Sexton
McKean
Kibbie

SSB - 1210

State Government

Succeeded By

SENATE FILE (SF)/ HF 476

BY (PROPOSED COMMITTEE ON STATE
GOVERNMENT BILL BY CHAIRPERSON
KING)

Passed Senate, Date _____     Passed House, Date _____

Vote: Ayes _____ Nays _____     Vote: Ayes _____ Nays _____

Approved _____

## A BILL FOR

1 An Act relating to voting marks on ballots cast in an election or
2 recounted after an election and the manner in which votes are
3 to be recounted.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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1    Section 1.  Section 49.68, subsection 3, Code 2001, is
2 amended to read as follows:
3    3.  That unmarked or improperly marked ballots will not be
4 counted.
5    Sec. 2.  Section 49.68, Code 2001, is amended by adding the
6 following new subsection:
7    NEW SUBSECTION.  3A.  That improperly market ballots will
8 not be counted if it is impossible to determine the voter's
9 intent.
10    Sec. 3.  Section 49.92, Code 2001, is amended to read as
11 follows:
12    49.92  VOTING MARK.
13    The instructions appearing on the ballot shall describe the
14 appropriate mark to be used by the voter.  The mark shall be
15 consistent with the requirements of the voting system in use
16 in the precinct.  The voting mark used on paper ballots may be
17 a cross or check which shall be placed in the voting targets
18 opposite the names of candidates.  If the entire voting target
19 is circled by a voter rather than the voter placing a cross or
20 check inside the target, and no other mark is made on the
21 ballot for any other candidate for that office, the vote for
22 that office shall be counted.  The fact that the voting mark
23 is made by an instrument other than a black lead pencil shall
24 not affect the validity of the ballot unless it appears that
25 the color or nature of the mark is intended to identify the
26 ballot contrary to the intent of section 49.107, subsection 7.
27    Sec. 4.  Section 49.98, Code 2001, is amended to read as
28 follows:
29    49.98  COUNTING BALLOTS.
30    The ballots shall be counted according to the voters' marks
31 on them as provided in sections 49.92 to through 49.97, and
32 not otherwise.  If, for any reason, it is impossible to
33 determine from a ballot, as marked, the choice of the voter
34 for any office, the vote for that office shall not be counted.
35 If at least seventy-five percent of the required mark is made

1 on the ballot for a candidate and no other mark is made on the
2 ballot for any other candidate for that office, the vote for
3 that office shall be counted. When there is a conflict
4 between a straight party or organization vote for one
5 political party or nonparty political organization and the
6 vote cast by marking the voting target next to the name of a
7 candidate for another political party or nonparty political
8 organization on the ballot, the mark next to the name of the
9 candidate shall be held to control, and the straight party or
10 organization vote in that case shall not apply as to that
11 office. Any ballot shall be rejected if it is marked in any
12 other manner than authorized in sections 49.92 to through
13 49.97. A ballot shall be rejected if the voter used a mark to
14 identify the voter's ballot.
15     Sec. 5.   Section 50.48, subsection 4, unnumbered paragraph
16 1, Code 2001, is amended to read as follows:
17     When all members of the recount board have been selected,
18 the board shall undertake and complete the required recount as
19 expeditiously as reasonably possible. The commissioner or the
20 commissioner's designee shall supervise the handling of
21 ballots or voting machine documents to ensure that the ballots
22 and other documents are protected from alteration or damage.
23 The board shall open only the sealed ballot containers from
24 the precincts specified to be recounted in the request or by
25 the recount board. The board shall recount only the ballots
26 which were voted and counted for the office in question,
27 including any disputed ballots returned as required in section
28 50.5. If an electronic tabulating system was used to count
29 the ballots, the recount board may shall request the
30 commissioner to retabulate the ballots using the electronic
31 tabulating system. The same program used for tabulating the
32 votes on election day shall be used at the recount unless the
33 program is believed or known to be flawed. The ballots shall
34 be counted according to the voters' marks on them as provided
35 in sections 49.92 through 49.97, and not otherwise.

S.P. _____ H.F. _____

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| 1 | **EXPLANATION** |
| 2 | This bill provides that a ballot is properly marked if 75 |
| 3 | percent or more of the required mark is made on the ballot for |
| 4 | a candidate and no other mark was made for any other candidate |
| 5 | for that office. The bill also provides that if the voting |
| 6 | target on the paper ballot is circled instead of checked or |
| 7 | crossed, the vote for that candidate shall count if no other |
| 8 | mark is made for any other candidate for that office. |
| 9 | The bill provides that if an electronic tabulating system |
| 10 | was used to count votes in an election, the recount of votes |
| 11 | shall also be electronically tabulated unless the electronic |
| 12 | tabulation system is believed or known to be flawed. The bill |
| 13 | provides that provisions relating to properly marking ballots |
| 14 | shall apply in a recount of ballots. |
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LSB 3121SC 79

sc/cf/24

Passed Senate, Date _____      Passed House, Date _____

Vote: Ayes _____ Nays _____      Vote: Ayes _____ Nays _____

Approved _____

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SF 475

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4 counted.
5    Sec. 2.  Section 49.68, Code 2001, is amended by adding the
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7    NEW SUBSECTION.  3A.  That improperly marked ballots will
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9 intent.
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18 opposite the names of candidates.  If the entire voting target
19 is circled by a voter rather than the voter placing a cross or
20 check inside the target, and no other mark is made on the
21 ballot for any other candidate for that office, the vote for
22 that office shall be counted.  The fact that the voting mark
23 is made by an instrument other than a black lead pencil shall
24 not affect the validity of the ballot unless it appears that
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26 ballot contrary to the intent of section 49.107, subsection 7.
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32 not otherwise.  If, for any reason, it is impossible to
33 determine from a ballot, as marked, the choice of the voter
34 for any office, the vote for that office shall not be counted.
35 If at least seventy-five percent of the required mark is made

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1 on the ballot for a candidate and no other mark is made on the
2 ballot for any other candidate for that office, the vote for
3 that office shall be counted. When there is a conflict
4 between a straight party or organization vote for one
5 political party or nonparty political organization and the
6 vote cast by marking the voting target next to the name of a
7 candidate for another political party or nonparty political
8 organization on the ballot, the mark next to the name of the
9 candidate shall be held to control, and the straight party or
10 organization vote in that case shall not apply as to that
11 office. Any ballot shall be rejected if it is marked in any
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13 49.97. A ballot shall be rejected if the voter used a mark to
14 identify the voter's ballot.
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16 1, Code 2001, is amended to read as follows:
17    When all members of the recount board have been selected,
18 the board shall undertake and complete the required recount as
19 expeditiously as reasonably possible. The commissioner or the
20 commissioner's designee shall supervise the handling of
21 ballots or voting machine documents to ensure that the ballots
22 and other documents are protected from alteration or damage.
23 The board shall open only the sealed ballot containers from
24 the precincts specified to be recounted in the request or by
25 the recount board. The board shall recount only the ballots
26 which were voted and counted for the office in question,
27 including any disputed ballots returned as required in section
28 50.5. If an electronic tabulating system was used to count
29 the ballots, the recount board may shall request the
30 commissioner to retabulate the ballots using the electronic
31 tabulating system. The same program used for tabulating the
32 votes on election day shall be used at the recount unless the
33 program is believed or known to be flawed. The ballots shall
34 be counted according to the voters' marks on them as provided
35 in sections 49.92 through 49.97, and not otherwise.

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1                     EXPLANATION

2     This bill provides that a ballot is properly marked if 75

3 percent or more of the required mark is made on the ballot for

4 a candidate and no other mark was made for any other candidate

5 for that office. The bill also provides that if the voting

6 target on the paper ballot is circled instead of checked or

7 crossed, the vote for that candidate shall count if no other

8 mark is made for any other candidate for that office.

9     The bill provides that if an electronic tabulating system

10 was used to count votes in an election, the recount of votes

11 snall also be electronically tabulated unless the electronic

12 tabulation system is believed or known to be flawed. The bill

13 provides that provisions relating to properly marking ballots

14 snall apply in a recount of ballots.

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## SENATE FILE   475

S-3291

1    Amend Senate File 475 as follows:
2    1.   Page 1. by striking lines 3 through 9. and
3  inserting the following.
4    "3.   That ~~unmarked or~~ improperly marked ballots
5  will not be counted if it is impossible to determine
6  the voter's intent."
7    2.   Page 1, line 18. by striking the word "It" and
8  inserting the following:  "However. if".
9    3.   Page 1. line 31. by inserting after the figure
10 "49.97." the following:  "and section 52.37.".
11   4.   By striking page 1, line 35. through page 2.
12 line 3. and inserting the following·  "When there is a
13 conflict".
14   5.   Page 2, by striking line 13. and inserting the
15 following:  "49.97 and section 52.37.  A ballot shall
16 not be ~~rejected~~ counted if the voter used a mark to".
17   6.   Page 2. line 33. by inserting before the word
18 "The" the following:  "The ballots that contain valid
19 votes that cannot be read by the vote tabulating
20 equipment shall be reviewed and duplicated. if
21 necessary. so that the vote tabulating equipment can
22 count them."
23   7.   Page 2. line 35, by inserting after the figure
24 "49.97." the following:  "and section 52.37,".
25   8    Page 2. line 35. by inserting after the word
26 "otherwise." the following.  "All duplicate ballots
27 shall be clearly labeled as such. and shall bear a
28 serial number which shall also be recorded on the
29 original ballot."
30   9.   Page 2. by inserting after line 35. the
31 following:
32   "Sec  ___ .   Section 52.37, subsection 2. unnumbered
33 paragraph 3. Code 2001. is amended to read as follows:
34   The tabulating equipment shall be programmed to
35 sort blank ballots and overvoted ballots for
36 examination by the resolution board.  Ballots which
37 are ~~rejected~~ sorted by the tabulating equipment as
38 blank because they have been marked with an unreadable
39 marker shall be duplicated or tabulated as required by
40 this subsection for damaged or defective ballots.  The
41 commissioner may instruct the resolution board to mark
42 over voters' unreadable marks using a marker
43 compatible with the tabulating equipment.  The
44 resolution board shall take care to leave part of the
45 original mark made by the voter.  If it is impossible
46 to mark over the original marks made by the voter
47 without completely obliterating them, the ballot shall
48 be duplicated.  Ballots which are sorted by the
49 tabulating equipment as blank shall be duplicated or
50 tabulated as required by this subsection for damaged

**S-3291**

Page    2

1  or defective ballots if at least twenty-five percent
2  of the required mark is made within the voting target
3  on the ballot for a candidate and no other mark is
4  made on the ballot for any other candidate for that
5  office.   If a ballot is sorted by the tabulating
6  equipment as an overvote because a voting mark has
7  been erased from one voting target and a clear and
8  distinct voting mark has been made in another voting
9  target for the same office, the clear and distinct
10  mark shall be considered a valid vote and the ballot
11  shall be duplicated so that it can be counted by the
12  tabulating equipment."
13      10.   By renumbering as necessary.

<div align="right">By STEVE KING</div>

**S-3291**   FILED APRIL 2, 2001