request and be furnished one at that time?
 - ★ [Applewhite v. Commonwealth](#) struck down a 2012 voter ID bill that required IDs to have an expiration date. SB 106 requires that valid identification must be “unexpired,” but this language is ambiguous—if an ID has no expiration date, does that mean it’s unexpired? Or does “unexpired” presume / require that an ID must have an expiration date? Again, this leads to needless confusion and invites the legislature to clarify those definitions **only after voters are asked whether or not to adopt this constitutional amendment.**

Shift responsibility and oversight of election audits from counties to the Auditor General.

- SB 106 would add a new section to [Article VII](#), Section 15 (Election audits) to require the General Assembly to provide for the auditing of elections via statute, which must include audits of:
 - Administration of elections
 - Certification of election machines

- Accuracy of the registered voters list
 - Administration of voter registration
 - Election results
- SB 106 would require the Auditor General to conduct the audits. In years when the Auditor General stands for election to any office, an independent auditor will conduct the audit.
 - ★ This provision would shift audit authority from counties to the auditor general. The Auditor General has no expertise in elections and no staff trained to conduct such audits, likely creating enormous disruption to the certification of elections.

Impose limits on executive orders.

- SB 106 would add a new section to [Article IV](#) (The Executive) to limit the duration of an executive order or proclamation issued by the Governor or an executive agency to 21 days, unless terminated or extended by concurrent resolution in the General Assembly.
- ★ This provision is similar to the amendment adopted by voters on May 18, 2021, which added [§ 20 to Article IV](#) to limit disaster declarations issued by the Governor to 21 days unless the legislature terminates or extends a declaration by a concurrent resolution.

Allow the legislature to reject executive-level regulations.

- SB 106 would amend [Article III, Section 9](#) (Action on concurrent orders and resolutions) to provide a new exception to traditional legislative procedure by allowing the General Assembly to disapprove of an executive regulation without needing the Governor's approval.
- ★ Currently, Article III, Section 9 establishes a general rule that all orders, resolutions or votes requiring approval by both the House of Representatives and Senate must be presented to the Governor for approval or veto. Resolutions for the adjournment of the General Assembly and disaster declarations are exempted from this process. If the order, resolution or vote is approved by the Governor, it becomes law. If the Governor vetoes the resolution, it does not become law unless two-thirds of the House and Senate vote to override the veto. SB 106 would create an additional exception to this procedure, which would remove veto power from the Governor if/when the legislature rejects a regulation issued by the Governor or an executive-level agency.

Change the selection process for the Lt. Governor.

- Currently, the Lieutenant Governor of Pennsylvania is elected separately from the Governor.
- SB 106 would amend [Article IV, Section 4](#) (Lieutenant Governor) of the Constitution to require each candidate for Governor, upon winning the nomination of the candidate's party, to choose a candidate for Lieutenant Governor no later than 90 days before the general gubernatorial election. Candidates for Lt. Governor would be subject to approval of the candidate's political party.
- SB 106 would prohibit a candidate from seeking election to both offices of Governor and Lieutenant Governor simultaneously.
- ★ This process would be similar to how candidates for Vice President are selected and appear on the ballot.

Make technical changes to voting age and residency requirements.

- SB 106 would amend [Article VII, Section 1](#) (Qualifications of electors) to:
 - Change the voting age from 21 to 18 to comply with federal constitutional and statutory law.
 - Change the residency requirement for living in the *state* from 90 days to 30 days to comply with federal and state statutory law.
 - Change the residency requirement for living in the *election district* from 60 days to 30 days to comply with federal and state statutory law.

- Change the time that a voter can vote in a prior election district after moving to another district from 60 to 30 days. In other words, if a voter moves within 30 days of an election, they could still vote in their old district.

★ These amendments are technical and would update outdated language in the PA Constitution.

Bill status

- As [originally introduced](#), SB 106 was limited to changing how the Lieutenant Governor is selected. This version [passed in the Senate](#) and was reported out of the [House State Government](#) committee.
- When SB 106 reached the House floor, the bill was [amended](#) to include the remaining provisions. It passed the House, as amended, by a vote of [113-87](#).
- Because the House amended a Senate bill, SB 106 PN 1279 must be re-considered by the full Senate for an up-or-down vote on concurrence. It has been awaiting a concurrence vote in the Senate since December 15, 2021.
- **Constitutional amendment process:**
 - Pennsylvania's constitution can only be amended by legislatively referred constitutional amendments as outlined under [Article XI](#) of the PA Constitution.
 - Any proposed amendments must be passed by a simple majority of both chambers in two consecutive legislative sessions (PA has two-year legislative sessions).
 - As a proposed amendment, this means SB 106 would need to pass before the end of this session (November 30, 2022) and then again in the 2023-2024 session.
 - If SB 106 passes this session and again next session, the amendment goes on a statewide ballot as a referendum asking voters to approve or reject the amendment.
 - If SB 106 fails to pass before November 30, 2022, the clock is reset, which means it would have to pass during the 2023-2024 session and again in the 2025-2026 session before it would appear as a statewide ballot question.