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STATE GOVERNMENT

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HOUSE FILE 109  
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and ATTEBERRY

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act allowing certain elections to be conducted by mail  
2 ballots, establishing a pilot project, providing penalties,  
3 and providing an applicability date.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 109

1 Section 1. NEW SECTION. 49B.1 MAIL BALLOT ELECTIONS.

2 An election shall not be conducted under this chapter  
3 unless all of the following apply:

4 1. The use of mail ballots for the election is authorized  
5 pursuant to section 49B.5 or section 49B.6.

6 2. The state commissioner of elections approves a written  
7 plan for conduct of the election, which shall include a  
8 written timetable for the conduct of the election, submitted  
9 by the county commissioner.

10 3. The election is nonpartisan.

11 4. The election is not held on the same date as another  
12 election in which registered voters of that political  
13 subdivision are eligible to cast ballots.

14 5. The election is one at which only the registered voters  
15 of one of the following political subdivisions are eligible to  
16 vote:

17 a. Counties.

18 b. Cities.

19 c. School districts.

20 d. Merged areas.

21 e. Benefited districts provided in chapters 357 through  
22 357G.

23 Sec. 2. NEW SECTION. 49B.2 DEFINITIONS.

24 As used in this chapter, unless the context otherwise  
25 requires:

26 1. "Election day" is the date established by law on which  
27 a particular election would be held if that election were  
28 being conducted by means other than a mail ballot election.

29 2. "Return verification envelope" means an envelope that  
30 contains a secrecy envelope and which is designed to allow  
31 election officials, upon examination of the outside of the  
32 envelope, to determine that the ballot is being submitted by  
33 someone who is in fact a registered voter and who has not  
34 already voted.

35 3. "Secrecy envelope" means an envelope used to contain

1 the elector's ballot and that is designed to conceal the  
2 voter's vote and to prevent the voter's ballot from being  
3 distinguished from the ballots of other voters.

4 Sec. 3. NEW SECTION. 49B.3 MAIL BALLOT ELECTION  
5 PROCEDURE.

6 The state commissioner of elections shall prescribe uniform  
7 procedures and forms to be used in the conduct of mail ballot  
8 elections.

9 Sec. 4. NEW SECTION. 49B.4 INITIATING A MAIL BALLOT  
10 ELECTION.

11 A proposal to conduct an election under this chapter may be  
12 initiated by either the appropriate governing body or the  
13 county commissioner of elections as provided in sections 49B.5  
14 and 49B.6.

15 Sec. 5. NEW SECTION. 49B.5 INITIATION BY GOVERNING BODY.

16 1. If the governing body of a political subdivision  
17 determines that it is economically and administratively  
18 feasible to conduct an election by mail and the election meets  
19 the requirements of section 49B.1, the governing body, by  
20 resolution, may require the county commissioner of elections  
21 to conduct the election under this chapter by filing the  
22 resolution with the county commissioner not later than seventy  
23 days before the date of the election.

24 2. After the resolution is filed, the county commissioner  
25 shall prepare a written plan for conduct of the election as  
26 provided in section 49B.7. At least sixty days prior to the  
27 date set for the election, the county commissioner shall  
28 forward a copy of the written plan to the governing body  
29 concerned.

30 Sec. 6. NEW SECTION. 49B.6 INITIATION BY COUNTY  
31 COMMISSIONER.

32 1. The county commissioner may conduct an election which  
33 meets the requirements of section 49B.1 as a mail ballot  
34 election if the county commissioner determines it would be the  
35 most economically and administratively feasible way of

1 conducting the election.

2 2. If the county commissioner decides to conduct a mail  
3 ballot election pursuant to subsection 1, the county  
4 commissioner shall prepare a written plan for conduct of the  
5 election as provided in section 49B.7. At least seventy-one  
6 days prior to the date set for the election, the county  
7 commissioner shall forward a copy of the written plan to the  
8 governing body concerned, together with a written statement  
9 informing the governing body of the decision to conduct the  
10 election by mail ballot and the reasons for the decision.

11 Sec. 7. NEW SECTION. 49B.7 WRITTEN PLAN FOR CONDUCT OF  
12 ELECTION -- AMENDMENTS -- APPROVAL PROCEDURE.

13 1. The county commissioner shall prepare a written plan,  
14 including a timetable, for the conduct of a mail ballot  
15 election and shall submit it to the state commissioner of  
16 elections at least seventy-one days before the date of the  
17 election.

18 2. The plan may be amended by the county commissioner any  
19 time before the sixty-fourth day before the date of the  
20 election by notifying the state commissioner of elections in  
21 writing of any changes.

22 3. Within five days after receiving the plan, and as soon  
23 as possible after receiving any amendments, the state  
24 commissioner of elections shall approve, disapprove, or  
25 recommend changes to the plan or amendments.

26 4. When the written plan has been approved, the county  
27 commissioner shall proceed to conduct the election according  
28 to the approved plan.

29 Sec. 8. NEW SECTION. 49B.8 PUBLICATION OF NOTICE.

30 The county commissioner shall, not more than ten days and  
31 not less than four days before the date that ballots are to be  
32 mailed, publish notice that a mail ballot election will be  
33 conducted. The notice shall include all of the following  
34 information:

35 1. The date ballots will be mailed.

1     2. The last day that a voter can request an absentee  
2 ballot.

3     3. Voter registration deadlines.

4     4. Location or locations where mail ballots can be  
5 deposited pursuant to section 49B.15.

6     5. Instructions for obtaining a replacement ballot if a  
7 voter's ballot is destroyed, spoiled, lost, or not received  
8 pursuant to section 49B.11.

9     The county commissioner is not required to publish a sample  
10 ballot.

11    Sec. 9. NEW SECTION. 49B.9 MAILING BALLOTS.

12    1. Official ballots for a mail ballot election shall be  
13 prepared and all other initial procedures for elections shall  
14 be followed as otherwise provided by law.

15    2. The county commissioner of elections shall mail an  
16 official ballot to every registered voter of the political  
17 subdivision conducting the election on a date not sooner than  
18 the twentieth day before the date of the election and not  
19 later than the tenth day before the date of the election. An  
20 exception shall be made for those ballots delivered as  
21 prescribed in section 49B.14.

22    3. All ballots shall be mailed by first class mail.

23    4. Ballots mailed by the county commissioner shall be  
24 addressed to the address of each voter appearing in the  
25 registration records of the political subdivision, and placed  
26 in an envelope which is prominently marked "Do Not Forward".

27    5. The ballot shall contain the following warning:

28    "Any person who, by use of violence, threats of violence,  
29 or any means of duress, procures the vote of a voter for or  
30 against any measure or candidate is subject, upon conviction,  
31 to imprisonment or to a fine, or both."

32    Sec. 10. NEW SECTION. 49B.10 REGISTRATION.

33    The county commissioner shall not mail a ballot under this  
34 chapter to any voter not registered thirty days before the  
35 date of the election. Voters registered after thirty days

1 prior to the date of the election, but prior to the close of  
2 registration, may apply for a ballot under section 49B.11.

3 Sec. 11. NEW SECTION. 49B.11 REPLACEMENT BALLOTS.

4 If the mail ballot is destroyed, spoiled, lost, or not  
5 received by the voter, the voter may obtain a replacement  
6 ballot from the county commissioner as provided in this  
7 section. A voter seeking a replacement ballot shall sign a  
8 statement, on a form prescribed by the state commissioner,  
9 that the ballot was destroyed, spoiled, lost, or not received.  
10 The voter or the voter's designee shall deliver the statement  
11 to the county commissioner before noon on the date of the  
12 election. The voter may mail the statement to the county  
13 commissioner. However, a county commissioner shall not  
14 transmit a ballot by mail under this section unless the  
15 statement is received before five p.m. on the fourth day  
16 before the date of the election. When a statement is timely  
17 received under this section, the county commissioner shall  
18 give the ballot to the voter if the voter is present in the  
19 office of the county commissioner, or promptly mail the ballot  
20 to the voter at the address contained in the statement, except  
21 when prohibited by this section. If the voter is present in  
22 the county commissioner's office, the ballot shall be voted at  
23 that time. The county commissioner shall keep a record of  
24 each replacement ballot provided under this section. If a  
25 voter, having received and voted a replacement ballot as  
26 provided under this section, later finds the lost ballot, the  
27 voter shall return the lost ballot to the county commissioner.

28 Sec. 12. NEW SECTION. 49B.12 VOTING AND RETURN OF  
29 BALLOT.

30 1. A registered voter, upon receipt of a mail ballot,  
31 shall mark the ballot in such a manner that no other person  
32 will know how the ballot is marked and shall place it in the  
33 secrecy envelope provided with the ballot and shall securely  
34 seal the secrecy envelope.

35 A voter who is blind, cannot read, or because of a physical

1 disability is unable to mark the ballot, may be assisted by  
2 any person selected by the voter.

3 2. The voter shall place the secrecy envelope containing  
4 the ballot in the return verification envelope and sign and  
5 securely seal the return verification envelope. The sealed  
6 return verification envelope shall be returned to the county  
7 commissioner by one of the following methods:

8 a. The sealed return verification envelope may be  
9 delivered by the registered voter or the voter's designee to  
10 the county commissioner's office or a place designated by the  
11 commissioner no later than the time the polls close on  
12 election day.

13 b. The sealed return verification envelope may be mailed,  
14 postage paid, to the county commissioner. In order for the  
15 ballot to be counted, the return verification envelope must be  
16 clearly postmarked by an officially authorized postal service  
17 not later than the day before the election and received by the  
18 county commissioner not later than the time established for  
19 the canvass by the board of supervisors for that election.  
20 The county commissioner shall contact the post office serving  
21 the county commissioner's office at the latest practical hour  
22 prior to the canvass by the board of supervisors for that  
23 election, and shall arrange for return verification envelopes  
24 received in that post office but not yet delivered to the  
25 commissioner's office to be brought to the commissioner's  
26 office prior to the canvass for that election by the board of  
27 supervisors.

28 Sec. 13. NEW SECTION. 49B.13 ABSENTEE BALLOTS.

29 1. A registered voter who will be absent from the precinct  
30 during the time when the ballots are mailed may do either of  
31 the following:

32 a. Vote in person in the county commissioner's office as  
33 soon as ballots are available and until noon the day before  
34 the ballots are scheduled to be mailed.

35 b. Make a written request, signed by the voter and

1 addressed to the county commissioner, that the ballot be  
2 mailed to an address other than that which appears on the  
3 voter's registration record. Written requests shall be  
4 accepted until noon the day before the ballots are scheduled  
5 to be mailed.

6 2. Ballots mailed to voters pursuant to this section shall  
7 be mailed the same day that all other ballots are mailed.

8 Sec. 14. NEW SECTION. 49B.14 BALLOTING BY CONFINED  
9 PERSONS.

10 A person who is a resident or patient in a health care  
11 facility or hospital located in the county in which the  
12 election is to be held shall not be mailed a ballot but shall  
13 have a ballot delivered in the manner prescribed by section  
14 53.22, subsection 1.

15 Sec. 15. NEW SECTION. 49B.15 PERSONAL DELIVERY OF MAIL  
16 BALLOT -- SATELLITE VOTING STATIONS.

17 Satellite voting stations for the deposit of mail ballots  
18 shall be established throughout the cities and county in the  
19 manner provided in section 53.11.

20 Sec. 16. NEW SECTION. 49B.16 RECEIPT OF BALLOT --  
21 SIGNATURE VERIFICATION.

22 When a mail ballot is returned, the county commissioner, or  
23 the county commissioner's designees, shall first examine the  
24 return verification envelope to determine whether it was  
25 submitted by a registered voter who has not previously voted.  
26 A ballot shall be counted only if it is returned in the return  
27 verification envelope, the envelope is signed by the voter to  
28 whom the ballot is issued, and the signature has been verified  
29 as provided in this section.

30 The county commissioner or the county commissioner's  
31 designees shall verify the signature of each voter on the  
32 return verification envelope with the signature in the voter's  
33 registration records and may commence verification at any time  
34 before election day. If the county commissioner determines  
35 that a voter to whom a replacement ballot has been issued



1 under section 49B.11 has voted more than once, the county  
2 commissioner shall not count any ballot cast by the voter.

3 If the voter's signature is verified and the ballot is  
4 otherwise valid, the county commissioner or the county  
5 commissioner's designees shall then deposit the ballot  
6 unopened in an official ballot box.

7 Sec. 17. NEW SECTION. 49B.17 PROCEDURE FOR INVALID  
8 BALLOTS.

9 If the county commissioner is not convinced that the  
10 individual who signed the return verification envelope is the  
11 voter whose name appears on the registration card, the county  
12 commissioner shall not validate the ballot but shall do all of  
13 the following:

14 1. Give notice to the voter as follows:

15 a. As soon as possible after receipt of a voter's ballot,  
16 give notice to the voter, either by telephone or by first  
17 class mail, if the county commissioner is unable to verify the  
18 voter's signature.

19 b. Inform the voter that the voter may appear in person at  
20 the county commissioner's office prior to the close of the  
21 polls on election day and verify the signature.

22 2. Permit any voter appearing pursuant to subsection 1,  
23 paragraph "b", to:

24 a. Verify the voter's signature, after proof of  
25 identification, by affirming that the signature is in fact the  
26 voter's signature or by completing a new registration card  
27 containing the voter's current signature.

28 b. If necessary, request and receive a replacement ballot  
29 and vote at that time.

30 3. If the discrepancy is not rectified to the county  
31 commissioner's satisfaction, present the unopened envelope and  
32 the registration card to the special precinct election board  
33 for a determination. If the election board is unable to  
34 resolve the issue to its satisfaction, the ballot shall not be  
35 counted.

1 Sec. 18. NEW SECTION. 49B.18 COUNTING BALLOTS.

2 Mail ballots shall be counted in the manner prescribed by  
3 section 53.23 for absentee ballots. The county commissioner  
4 shall supervise the procedures for the handling, counting, and  
5 canvassing of ballots to ensure the safety and confidentiality  
6 of all ballots properly cast.

7 Sec. 19. NEW SECTION. 49B.19 CHALLENGES.

8 Votes cast pursuant to this chapter can be challenged in  
9 the manner prescribed by sections 49.79 through 49.81, as  
10 applicable.

11 Sec. 20. NEW SECTION. 49B.20 CANVASS OF VOTES.

12 The provisions of chapter 50 relating to canvass of votes  
13 apply to this chapter only to the extent they do not conflict  
14 with this chapter.

15 Sec. 21. NEW SECTION. 49B.21 OTHER LAWS.

16 All laws which apply to elections apply to mail ballot  
17 elections held under this chapter to the extent applicable.

18 Sec. 22. NEW SECTION. 49B.22 RULES.

19 The state commissioner of elections shall adopt rules  
20 pursuant to chapter 17A to govern the procedures and forms  
21 necessary to implement this chapter. The authority of the  
22 state commissioner to adopt rules under this chapter shall be  
23 liberally construed.

24 Sec. 23. NEW SECTION. 49B.23 MISCONDUCT -- VIOLATIONS --  
25 PENALTIES.

26 1. A person who, by use of violence, threats of violence,  
27 or any means of duress, procures or endeavors to procure the  
28 vote of a voter for or against any measure or candidate  
29 commits an aggravated misdemeanor.

30 2. A person who violates or attempts to violate any  
31 provision or requirement of this chapter for which a penalty  
32 is not otherwise provided commits a simple misdemeanor.

33 Sec. 24. NEW SECTION. 49B.24 PILOT PROJECT AUTHORIZED.

34 The state commissioner shall implement a pilot project  
35 applying the provisions of this chapter to enable the

1 commissioner to examine the feasibility of allowing mail  
2 ballot elections statewide. The pilot project shall extend  
3 for two years. The state commissioner shall implement the  
4 pilot project in no more than six counties chosen by the state  
5 commissioner as a representative sampling of rural and urban  
6 counties. The commissioner may grant a request by a county  
7 board of supervisors to include the county in the pilot  
8 project. A request made to the commissioner shall include  
9 information on the anticipated number of elections that would  
10 qualify for mail balloting over the two-year period of the  
11 pilot project. The pilot project shall be applicable to  
12 elections of all political subdivisions in the county if such  
13 elections meet the qualifications of section 49B.1. The state  
14 commissioner shall monitor the progress of the project and  
15 shall annually issue a report to the general assembly.

16 Sec. 25. Section 39.3, Code 2001, is amended by adding the  
17 following new subsection:

18 NEW SUBSECTION. 8A. "Mail ballot election" means an  
19 election conducted pursuant to chapter 49B.

20 Sec. 26. APPLICABILITY. This Act applies to elections  
21 held on or after July 1, 2003, except as otherwise provided in  
22 section 49B.24.

23 EXPLANATION

24 This bill creates a new Code chapter 49B and establishes a  
25 procedure for certain elections to be conducted primarily by  
26 mailed ballots. To qualify for this method of election, the  
27 election of a specified political subdivision (county, city,  
28 school district, merged area, or benefited district) must be  
29 the only election scheduled, must be nonpartisan, and must be  
30 conducted pursuant to a plan proposed by the county  
31 commissioner of elections (county auditor) and approved by the  
32 state commissioner of elections (secretary of state).

33 The bill applies to elections held on or after July 1,  
34 2003.

35 The bill requires the state commissioner of elections to

1 establish a two-year pilot project in six counties to enable  
2 the commissioner to examine the feasibility of allowing mail  
3 ballot elections statewide.

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