

CHAPTER 52

VOTING SYSTEMS

Referred to in §39.3, 39A.1, 39A.2, 39A.4, 39A.6, 43.5, 49.26, 260C.15, 260C.39, 275.35, 277.3, 296.4, 298.18, 331.427, 357J.16, 360.1, 372.2, 376.1

[P]

Chapter applicable to primary elections, §43.5

[P] Definitions in §39.3 applicable to this chapter

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52.1 Voting systems — definitions.

1. At all elections conducted under chapter 49, and at any other election unless the commissioner directs otherwise pursuant to section 49.26, votes shall be cast, registered, recorded, and counted by means of optical scan voting systems, in accordance with this chapter.

2. As used in this chapter, unless the context otherwise requires:

a. “*Automatic tabulating equipment*” means apparatus, including but not limited to electronic data processing machines, that are utilized to ascertain the manner in which optical scan ballots have been marked by voters or by electronic ballot marking devices, and count the votes marked on the ballots.

b. “*Ballot*” includes paper ballots designed to be read by automatic tabulating equipment. In appropriate contexts, “*ballot*” also includes conventional paper ballots.

c. “*Ballot marking device*” means a pen, pencil, or similar writing tool, or an electronic device, all designed for use in marking an optical scan ballot, and so designed or fabricated that the mark it leaves may be detected and the vote so cast counted by automatic tabulating equipment.

d. “*Optical scan ballot*” means a printed ballot designed to be marked by a voter with a ballot marking device.

e. “*Optical scan voting system*” means a system employing paper ballots under which votes are cast by voters by marking paper ballots with a ballot marking device and thereafter counted by use of automatic tabulating equipment.

f. “*Program*” means the written record of the set of instructions defining the operations to be performed by a computer in examining, counting, tabulating, and printing votes.

[S13, §1137-a7; C24, 27, 31, 35, 39, §904; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §52.1] 86 Acts, ch 1224, §17, 18; 2002 Acts, ch 1134, §50, 51, 115; 2004 Acts, ch 1083, §24, 37; 2007 Acts, ch 190, §4, 5; 2009 Acts, ch 57, §46, 47

Referred to in §49.99

52.2 Optical scan voting system required.

Notwithstanding any provision to the contrary, for elections held on or after November 4, 2008, a county shall use an optical scan voting system only. The requirements of the federal Help America Vote Act relating to disabled voters shall be met by a county through the use of electronic ballot marking devices that are compatible with an optical scan voting system.

[S13, §1137-a8; C24, 27, 31, 35, 39, §905; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §52.2] 2004 Acts, ch 1083, §25, 37; 2007 Acts, ch 190, §6; 2008 Acts, ch 1176, §3, 10; 2011 Acts, ch 34, §16

Referred to in §47.10, 331.383

52.3 Terms of purchase — tax levy.

The county board of supervisors, on the adoption and purchase of an optical scan voting system, may issue bonds under section 331.441, subsection 2, paragraph “b”, subparagraph (1).

[S13, §1137-a14; C24, 27, 31, 35, 39, §906; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §81, §52.3; 81 Acts, ch 117, §1009]

83 Acts, ch 123, §46, 209; 2007 Acts, ch 190, §27; 2009 Acts, ch 57, §48

Referred to in §331.383

52.4 Examiners — term — removal.

1. The state commissioner of elections shall appoint three members to a board of examiners for voting systems, not more than two of whom shall be from the same political party. The examiners shall hold office for staggered terms of six years, subject to removal at the pleasure of the state commissioner of elections.

2. At least one of the examiners shall have been trained in computer programming and operations. The other two members shall be directly involved in the administration of elections and shall have experience in the use of optical scan voting systems.

[S13, §1137-a9; C24, 27, 31, 35, 39, §907; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §52.4] 94 Acts, ch 1180, §20; 2007 Acts, ch 190, §28; 2009 Acts, ch 57, §49

52.5 Testing and examination of voting equipment.

1. A person or corporation owning or being interested in an optical scan voting system may request that the state commissioner call upon the board of examiners to examine and test the system. Within seven days of receiving a request for examination and test, the state commissioner shall notify the board of examiners of the request in writing and set a time and place for the examination and test.

2. The state commissioner shall formulate, with the advice and assistance of the examiners, and adopt rules governing the testing and examination of any optical scan voting system by the board of examiners. The rules shall prescribe the method to be used in determining whether the system is suitable for use within the state and performance standards for voting equipment in use within the state. The rules shall provide that all

optical scan voting systems approved for use by the examiners after April 9, 2003, shall meet voting systems performance and test standards, as adopted by the federal election commission on April 30, 2002, and as deemed adopted by Pub. L. No. 107-252, § 222. The rules shall include standards for determining when recertification is necessary following modifications to the equipment or to the programs used in tabulating votes, and a procedure for rescinding certification if a system is found not to comply with performance standards adopted by the state commissioner.

3. The state commissioner may employ a competent person or persons to assist the examiners in their evaluation of the equipment and to advise the examiners as to the sufficiency of the equipment. Consultant fees shall be paid by the person who requested the certification. Following the examination and testing of the optical scan voting system, the examiners shall report to the state commissioner describing the testing and examination of the system and upon the capacity of the system to register the will of voters, its accuracy and efficiency, and with respect to its mechanical perfections and imperfections. Their report shall be filed in the office of the state commissioner and shall state whether in their opinion the kind of system so examined can be safely used by voters at elections under the conditions prescribed in this chapter. If the report states that the system can be so used, it shall be deemed approved by the examiners, and systems of its kind may be adopted for use at elections as provided in this section. Any form of system not so approved cannot be used at any election.

4. Before actual use by a county of a particular optical scan voting system which has been approved for use in this state, the state commissioner shall formulate, with the advice and assistance of the examiners, and adopt rules governing the development of vote counting programs and all procedures used in actual counting of votes by means of that system.

[S13, §1137-a10; C24, 27, 31, 35, 39, §908; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §52.5]

86 Acts, ch 1224, §19; 89 Acts, ch 136, §50; 2004 Acts, ch 1083, §26, 37; 2007 Acts, ch 190, §29; 2009 Acts, ch 57, §50

Referred to in §52.6

52.6 Compensation.

1. Each examiner is entitled to one hundred fifty dollars for compensation and expenses in making an examination and report under section 52.5, to be paid by the person or corporation applying for the examination. However, each examiner shall receive not to exceed fifteen hundred dollars and reasonable expenses in any one year; and all sums collected for such examinations over and above said maximum salaries and expenses shall be turned in to the state treasury.

2. An examiner shall not have any interest whatever in any optical scan voting system reported upon.

[S13, §1137-a10; C24, 27, 31, 35, 39, §909; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §52.6]

2009 Acts, ch 57, §51

52.7 Construction of machine approved — requirements. Repealed by 2009 Acts, ch 57, § 96.

52.8 Experimental use.

The board of supervisors of any county may provide for the experimental use at an election in one or more districts, of an optical scan voting system which it might lawfully adopt, without a formal adoption of the system; and its use at such election shall be as valid for all purposes as if it had been lawfully adopted.

[S13, §1137-a12; C24, 27, 31, 35, 39, §911; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §52.8]

2007 Acts, ch 190, §30; 2009 Acts, ch 57, §52

Referred to in §331.383

52.9 and 52.10 Repealed by 2009 Acts, ch 57, § 96.

52.11 Locking of unused party row. Repealed by 2007 Acts, ch 190, § 13.

52.12 Exception — straight party voting. Repealed by 2007 Acts, ch 190, § 13.

52.13 Sample ballots. Repealed by 2007 Acts, ch 190, § 13.

52.14 Two sets of ballots. Repealed by 2007 Acts, ch 190, § 13.

52.15 Delivery of ballots and supplies. Repealed by 2007 Acts, ch 190, § 13.

52.16 Duties of election officers — independent ballots. Repealed by 2007 Acts, ch 190, § 13.

52.17 and 52.18 Repealed by 2009 Acts, ch 57, § 96.

52.19 Instructions.

In case any elector after entering the voting booth shall ask for further instructions concerning the manner of voting, two precinct election officials of opposite political parties shall give such instructions to the elector; but no precinct election official or other election officer or person assisting an elector shall in any manner request, suggest, or seek to persuade or induce any such elector to vote any particular ticket, or for any particular candidate, or for or against any particular amendment, question, or proposition. After receiving such instructions, the elector shall vote as in the case of an unassisted voter.

[S13, §1137-a22; C24, 27, 31, 35, 39, §921; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §52.19]

2009 Acts, ch 57, §53

52.20 Injury to machine. Repealed by 2009 Acts, ch 57, § 96.

52.21 Canvass of vote — tally sheet. Repealed by 2007 Acts, ch 190, § 13.

52.22 Locking machine. Repealed by 2007 Acts, ch 190, § 13.

52.23 Written statements of election.

After the total vote for each candidate has been ascertained, and before leaving the room or voting place, the precinct election officials shall make and sign the tally list required in section 50.16. One copy of the printed results from each tabulating device shall be signed by all precinct election officials present and shall be attached to the tally list from the precinct. The printed results attached to the tally list shall reflect all votes cast in the precinct, including overvotes and undervotes, for each candidate and public measure on the ballot.

[S13, §1137-a26; C24, 27, 31, 35, 39, §925; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §52.23]

86 Acts, ch 1224, §23; 93 Acts, ch 143, §26; 2007 Acts, ch 190, §31; 2009 Acts, ch 57, §54

52.24 Separate ballots.

Nothing in this chapter shall be construed as prohibiting the use of a separate ballot for public measures.

[S13, §1137-a27; C24, 27, 31, 35, 39, §926; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §52.24]

2009 Acts, ch 57, §55

[P] See also §49.30, 49.43

52.25 Summary of amendment or public measure.

1. The question of a constitutional convention, amendments, and public measures including bond issues may be voted on ballots in the following manner:

a. The entire convention question, amendment, or public measure shall be printed and displayed prominently in at least one place within the voting precinct, and inside each voting booth, the printing to be in conformity with the provisions of chapter 49.

b. The question, amendment, or measure, and summaries thereof, shall be printed on the ballots. In no case shall the font size be less than ten point type.

2. The public measure shall be summarized by the commissioner, except that:

a. In the case of the question of a constitutional convention, or of an amendment or measure to be voted on in the entire state, the summary shall be worded by the state commissioner of elections as required by section 49.44.

b. In the case of a public question to be voted on in a political subdivision lying in more than one county, the summary shall be worded by the commissioner responsible under section 47.2 for conducting that election.

[C62, 66, 71, 73, 75, 77, 79, 81, §52.25]

88 Acts, ch 1119, §25; 2002 Acts, ch 1134, §52, 115; 2007 Acts, ch 59, §16, 19; 2007 Acts, ch 190, §32; 2008 Acts, ch 1032, §201; 2009 Acts, ch 57, §56; 2009 Acts, ch 133, §15

Referred to in §49.43, 364.2

52.26 Authorized optical scan voting system.

1. Every optical scan voting system approved by the state board of examiners for voting systems shall:

a. Provide for voting in secrecy, except as to persons entitled by sections 49.90 and 49.91 to assistance. The state board of examiners for voting systems shall determine whether the systems' voting booths provide for voting in secrecy.

b. Permit each voter to vote at any election for any candidate for each office and upon each public question with respect to which the voter is entitled by law to vote, while preventing the voter from voting more than once upon any public question or casting more votes for any office than there are persons to be elected to that office.

c. Permit a voter to vote for any person for any office on the ballot at that election, whether or not the person's name is printed on the ballot.

d. Be so constructed or designed that, when voting in a primary election in which candidates are nominated by political parties, a voter is limited to the candidates for the nominations of the political party with which that voter is affiliated.

e. Be so constructed or designed that in presidential elections the voter casts a vote for the presidential electors of any party or political organization by a single mark made opposite the name of the candidates of that party or organization for the offices of both president and vice president of the United States, and so that the voter is also provided the opportunity to write in the name of any person for whom the voter desires to vote for president or vice president of the United States.

f. Be so constructed or designed as to permit voting for candidates for nomination or election of at least seven different political parties or organizations, and to permit voting for all of the candidates of any one political party or organization by a single mark, at any one election.

2. A punch card voting system shall not be approved for use.

[C77, 79, 81, §52.26]

90 Acts, ch 1007, §2; 2002 Acts, ch 1134, §53, 115; 2007 Acts, ch 190, §33, 34

52.27 Commissioner to provide optical scan voting equipment.

The commissioner having jurisdiction of any precinct for which the board of supervisors has adopted voting by means of an optical scan voting system shall, as soon as practicable thereafter, provide for use at each election held in the precinct optical scan ballots and ballot marking devices in appropriate numbers. The commissioner shall have custody of all equipment required for use of the optical scan voting system, and shall be responsible for maintaining it in good condition and for storing it between elections.

[C77, 79, 81, §52.27]

2002 Acts, ch 1134, §54, 115; 2007 Acts, ch 190, §35; 2009 Acts, ch 57, §57

52.28 Optical scan voting system ballot forms.

The commissioner of each county in which the use of an optical scan voting system in one or more precincts has been authorized shall print optical scan ballots using black ink on white paper and shall determine the arrangement of candidates' names and public questions upon the ballot or ballots used with the system. The ballot information shall be arranged as required by chapters 43 and 49, and by any relevant provisions of any statutes which specify the form of ballots for special elections, so far as possible within the constraints of the physical characteristics of the optical scan voting system in use in that county. The state commissioner may adopt rules requiring a reasonable degree of uniformity among counties in arrangement of optical scan voting system ballots.

[C77, 79, 81, §52.28]

2002 Acts, ch 1134, §55, 56, 115; 2007 Acts, ch 190, §36; 2009 Acts, ch 57, §58

52.29 Optical scan voting system sample ballots.

The commissioner shall provide for each precinct where an optical scan voting system is in use at least one sample optical scan ballot which shall be an exact copy of the official ballots as printed for that precinct. The sample ballot shall be posted prominently within the polling place, and shall be open to public inspection during the hours the polls are open on election day. If the ballot used on election day has offices or questions appearing on the back of the ballot, both sides of the sample ballot shall be displayed.

[C77, 79, 81, §52.29]

2002 Acts, ch 1134, §57, 115; 2007 Acts, ch 190, §37; 2009 Acts, ch 57, §59

52.30 Repealed by 2002 Acts, ch 1134, § 114, 115.**52.31 Procedure where votes cast on optical scan ballots.**

Preparations for voting and voting at any election in a precinct where votes are to be received on optical scan ballots shall be in accordance with the provisions of chapter 49 governing voting upon conventional paper ballots with the following exceptions:

1. Before entering the voting booth each voter shall be cautioned to mark the ballot only with a ballot marking device provided in the booth or by the precinct election officials.

2. In each precinct where portable automatic tabulating equipment is used, the voter may personally insert the ballot into the tabulating device.

[C77, 79, 81, §52.31]

86 Acts, ch 1224, §24; 2007 Acts, ch 190, §38

52.32 Procedure upon closing polls. Repealed by 2007 Acts, ch 190, § 13.**52.33 Absentee voting by optical scan voting system.**

1. In any county in which the board of supervisors has adopted voting by means of an optical scan voting system, the commissioner shall also conduct absentee voting by use of such a system. In any other county, the commissioner may with approval of the board of supervisors conduct absentee voting by use of an optical scan voting system. All provisions of chapter 53 shall apply to such absentee voting, so far as applicable. In counties where absentee voting is conducted by use of an optical scan voting system, the special precinct counting board shall, at the time required by chapter 53, prepare absentee ballots for tabulation in the manner prescribed by this chapter.

2. The absentee and special precinct board shall follow the process prescribed in section 52.37, subsection 1, in handling damaged or defective ballots and in counting write-in votes on optical scan ballots.

[C77, 79, 81, §52.33]

97 Acts, ch 170, §62; 2002 Acts, ch 1134, §58, 115; 2007 Acts, ch 190, §9

52.34 Counting center established. Repealed by 2007 Acts, ch 190, § 13.

52.35 Equipment tested.

Before the date of any election at which votes are to be cast by means of an optical scan voting system, the commissioner shall have the automatic tabulating equipment, including the portable tabulating devices, tested to ascertain that it will correctly count the votes cast for all offices and on all public questions. Testing shall be completed not later than twelve hours before the opening of the polls on the morning of the election. The procedure for conducting the test shall be as follows:

1. For any election to fill a partisan office, the county chairperson of each political party shall be notified in writing of the date, time, and place the test will be conducted, so that they may be present or have a representative present. For every election, the commissioner shall publish notice of the date, time, and place the test will be conducted. The commissioner may include such notice in the notice of the election published pursuant to section 49.53. The test shall be open to the public.

2. The test shall be conducted by processing a preaudited group of ballots marked so as to record a predetermined number of valid votes for each candidate, and on each public question, on the ballot. The test group shall include for each office and each question one or more ballots having votes in excess of the number allowed by law for that office or question, in order to test the ability of the automatic tabulating equipment to reject such votes. Any observer may submit an additional test group of ballots which, if so submitted, shall also be tested. The state commissioner shall promulgate administrative rules establishing procedures for any additional test group of ballots submitted by an observer. If any error is detected, its cause shall be ascertained and corrected and an errorless count obtained before the automatic tabulating equipment is approved. When so approved, a statement attesting to the fact shall be signed by the commissioner and kept with the records of the election.

3. The test group of ballots used for the test shall be clearly labeled as such, and retained in the commissioner's office. The test group of ballots and the programs used for the counting procedure shall be sealed, retained for the time required for and disposed of in the same manner as ballots cast in the election.

4. Those present for the test shall sign a certificate which shall read substantially as follows:

The undersigned certify that we were present and witnessed the testing of the following tabulating devices; that we believe the devices are in proper condition for use in the election of (date); that following the test the vote totals were erased from the memory of each tabulating device and a report was produced showing that all vote totals in the memory were set at 0000; that the devices were securely locked or sealed; and that the serial numbers and locations of the devices which were tested are listed below.

Signed
(name and political party affiliation, if applicable)

.....
(name and political party affiliation, if applicable)

.....
Voting equipment custodian

Dated

Precinct	Location	Serial Number
.....		
.....		
.....		

[C77, 79, 81, §52.35]

86 Acts, ch 1224, §26; 97 Acts, ch 170, §63; 98 Acts, ch 1123, §9; 2002 Acts, ch 1134, §59, 115; 2007 Acts, ch 190, §10 – 12

52.36 Commissioner in charge of counting center — appointment of resolution board. Repealed by 2007 Acts, ch 190, § 13.

52.37 Special precinct tabulation procedure.

The tabulation of absentee and provisional ballots cast by means of an optical scan voting system shall be conducted as follows:

1. *a.* If any ballot is found damaged or defective, so that it cannot be counted properly by the automatic tabulating equipment, a true duplicate shall be made by the resolution board team and substituted for the damaged or defective ballot, or, as an alternative, the valid votes on a defective ballot may be manually counted by the special precinct election board, whichever method is best suited to the system being used. All duplicate ballots shall be clearly labeled as such, and shall bear a serial number which shall also be recorded on the damaged or defective ballot.

b. The special precinct election board shall also tabulate any write-in votes which were cast. Write-in votes cast for a candidate whose name appears on the ballot for the same office shall be counted as a vote for the candidate indicated, if the vote is otherwise properly cast.

c. Ballots which are rejected by the tabulating equipment as blank because they have been marked with an unreadable marker shall be duplicated or tabulated as required by this subsection for damaged or defective ballots. The commissioner may instruct the special precinct election board to mark over voters' unreadable marks using a marker compatible with the tabulating equipment. The special precinct election board shall take care to leave part of the original mark made by the voter. If it is impossible to mark over the original marks made by the voter without completely obliterating them, the ballot shall be duplicated.

2. The record printed by the automatic tabulating equipment, with the addition of a record of any write-in or other votes manually counted pursuant to this chapter, shall constitute the official return of the absentee ballot and special voter's precinct. Upon completion of the tabulation of the votes, the result shall be announced and reported in substantially the manner required by section 50.11.

3. If for any reason it becomes impracticable to count all or any part of the ballots with the automatic tabulating equipment, the commissioner may direct that they be counted manually, in accordance with chapter 50 so far as applicable.

[C77, 79, 81, §52.37]

92 Acts, ch 1034, §2; 93 Acts, ch 143, §29; 97 Acts, ch 170, §65; 2002 Acts, ch 1134, §60, 115; 2007 Acts, ch 190, §39; 2008 Acts, ch 1032, §156

Referred to in §52.33

52.38 Testing portable tabulating devices. Repealed by 2007 Acts, ch 190, § 13. See § 52.35.

52.39 Reserved.

52.40 Early pick-up sites established — procedure. Repealed by 2007 Acts, ch 190, § 13.

52.41 Electronic transmission of election results.

With the advice of the board of examiners for voting systems, the state commissioner shall adopt by rule standards for the examination and testing of devices for the electronic transmission of election results. All voting systems which contain devices for the electronic transmission of election results submitted to the examiners for examination and testing after July 1, 2003, shall comply with these standards.

2002 Acts, ch 1134, §61, 115; 2009 Acts, ch 57, §60

Referred to in §50.11