HOUSE FILE 277

BY JOCHUM

Passed House, Date _____   Passed Senate, Date _____
Vote: Ayes _____ Nays _____   Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to voting, including to information contained on
2   abstracts of votes and to the definition of a valid vote for
3   purposes of canvassing ballots after an election and during a
4   recount.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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1   Section 1. Section 39.3, Code 2003, is amended by adding
2 the following new subsections:
3   NEW SUBSECTION. 8A. "Overvote" means when a voter marks
4 more than the permitted number of choices for an office or
5 question.
6   NEW SUBSECTION. 16A. "Undervote" means when a voter marks
7 fewer than the permitted number of choices for an office or
8 question.
9   Sec. 2. Section 43.49, Code 2003, is amended by adding the
10 following new subsection:
11   NEW SUBSECTION. 4. The number of overvotes and undervotes
12 for each office on the ballot.
13   Sec. 3. Section 43.56, unnumbered paragraph 2, Code 2003,
14 is amended by striking the unnumbered paragraph.
15   Sec. 4. Section 49.98, Code 2003, is amended by striking
16 the section and inserting in lieu thereof the following:
17   49.98 COUNTING BALLOTS.
18   1. Ballots shall be counted according to the voters' marks
19 on them as provided in sections 49.92 through 49.97, this
20 section, and sections 49.98A and 49.98B. A ballot, or the
21 votes on any part of the ballot, shall be counted if the
22 ballot contains a clear indication that the voter has made a
23 definite choice. A vote for any office or question on a
24 ballot shall not be rejected solely because a voter failed to
25 follow instructions for marking the ballot. If for any reason
26 it is impossible to determine from a ballot, as marked, the
27 choice of the voter for any office or question, the vote for
28 that office or question shall not be counted. Failure to vote
29 for any candidate for a particular office or for either choice
30 for a question shall not invalidate valid marks made on the
31 rest of the ballot.
32   2. When ballots are counted by automatic tabulating
33 equipment, the vote tabulating devices shall be configured to
34 sort out any ballots read as blank, or that contain overvotes
35 for one or more offices or questions. If the ballots are

1 tabulated at the precinct, the voter shall be offered the
2 opportunity to review the ballot and correct any errors.
3 Absentee ballots counted by automatic tabulating equipment and
4 ballots tabulated at a counting center established under
5 section 52.34 shall be sorted for blank ballots and for
6 overvotes. Blank and overvoted ballots shall be given to the
7 resolution board and tabulated as required by this section and
8 section 52.37.
9   3. If a voter uniformly uses a mark other than the mark
10 prescribed in the ballot instructions, and does not use the
11 prescribed mark anywhere else, and the mark the voter uses
12 clearly indicates that the voter has made a choice for a
13 candidate or a question on the ballot, the voter's marks shall
14 be counted. However, no votes shall be counted if the voter's
15 marks identify the ballot in violation of section 39A.4,
16 subsection 1, paragraph "a", subparagraph (6).
17   4. A vote for an office or question shall be counted if
18 the voter has marked the ballot in a manner that will be
19 counted as an overvote by automatic tabulating equipment but
20 the voter has indicated in a clear fashion that the voter has
21 made a mistake and has attempted to correct it, either by an
22 erasure or by otherwise indicating which mark is the voter's
23 choice, if such indication does not violate section 39A.4,
24 subsection 1, paragraph "a", subparagraph (6).
25   Sec. 5. NEW SECTION. 49.98A COUNTING STRAIGHT PARTY OR
26 ORGANIZATION VOTES.
27   When a voter has marked a straight party or organization
28 target for one political party or nonparty political
29 organization, blank voting targets under an office shall be
30 counted as votes for that party or organization. If the voter
31 has marked any voting targets next to any of the following in
32 addition to the straight party or organization target, those
33 votes shall be counted as marked:
34   1. A candidate for a political party or nonparty political
35 organization that differs from the straight party or

1 organization marked by the voter.

2   2. A candidate who is not affiliated with any political

3 party.

4   3. A write-in line.

5   However, if a voter has marked the voting target next to

6 the name of more than one political party or organization,

7 only votes cast for individual candidates shall be counted.

8   Sec. 6. <u>NEW SECTION</u>. 49.98B RULES FOR COUNTING BALLOTS.

9   The state commissioner of elections shall adopt rules to

10 provide guidance for counting votes for each type of voting

11 equipment and voting target on ballots in use in the state.

12 The rules shall provide specific examples of the kinds of

13 errors made by voters and the appropriate interpretation based

14 upon the vote counting procedures of this chapter.

15   Sec. 7. Section 49.99, Code 2003, is amended to read as

16 follows:

17   49.99 WRITING NAME ON BALLOT.

18   The voter may also write on the line provided for write-in

19 votes the name of any person for whom the voter desires to

20 vote and mark the voting target opposite the name. ~~If-the~~

21 ~~voter-is-using-a-voting-system-other-than-an-electronic-voting~~

22 ~~system,-as-defined-in-section-52.1,-the-writing-of-the~~ <u>Writing</u>

23 <u>a</u> name <u>on the write-in line</u> shall constitute a valid vote for

24 the person whose name has been written on the ballot without

25 regard to whether the voter has made a mark opposite the name.

26 ~~However,-when~~ <u>When</u> a write-in vote is cast using an electronic

27 voting system, the ballot must also be marked in the

28 corresponding space in order to be counted. <u>However, precinct</u>

29 <u>election officials, resolution boards, and recount boards</u>

30 <u>shall count otherwise valid write-in votes cast without the</u>

31 <u>mark in the corresponding space.</u> Marking the voting target

32 opposite a write-in line without writing a name on the line

33 shall ~~not-affect-the-validity-of-the-remainder-of-the-ballot~~

34 <u>be interpreted as no vote for that office.</u>

35   If a voter writes the name of a person more than once in

1 the proper places on a ballot or on a voting machine for an
2 office to which more than one person is to be elected, all but
3 one of those votes for that person for that office are void
4 and shall not be counted. If a write-in vote is duplicative
5 of an otherwise correctly cast vote for a candidate whose name
6 appears on the ballot, the write-in vote shall be interpreted
7 as a confirmation of the voter's choice and shall be counted
8 as one vote for the candidate.
9   The officials tabulating write-in votes shall disregard
10 misspellings or variations in names or abbreviations for
11 write-in candidates and shall count the variations in the form
12 of the name for a single person if the officials can determine
13 for whom the write-in votes were cast.
14   Sec. 8. Section 50.24, unnumbered paragraph 1, Code 2003,
15 is amended to read as follows:
16   The county board of supervisors shall meet to canvass the
17 vote on the first Monday or Tuesday after the day of each
18 election to which this chapter is applicable, unless the law
19 authorizing the election specifies another date for the
20 canvass. If that Monday or Tuesday is a public holiday,
21 section 4.1, subsection 34, controls. Upon convening, the
22 board shall open and canvass the tally lists and shall prepare
23 abstracts stating, in words written at length, the number of
24 votes cast in the county, or in that portion of the county in
25 which the election was held, for each office and on each
26 question on the ballot for the election. The board shall
27 contact the chairperson of the special precinct board before
28 adjourning and include in the canvass any absentee ballots
29 which were received after the polls closed in accordance with
30 section 53.17 and which were canvassed by the special precinct
31 board after election day. The abstract shall further indicate
32 the name of each person who received votes for each office on
33 the ballot, and the number of votes each person named received
34 for that office, and the number of votes for and against each
35 question submitted to the voters at the election. The votes

1 of all write-in candidates who each received less than two
2 percent of the votes cast for an office shall be reported
3 collectively under the heading "scattering". The abstract
4 shall also show the number of overvotes and undervotes for
5 each office or question on the ballot.
6   Sec. 9. Section 50.48, subsection 4, unnumbered paragraph
7 1, Code 2003, is amended to read as follows:
8   When all members of the recount board have been selected,
9 the board shall undertake and complete the required recount as
10 expeditiously as reasonably possible. The commissioner or the
11 commissioner's designee shall supervise the handling of
12 ballots or voting machine documents to ensure that the ballots
13 and other documents are protected from alteration or damage.
14 The board shall open only the sealed ballot containers from
15 the precincts specified to be recounted in the request or by
16 the recount board. The board shall recount only the ballots
17 which were voted and counted for the office in question,
18 including any disputed ballots returned as required in section
19 50.5. If an electronic tabulating system was used to count
20 the ballots, the recount board may request the commissioner to
21 retabulate the ballots using the electronic tabulating system.
22 The same program used for tabulating the votes on election day
23 shall be used at the recount unless the program is believed or
24 known to be flawed. The board shall recount the ballots in
25 accordance with the method for counting ballots set forth by
26 statute and by administrative rule. The ballots shall be
27 counted according to the voters' marks on the ballots as
28 provided in sections 49.92 through 49.98B and not otherwise.
29 A voter's definite choices shall be counted even if the
30 recount board determines that the voter's choices differ from
31 the manner in which the ballot was counted by the automatic
32 tabulating equipment.
33   EXPLANATION
34   This bill makes changes relating to information included on
35 abstracts of votes and the definition of a valid vote.

1   The bill requires that an abstract of votes for a primary
2 or general election show the number of overvotes and
3 undervotes for each office or question on the ballot. The
4 bill defines overvote and undervote.
5   The bill provides that a vote shall not be rejected solely
6 because a voter failed to follow instructions for marking the
7 ballot and if a voter uniformly uses a mark other than the
8 prescribed mark, the votes shall be counted. The bill also
9 provides that failure to vote for each office or question on
10 the ballot shall not invalidate valid marks made on the rest
11 of the ballot.
12   The bill requires that vote-tabulating devices be
13 configured to sort for blank votes and overvotes. If
14 tabulating takes place at the precinct, the voter shall be
15 offered the opportunity to review the ballot and correct any
16 errors. Blank and overvoted ballots that were cast absentee
17 or that were tabulated at a counting center shall be given to
18 the resolution board for determination of whether the votes
19 cast were valid.
20   The bill provides that when a voter has marked a straight
21 party or organization target and then marks the targets of
22 candidates not of that party or organization or has made a
23 write-in vote, the ballot shall be counted according to the
24 votes cast under the individual offices. A blank voting
25 target under an office shall be counted as a vote under the
26 straight party or organization vote.
27   The bill directs the state commissioner of elections to
28 adopt rules to provide guidance for counting votes.
29   The bill provides that a write-in vote shall be counted by
30 precinct election officials, resolution boards, and recount
31 boards even if the voter did not mark the voting target next
32 to the write-in line and the vote was cast using an electronic
33 voting system. The bill also provides that a write-in vote
34 that duplicates a correctly cast vote for a candidate on the
35 ballot shall be counted as one vote for the candidate. The

1 bill further provides that officials tabulating write-in votes
2 shall disregard misspellings or variations in names or
3 abbreviations for write-in votes if the officials can
4 determine for whom the write-in votes were cast.
5   The bill provides that a recount board shall count the
6 definite choices of the voter even if the board determines
7 that the voter's choices differ from the manner in which the
8 ballot was counted by the automatic tabulating equipment.
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