

House File 845 - Introduced

HOUSE FILE _____
BY COMMITTEE ON STATE GOVERNMENT
(SUCCESSOR TO HSB 178)

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

A BILL FOR

1 An Act relating to voting machines and optical scan voting
2 systems.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 1607HV 82
5 sc/je/5

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1 1 Section 1. Section 49.28, Code 2007, is amended to read as
1 2 follows:

1 3 49.28 COMMISSIONER TO FURNISH REGISTERS AND SUPPLIES.

1 4 1. The commissioner shall prepare and furnish to each
1 5 precinct an election register and all other books, forms,
1 6 materials, equipment, and supplies necessary to conduct the
1 7 election.

1 8 2. a. After the registration deadline and before election
1 9 day the commissioner shall prepare an election register for
1 10 each precinct in which voting will occur on the day of the
1 11 election. The precinct election register shall be a list of
1 12 the names and addresses of all registered voters of the
1 13 precinct. Inactive records listed in the election register
1 14 shall be clearly identified with a special mark or symbol.

1 15 b. When a precinct is divided by a district boundary, and
1 16 some, but not all, registered voters of the precinct may vote
1 17 on an issue or office from that district, the election
1 18 register shall clearly indicate which of the registered voters
1 19 are entitled to vote in the district.

1 20 3. a. The commissioner shall furnish a supply of printed
1 21 ballots to each precinct where voting machines are to be used
1 22 for any election.

1 23 b. In any precinct in which voting machines are designated
1 24 as the only method of voting for an election, a paper ballot
1 25 shall be furnished to any person offering to vote under the
1 26 provisions of section 49.81 or 49.90 or to any person offering
1 27 to vote if any of the following apply:

1 28 (1) A power failure prevents use of the voting machines.

1 29 (2) A malfunction occurs that prevents the use of one or
1 30 more voting machines.

1 31 (3) A malfunction occurs preventing one or more voting
1 32 machines from producing the paper record required in section
1 33 52.7, subsection 2.

1 34 (4) Any other conditions existing due to a fault of one or
1 35 more voting machines that prevents a person offering to vote
2 1 from casting the person's ballot.

2 2 c. The ballots furnished by the commissioner shall be the
2 3 same as the ballots used for voters casting ballots pursuant
2 4 to sections 49.81 and 49.90, and voting shall be in accordance
2 5 with statutory provisions relating to conventional paper
2 6 ballots. After a paper ballot has been voted under this
2 7 subsection, the precinct election official shall place the
2 8 voted ballot in a closed container to be kept in a secure
2 9 manner in a secure place.

2 10 Sec. 2. Section 49.53, unnumbered paragraph 1, Code 2007,
2 11 is amended to read as follows:

2 12 The commissioner shall not less than four nor more than
2 13 twenty days before the day of each election, except those for
2 14 which different publication requirements are prescribed by
2 15 law, publish notice of the election. The notice shall contain
2 16 a facsimile of the portion of the ballot containing the first
2 17 rotation as prescribed by section 49.31, subsection 2, and
2 18 shall show the names of all candidates or nominees and the

2 19 office each seeks, and all public questions, to be voted upon
2 20 at the election. The sample ballot published as a part of the
2 21 notice may at the discretion of the commissioner be reduced in
2 22 size relative to the actual ballot but such reduction shall
2 23 not cause upper case letters appearing in candidates' names or
2 24 in summaries of public measures on the published sample ballot
2 25 to be less than ninety percent of the size of such upper case
2 26 letters appearing on the actual ballot. The notice shall also
2 27 state the date of the election, the hours the polls will be
2 28 open, the location of each polling place at which voting is to
2 29 occur in the election, the location of the polling places
2 30 designated as early ballot pick-up sites, and the names of the
2 31 precincts voting at each polling place, but the statement need
2 32 not set forth any fact which is apparent from the portion of
2 33 the ballot appearing as a part of the same notice. The notice
2 34 shall include the full text of all public measures to be voted
2 35 upon at the election. ~~The notice shall also include notice of~~

~~3 1 testing required pursuant to sections 52.9, 52.35, and 52.38.~~

3 2 Sec. 3. Section 50.48, subsection 4, unnumbered paragraph
3 3 1, Code 2007, is amended to read as follows:

3 4 When all members of the recount board have been selected,
3 5 the board shall undertake and complete the required recount as
3 6 expeditiously as reasonably possible. The commissioner or the
3 7 commissioner's designee shall supervise the handling of
3 8 ballots or voting machine documents to ensure that the ballots
3 9 and other documents are protected from alteration or damage.
3 10 The board shall open only the sealed ballot containers from
3 11 the precincts specified to be recounted in the request or by
3 12 the recount board. The board shall recount only the ballots
3 13 which were voted and counted for the office in question,
3 14 including any disputed ballots returned as required in section
3 15 50.5. If an electronic tabulating system was used to count
3 16 the ballots, the recount board may request the commissioner to
3 17 retabulate the ballots using the electronic tabulating system.
3 18 The same program used for tabulating the votes on election day
3 19 shall be used at the recount unless the program is believed or
3 20 known to be flawed. If a voting machine was used, the paper
3 21 record required in section 52.7, subsection 2, shall be the

3 22 official record used in the recount. However, if the
3 23 commissioner believes or knows that the paper records produced
3 24 from a machine have been compromised due to damage, mischief,
3 25 malfunction, or other cause, the printed ballot images
3 26 produced from the internal audit log for that machine shall be
3 27 the official record used in the recount.

3 28 Sec. 4. Section 52.1, subsection 1, Code 2007, is amended
3 29 to read as follows:

3 30 1. At all elections conducted under chapter 49, and at any
3 31 other election unless specifically prohibited by the statute
3 32 authorizing the election, votes may be cast, registered,
3 33 recorded, and counted by means of either voting machines or
3 34 ~~electronic optical scan~~ voting systems, in accordance with
3 35 this chapter.

4 1 Sec. 5. Section 52.1, subsection 2, Code 2007, is amended
4 2 by striking the subsection and inserting in lieu thereof the
4 3 following:

4 4 2. As used in this chapter, unless the context otherwise
4 5 requires:

4 6 a. "Automatic tabulating equipment" means apparatus,
4 7 including but not limited to electronic data processing
4 8 machines, that are utilized to ascertain the manner in which
4 9 optical scan ballots have been marked by voters or by
4 10 electronic ballot marking devices, and count the votes marked
4 11 on the ballots.

4 12 b. "Ballot" includes paper ballots designed to be read by
4 13 automatic tabulating equipment. In appropriate contexts,
4 14 "ballot" also includes conventional paper ballots.

4 15 c. "Ballot marking device" means a pen, pencil, or similar
4 16 writing tool, or an electronic device, all designed for use in
4 17 marking an optical scan ballot, and so designed or fabricated
4 18 that the mark it leaves may be detected and the vote so cast
4 19 counted by automatic tabulating equipment.

4 20 d. "Optical scan ballot" means a printed ballot designed
4 21 to be marked by a voter with a ballot marking device.

4 22 e. "Optical scan voting system" means a system employing
4 23 paper ballots under which votes are cast by voters by marking
4 24 paper ballots with a ballot marking device and thereafter
4 25 counted by use of automatic tabulating equipment.

4 26 f. "Program" means the written record of the set of
4 27 instructions defining the operations to be performed by a
4 28 computer in examining, counting, tabulating, and printing
4 29 votes.

4 30 g. "Voting machine" means a direct recording electronic
4 31 device meeting the requirements of section 52.7, subsections 1
4 32 and 2, and designated for use in casting, registering,
4 33 recording, and counting votes at an election.

4 34 Sec. 6. Section 52.2, Code 2007, is amended to read as
4 35 follows:

5 1 52.2 PURCHASE.

5 2 1. ~~The Except as otherwise provided in subsection 2, the~~
5 3 board of supervisors of a county may, by a majority vote,
5 4 authorize, purchase, and order the use of voting machines or
5 5 an ~~electronic~~ optical scan voting system in any one or more
5 6 voting precincts within the county until otherwise ordered by
5 7 the board of supervisors. Voting machines and an ~~electronic~~
5 8 optical scan voting system may be used concurrently at the
5 9 same precinct.

5 10 2. Notwithstanding any provision to the contrary:

5 11 a. On or after the effective date of this Act, a county
5 12 whose voting system primarily utilizes voting machines, as
5 13 defined in section 52.1, shall, when seeking to replace the
5 14 voting system, replace the voting system with an optical scan
5 15 voting system only. The requirements of the federal Help
5 16 America Vote Act relating to disabled voters shall be met by a
5 17 county through the use of electronic ballot marking devices
5 18 that are compatible with an optical scan voting system.

5 19 b. On or after the effective date of this Act, a county
5 20 that utilizes a voting machine, as defined in section 52.1,
5 21 and an optical scan voting system concurrently at the same
5 22 precinct shall, when seeking to replace the voting machine,
5 23 replace the voting machine with an electronic ballot marking
5 24 device that is compatible with an optical scan voting system
5 25 in order to ensure that each precinct in the county shall have
5 26 at least one electronic ballot marking device.

5 27 Sec. 7. Section 52.7, Code 2007, is amended by striking
5 28 the section and inserting in lieu thereof the following:

5 29 52.7 CONSTRUCTION OF MACHINE APPROVED == REQUIREMENTS.

5 30 1. A voting machine approved by the state board of
5 31 examiners for voting machines and optical scan voting systems
5 32 shall be so constructed as to do all of the following:

5 33 a. Permit straight party voting, pursuant to section
5 34 49.94, for all political parties and nonparty political
5 35 organizations on the ballot.

6 1 b. Permit a voter to vote for any person for any office,
6 2 whether or not the person is nominated as a candidate by any
6 3 party or organization.

6 4 c. Permit voting in absolute secrecy.

6 5 d. Prevent voting for more than one person for the same
6 6 office, except where a voter is lawfully entitled to vote for
6 7 more than one person for that office.

6 8 e. Afford a voter an opportunity to vote for any or all
6 9 persons for that office as the voter is by law entitled to
6 10 vote for and no more, at the same time preventing a voter from
6 11 voting for the same person twice.

6 12 f. Provide a voter with an opportunity to change a vote
6 13 before the ballot is recorded and counted.

6 14 g. Present together the names of each team of candidates
6 15 for president and vice president and for governor and
6 16 lieutenant governor. The votes for a team shall be counted as
6 17 a vote for both candidates of the team.

6 18 h. Provide a voter with a method for casting write-in
6 19 votes for paired offices so that the voter can specify one
6 20 person as a candidate for president or for governor and one
6 21 person as a candidate for vice president or for lieutenant
6 22 governor.

6 23 i. Accurately account for every vote cast upon it.

6 24 j. If the machine is to be used for provisional or
6 25 absentee voting, remove information from the ballot
6 26 identifying the voter before the ballot is recorded and
6 27 counted.

6 28 k. Maintain an internal audit log that will store each
6 29 ballot cast separate from the ballot tabulation function,
6 30 which ballot may be reproduced on paper in the case of a
6 31 recount or machine malfunction. The printed ballot image
6 32 produced from an internal audit log shall be sealed in the
6 33 manner, and for the time period, prescribed in section 50.12.
6 34 The state commissioner of elections shall adopt rules to
6 35 implement this paragraph "k".

7 1 l. For all elections held on or after November 4, 2008,
7 2 provide a paper record for review by the voter as provided in
7 3 subsection 2.

7 4 2. A voting machine shall be capable of producing a paper
7 5 record that the voter may review before the voter casts the

7 6 voter's ballot. The paper record shall meet all of the
7 7 following requirements:
7 8 a. Be printed on paper separate from all other paper
7 9 records.
7 10 b. Be readable by the voter without the use of an
7 11 electronic device. It may also be machine-readable.
7 12 c. Not contain any information that will identify the
7 13 person who cast the ballot.
7 14 d. Be stored at the polling place in a secure container,
7 15 such that the voter is incapable of removing the paper record
7 16 from the polling place.
7 17 3. After the polls close, the precinct election officials
7 18 shall seal all paper records required by subsection 2 in the
7 19 manner, and for the time period, prescribed in section 50.12.
7 20 Sec. 8. Section 52.9, unnumbered paragraph 2, Code 2007,
7 21 is amended to read as follows:
7 22 It shall be the duty of the commissioner or the
7 23 commissioner's duly authorized agents to examine and test the
7 24 voting machines to be used at any election, after the machines
7 25 have been prepared for the election and not less than twelve
7 26 hours before the opening of the polls on the morning of the
7 27 election. For any election to fill a partisan office, the
7 28 county chairperson of each political party referred to in
7 29 section 49.13 shall be notified in writing of the date, time
7 30 said, and place the machines shall be examined and tested so
7 31 that they may be present, or have a representative present.
7 32 For every election, the commissioner shall ~~include the publish~~
7 33 ~~notice of the date, time, and place the examination and~~
7 34 ~~testing will be conducted. The commissioner may include such~~
7 35 notice in the notice of the election published ~~as required by~~
8 1 ~~pursuant to~~ section 49.53. Those present for the examination
8 2 and testing shall sign a certificate which shall read
8 3 substantially as follows:
8 4 Sec. 9. Section 52.33, Code 2007, is amended to read as
8 5 follows:
8 6 52.33 ABSENTEE VOTING BY ~~ELECTRONIC~~ OPTICAL SCAN VOTING
8 7 SYSTEM.
8 8 In any county in which the board of supervisors has adopted
8 9 voting by means of an electronic optical scan voting system,
8 10 the commissioner ~~may elect to shall~~ also conduct absentee
8 11 voting by use of such a system ~~if the system so used is~~
8 12 ~~compatible with the counting center serving the precinct~~
8 13 ~~polling places in the county where voting is by means of an~~
8 14 ~~electronic voting system.~~ In any other county, the
8 15 commissioner may with approval of the board of supervisors
8 16 conduct absentee voting by use of an electronic optical scan
8 17 voting system. All provisions of chapter 53 shall apply to
8 18 such absentee voting, so far as applicable. In counties where
8 19 absentee voting is conducted by use of an electronic optical
8 20 scan voting system, the special precinct counting board shall,
8 21 at the time required by chapter 53, prepare absentee ballots
8 22 for ~~delivery to the counting center~~ tabulation in the manner
8 23 prescribed by this chapter.
8 24 The absentee and special precinct board shall follow the
8 25 process prescribed in section 52.37, subsection ~~2~~ 1, in
8 26 handling damaged or defective ballots and in counting write-in
8 27 votes on ~~special paper~~ optical scan ballots.
8 28 Sec. 10. Section 52.35, unnumbered paragraph 1, Code 2007,
8 29 is amended to read as follows:
8 30 ~~Within five days before~~ Before the date of any election at
8 31 which votes are to be cast by means of an electronic optical
8 32 scan voting system ~~and tabulated at a counting center~~
8 33 ~~established under section 52.34, the commissioner in charge of~~
8 34 ~~the counting center where votes so cast are to be tabulated~~
8 35 shall have the automatic tabulating equipment, including the
9 1 portable tabulating devices, tested to ascertain that it will
9 2 correctly count the votes cast for all offices and on all
9 3 public questions. Testing shall be completed not later than
9 4 twelve hours before the opening of the polls on the morning of
9 5 the election. The procedure for conducting the test shall be
9 6 as follows:
9 7 Sec. 11. Section 52.35, subsections 1 and 3, Code 2007,
9 8 are amended to read as follows:
9 9 1. For any election to fill a partisan office, the county
9 10 chairperson of each political party shall be notified in
9 11 writing of the date, time, and place the test will be
9 12 conducted, so that they may be present or have a
9 13 representative present. For every election, the commissioner
9 14 shall ~~include such publish notice of the date, time, and place~~
9 15 ~~the test will be conducted. The commissioner may include such~~
9 16 notice in the notice of the election published ~~as required by~~

9 17 pursuant to section 49.53. The test shall be open to the
9 18 public.

9 19 3. The test group of ballots used for the test shall be
9 20 clearly labeled as such, and retained in the ~~counting center~~
9 21 ~~commissioner's office. The test prescribed in subsection 2~~
9 22 ~~shall be repeated immediately before the start of the official~~
9 23 ~~tabulation of ballots cast in the election, and again~~
9 24 ~~immediately after the tabulation is completed.~~ The test group
9 25 of ballots and the programs used for the counting procedure
9 26 shall be sealed, retained for the time required for and
9 27 disposed of in the same manner as ballots cast in the
9 28 election.

9 29 Sec. 12. Section 52.35, Code 2007, is amended by adding
9 30 the following new subsection:
9 31 NEW SUBSECTION. 4. Those present for the test shall sign
9 32 a certificate which shall read substantially as follows:
9 33 The undersigned certify that we were present and witnessed
9 34 the testing of the following tabulating devices, that we
9 35 believe the devices are in proper condition for use in the
10 1 election of (date); that following the test the vote
10 2 totals were erased from the memory of each tabulating device
10 3 and a report was produced showing that all vote totals in the
10 4 memory were set at 0000; that the devices were securely locked
10 5 or sealed; and that the serial numbers and locations of the
10 6 devices which were tested are listed below.
10 7 Signed
10 8 (name and political party affiliation,
10 9 if applicable)
10 10
10 11 (name and political party affiliation,
10 12 if applicable)
10 13
10 14 Voting equipment custodian
10 15 Dated
10 16 Precinct Location Serial Number
10 17
10 18
10 19
10 20 Sec. 13. Sections 52.11 through 52.16, 52.21,
10 21 52.22, 52.32, 52.34, 52.36, 52.38, and 52.40, Code
10 22 2007, are repealed.

10 23 CONFORMING AMENDMENTS

10 24 Sec. 14. Section 39A.5, subsection 1, paragraph a,
10 25 subparagraph (3), Code 2007, is amended to read as follows:
10 26 (3) Circulating, communicating, or attempting to circulate
10 27 or communicate information with reference to the result of the
10 28 counted ballots or making a compilation of vote subtotals
10 29 before the polls are closed in violation of section 51.11-
10 30 52.40, or 53.23.

10 31 Sec. 15. Section 43.45, subsection 4, unnumbered paragraph
10 32 1, Code 2007, is amended to read as follows:
10 33 In precincts where ~~electronic optical scan~~ voting systems
10 34 are used and ballots are counted in the precinct, precinct
10 35 election officials shall do all of the following:
11 1 Sec. 16. Section 43.45, subsection 5, Code 2007, is
11 2 amended by striking the subsection.
11 3 Sec. 17. Section 43.48, Code 2007, is amended by striking
11 4 the section and inserting in lieu thereof the following:
11 5 43.48 ELECTOR MAY ASCERTAIN VOTE CAST.
11 6 The commissioner shall make available to the public the
11 7 precinct counts produced by the voting equipment.
11 8 Sec. 18. Section 46.22, Code 2007, is amended to read as
11 9 follows:
11 10 46.22 VOTING.
11 11 Voting at judicial elections shall be by separate paper
11 12 ballot, ~~special paper ballot, ballot cards optical scan~~
11 13 ~~ballot~~, or by voting machine in the space provided for public
11 14 measures. If ~~separate~~ paper ballots are used, the election
11 15 judges shall offer a ballot to each voter. If ~~special paper~~
11 16 ~~optical scan~~ ballots or ~~ballot cards~~ are used, either a
11 17 separate ballot or a distinct heading may be used to
11 18 distinguish the judicial ballot. Separate ballot boxes for
11 19 the general election ballots and the judicial election ballots
11 20 are not required. The general election ballot and the
11 21 judicial election ballot may be voted in the same voting
11 22 booth.
11 23 Sec. 19. Section 49.25, subsection 3, Code 2007, is
11 24 amended to read as follows:
11 25 3. The commissioner shall furnish to each precinct where
11 26 voting is to be by paper ballot, ~~special paper or optical scan~~
11 27 ballot, or ~~ballot card~~, rather than by voting machine, the

11 28 necessary ballot boxes, suitably equipped with seals or locks
11 29 and keys, and voting booths. The voting booths shall be
11 30 approved by the board of examiners for voting machines and
11 31 ~~electronic optical scan~~ voting systems and shall provide for
11 32 voting in secrecy. At least one voting booth in each precinct
11 33 shall be accessible to persons with disabilities. If the
11 34 lighting in the polling place is inadequate, the voting booths
11 35 used in that precinct shall include lights. Ballot boxes
12 1 shall be locked or sealed before the polls open and shall
12 2 remain locked or sealed until the polls are closed, except as
12 3 provided in ~~sections section~~ 51.7 and ~~52.40~~, or to provide
12 4 necessary service to a malfunctioning portable vote tallying
12 5 device. If a ballot box is opened prior to the closing of the
12 6 polls, two precinct election officials not of the same party
12 7 shall be present and observe the ballot box being opened.
12 8 Sec. 20. Section 49.30, subsection 1, Code 2007, is
12 9 amended to read as follows:
12 10 1. Where ~~special paper~~ optical scan ballots are used, if
12 11 it is not possible to include all offices and public measures
12 12 on a single ballot, separate ballots may be provided for
12 13 nonpartisan offices, judges, or public measures.
12 14 Sec. 21. Section 49.30, subsection 2, Code 2007, is
12 15 amended by striking the subsection.
12 16 Sec. 22. Section 49.30, subsection 3, unnumbered paragraph
12 17 1, Code 2007, is amended to read as follows:
12 18 Where conventional paper ballots are used, separate paper
12 19 ballots shall be used:
12 20 Sec. 23. Section 49.43, unnumbered paragraphs 1 and 2,
12 21 Code 2007, are amended to read as follows:
12 22 If possible, all public measures and constitutional
12 23 amendments to be voted upon by an elector shall be included on
12 24 a single ~~special paper~~ ballot which shall also include all
12 25 offices to be voted upon. However, if it is necessary, a
12 26 separate ballot may be used as provided in section 49.30,
12 27 subsection 1.
12 28 In precincts using paper ballots all public measures to be
12 29 voted upon by a voter at a given election shall be printed
12 30 upon one ballot of some color other than white. In precincts
12 31 using voting machines all public measures shall be placed ~~in~~
~~12 32 the question row on the machine; however, if it is impossible~~
~~12 33 to place all the public measures on the machine ballot, or if~~
~~12 34 only a portion of the registered voters of the precinct are~~
~~12 35 entitled to vote upon any measure presented, the commissioner~~
~~13 1 may provide a separate paper ballot for the public measure or~~
~~13 2 measures.~~
13 3 Sec. 24. Section 49.44, unnumbered paragraphs 1 and 2,
13 4 Code 2007, are amended to read as follows:
13 5 When a proposed constitutional amendment or other public
13 6 measure to be decided by the voters of the entire state is to
13 7 be voted upon, the state commissioner shall prepare a written
13 8 summary of the amendment or measure including the number of
13 9 the amendment or statewide public measure assigned by the
13 10 state commissioner. The summary shall be printed immediately
13 11 preceding the text of the proposed amendment or measure on the
13 12 paper ballot or ~~special paper~~ optical scan ballot referred to
13 13 in section 49.43. If the complete text of the public measure
13 14 will not fit on the ~~special paper~~ ballot it shall be posted
13 15 inside the voting booth. A copy of the full text shall be
13 16 included with any absentee ballots.
13 17 In precincts where the amendment or measure will be voted
13 18 on by machine, the summary shall be placed ~~in~~ on the ~~voting~~
13 19 machine ~~inserts~~ as required by section 52.25.
13 20 Sec. 25. Section 49.53, unnumbered paragraph 1, Code 2007,
13 21 is amended to read as follows:
13 22 The commissioner shall not less than four nor more than
13 23 twenty days before the day of each election, except those for
13 24 which different publication requirements are prescribed by
13 25 law, publish notice of the election. The notice shall contain
13 26 a facsimile of the portion of the ballot containing the first
13 27 rotation as prescribed by section 49.31, subsection 2, and
13 28 shall show the names of all candidates or nominees and the
13 29 office each seeks, and all public questions, to be voted upon
13 30 at the election. The sample ballot published as a part of the
13 31 notice may at the discretion of the commissioner be reduced in
13 32 size relative to the actual ballot but such reduction shall
13 33 not cause upper case letters appearing in candidates' names or
13 34 in summaries of public measures on the published sample ballot
13 35 to be less than ninety percent of the size of such upper case
14 1 letters appearing on the actual ballot. The notice shall also
14 2 state the date of the election, the hours the polls will be
14 3 open, the location of each polling place at which voting is to

14 4 occur in the election, the location of the polling places
14 5 designated as early ballot pick-up sites, and the names of the
14 6 precincts voting at each polling place, but the statement need
14 7 not set forth any fact which is apparent from the portion of
14 8 the ballot appearing as a part of the same notice. The notice
14 9 shall include the full text of all public measures to be voted
14 10 upon at the election. The notice shall also include notice of
14 11 testing required pursuant to sections 52.9~~7~~ and 52.35~~7~~, and
~~14 12 52.38.~~

14 13 Sec. 26. Section 49.90, Code 2007, is amended to read as
14 14 follows:

14 15 49.90 ASSISTING VOTER.

14 16 Any voter who may declare upon oath that the voter is
14 17 blind, cannot read the English language, or is, by reason of
14 18 any physical disability other than intoxication, unable to
14 19 cast a vote without assistance, shall, upon request, be
14 20 assisted by the two officers as provided in section 49.89, or
14 21 alternatively by any other person the voter may select in
14 22 casting the vote. The officers, or the person selected by the
14 23 voter, shall cast the vote of the voter requiring assistance,
14 24 and shall thereafter give no information regarding the vote
14 25 cast. If any elector because of a disability cannot enter the
14 26 building where the polling place for the elector's precinct of
14 27 residence is located, the two officers shall take a paper
14 28 ballot to the vehicle occupied by the elector with a
14 29 disability and allow the elector to cast the ballot in the
14 30 vehicle. If an elector with a disability cannot cast a ballot
14 31 on a voting machine the elector shall be allowed to cast a
14 32 paper ballot, which shall be opened immediately after the
14 33 closing of the polling place by the two precinct election
14 34 officials designated under section 49.89, who shall register
14 35 the votes cast thereon on a voting machine in the polling
15 1 place before the votes cast there are tallied pursuant to
15 2 section ~~52.21~~ 50.16. To preserve so far as possible the
15 3 confidentiality of each ballot of an elector with a
15 4 disability, the two officers shall proceed substantially in
15 5 the same manner as provided in section 53.24. In precincts
15 6 where all voters use paper ballots, those cast by voters with
15 7 disabilities shall be deposited in the regular ballot box and
15 8 counted in the usual manner.

15 9 Sec. 27. Section 49.99, unnumbered paragraph 1, Code 2007,
15 10 is amended to read as follows:

15 11 The voter may also write on the line provided for write-in
15 12 votes the name of any person for whom the voter desires to
15 13 vote and mark the voting target opposite the name. If the
15 14 voter is using a voting system other than an ~~electronic~~
15 15 optical scan voting system, as defined in section 52.1, the
15 16 writing of the name shall constitute a valid vote for the
15 17 person whose name has been written on the ballot without
15 18 regard to whether the voter has made a mark opposite the name.
15 19 However, when a write-in vote is cast using an ~~electronic~~
15 20 optical scan voting system, the ballot must also be marked in
15 21 the corresponding space in order to be counted. Marking the
15 22 voting target opposite a write-in line without writing a name
15 23 on the line shall not affect the validity of the remainder of
15 24 the ballot.

15 25 Sec. 28. Section 52.3, Code 2007, is amended to read as
15 26 follows:

15 27 52.3 TERMS OF PURCHASE == TAX LEVY.

15 28 The county board of supervisors, on the adoption and
15 29 purchase of a voting machine or an ~~electronic~~ optical scan
15 30 voting system, may issue bonds under section 331.441,
15 31 subsection 2, paragraph "b", subparagraph (1).

15 32 Sec. 29. Section 52.4, Code 2007, is amended to read as
15 33 follows:

15 34 52.4 EXAMINERS == TERM == REMOVAL.

15 35 The state commissioner of elections shall appoint three
16 1 members to a board of examiners for ~~voting machines and~~
~~16 2 electronic~~ voting systems, not more than two of whom shall be
16 3 from the same political party. The examiners shall hold
16 4 office for staggered terms of six years, subject to removal at
16 5 the pleasure of the state commissioner of elections.

16 6 At least one of the examiners shall have been trained in
16 7 computer programming and operations. The other two members
16 8 shall be directly involved in the administration of elections
16 9 and shall have experience in the use of ~~electronic voting~~
~~16 10 machines and optical scan~~ voting systems.

16 11 Sec. 30. Section 52.5, Code 2007, is amended to read as
16 12 follows:

16 13 52.5 TESTING AND EXAMINATION OF VOTING EQUIPMENT.

16 14 A person or corporation owning or being interested in a

16 15 voting machine or ~~electronic~~ optical scan voting system may
16 16 request that the state commissioner call upon the board of
16 17 examiners to examine and test the machine or system. Within
16 18 seven days of receiving a request for examination and test,
16 19 the state commissioner shall notify the board of examiners of
16 20 the request in writing and set a time and place for the
16 21 examination and test.

16 22 The state commissioner shall formulate, with the advice and
16 23 assistance of the examiners, and adopt rules governing the
16 24 testing and examination of any voting machine or ~~electronic~~
16 25 optical scan voting system by the board of examiners. The
16 26 rules shall prescribe the method to be used in determining
16 27 whether the machine or system is suitable for use within the
16 28 state and performance standards for voting equipment in use
16 29 within the state. The rules shall provide that all ~~electronic~~
16 30 optical scan voting systems and voting machines approved for
16 31 use by the examiners after April 9, 2003, shall meet voting
16 32 systems performance and test standards, as adopted by the
16 33 federal election commission on April 30, 2002, and as deemed
16 34 adopted by Pub. L. No. 107-252, section 222. The rules shall
16 35 include standards for determining when recertification is
17 1 necessary following modifications to the equipment or to the
17 2 programs used in tabulating votes, and a procedure for
17 3 rescinding certification if a system or machine is found not
17 4 to comply with performance standards adopted by the state
17 5 commissioner.

17 6 The state commissioner may employ a competent person or
17 7 persons to assist the examiners in their evaluation of the
17 8 equipment and to advise the examiners as to the sufficiency of
17 9 the equipment. Consultant fees shall be paid by the person
17 10 who requested the certification. Following the examination
17 11 and testing of the voting machine or system the examiners
17 12 shall report to the state commissioner describing the testing
17 13 and examination of the machine or system and upon the capacity
17 14 of the machine or system to register the will of voters, its
17 15 accuracy and efficiency, and with respect to its mechanical
17 16 perfections and imperfections. Their report shall be filed in
17 17 the office of the state commissioner and shall state whether
17 18 in their opinion the kind of machine or system so examined can
17 19 be safely used by voters at elections under the conditions
17 20 prescribed in this chapter. If the report states that the
17 21 machine or system can be so used, it shall be deemed approved
17 22 by the examiners, and machines or systems of its kind may be
17 23 adopted for use at elections as provided in this section. Any
17 24 form of voting machine or system not so approved cannot be
17 25 used at any election. Before actual use by a county of a
17 26 particular ~~electronic~~ optical scan voting system which has
17 27 been approved for use in this state, the state commissioner
17 28 shall formulate, with the advice and assistance of the
17 29 examiners, and adopt rules governing the development of vote
17 30 counting programs and all procedures used in actual counting
17 31 of votes by means of that system.

17 32 Sec. 31. Section 52.8, Code 2007, is amended to read as
17 33 follows:

17 34 52.8 EXPERIMENTAL USE.

17 35 The board of supervisors of any county may provide for the
18 1 experimental use at an election in one or more districts, of a
18 2 voting machine or ~~electronic~~ optical scan voting system which
18 3 it might lawfully adopt, without a formal adoption thereof;
18 4 and its use at such election shall be as valid for all
18 5 purposes as if it had been lawfully adopted.

18 6 Sec. 32. Section 52.23, unnumbered paragraph 1, Code 2007,
18 7 is amended to read as follows:

18 8 After the total vote for each candidate has been
18 9 ascertained, and before leaving the room or voting place, the
18 10 precinct election officials shall make and sign the ~~canvass~~
18 11 ~~forms referred to in section 52.21, which canvass shall serve~~
18 12 ~~as a written statement of election. Said canvass statement~~
18 13 ~~shall be in lieu of the tally list required in section 50.16.~~

18 14 Sec. 33. Section 52.25, unnumbered paragraphs 1 and 2,
18 15 Code 2007, are amended to read as follows:

18 16 The question of a constitutional convention, amendments,
18 17 and public measures including bond issues may be voted on
18 18 voting machines and on ~~special paper~~ ballots in the following
18 19 manner:

18 20 The entire convention question, amendment or public measure
18 21 shall be printed and displayed prominently in at least four
18 22 places within the voting precinct, and inside each voting
18 23 booth, ~~or on the left-hand side inside the curtain of each~~
18 24 ~~voting machine,~~ the printing to be in conformity with the
18 25 provisions of chapter 49. The public measure shall be

18 26 summarized by the commissioner and in the largest type
18 27 possible printed on the ~~special paper~~ ballots or ~~inserts used~~
~~18 28 in on~~ the voting machines, except that:
18 29 Sec. 34. Section 52.26, subsection 1, unnumbered paragraph
18 30 1, Code 2007, is amended to read as follows:
18 31 Every ~~electronic optical scan~~ voting system approved by the
18 32 state board of examiners for ~~voting machines and electronic~~
18 33 voting systems shall:
18 34 Sec. 35. Section 52.26, subsection 1, paragraph a, Code
18 35 2007, is amended to read as follows:
19 1 a. Provide for voting in secrecy, except as to persons
19 2 entitled by sections 49.90 and 49.91 to assistance. The state
19 3 board of examiners for ~~voting machines and electronic~~ voting
19 4 systems shall determine whether the systems' voting booths
19 5 provide for voting in secrecy.
19 6 Sec. 36. Section 52.27, Code 2007, is amended to read as
19 7 follows:
19 8 52.27 COMMISSIONER TO PROVIDE ~~ELECTRONIC~~ OPTICAL SCAN
19 9 VOTING EQUIPMENT.
19 10 The commissioner having jurisdiction of any precinct for
19 11 which the board of supervisors has adopted voting by means of
19 12 an ~~electronic optical scan~~ voting system shall, as soon as
19 13 practicable thereafter, provide for use at each election held
19 14 in the precinct ~~special paper optical scan~~ ballots and ~~vote~~
19 15 ~~ballot~~ marking devices in appropriate numbers. The
19 16 commissioner shall have custody of all equipment required for
19 17 use of the ~~electronic optical scan~~ voting system, and shall be
19 18 responsible for maintaining it in good condition and for
19 19 storing it between elections. All provisions of chapter 49
19 20 relative to times and circumstances under which voting
19 21 machines are to be used in any election and the number of
19 22 voting machines to be provided shall also govern the use of
19 23 ~~electronic optical scan~~ voting systems, when applicable.
19 24 Sec. 37. Section 52.28, Code 2007, is amended to read as
19 25 follows:
19 26 52.28 ~~ELECTRONIC~~ OPTICAL SCAN VOTING SYSTEM BALLOT FORMS.
19 27 The commissioner of each county in which the use of an
19 28 ~~electronic optical scan~~ voting system in one or more precincts
19 29 has been authorized shall determine the arrangement of
19 30 candidates' names and public questions upon the ballot or
19 31 ballots used with the system. The ballot information shall be
19 32 arranged as required by chapters 43 and 49, and by any
19 33 relevant provisions of any statutes which specify the form of
19 34 ballots for special elections, so far as possible within the
19 35 constraints of the physical characteristics of the ~~electronic~~
20 1 optical scan voting system in use in that county. The state
20 2 commissioner may adopt rules requiring a reasonable degree of
20 3 uniformity among counties in arrangement of ~~electronic optical~~
20 4 scan voting system ballots.
20 5 Sec. 38. Section 52.29, Code 2007, is amended to read as
20 6 follows:
20 7 52.29 ~~ELECTRONIC~~ OPTICAL SCAN VOTING SYSTEM SAMPLE
20 8 BALLOTS.
20 9 The commissioner shall provide for each precinct where an
20 10 ~~electronic optical scan~~ voting system is in use at least four
20 11 sample ~~special paper optical scan~~ ballots which shall be exact
20 12 copies of the official ballots as printed for that precinct.
20 13 The sample ballots shall be arranged in the form of a diagram
20 14 showing the ~~special paper optical scan~~ ballot as it will
20 15 appear to the voter in that precinct on election day. The
20 16 sample ballots shall be posted prominently within the polling
20 17 place, and shall be open to public inspection during the hours
20 18 the polls are open on election day.
20 19 Sec. 39. Section 52.31, Code 2007, is amended to read as
20 20 follows:
20 21 52.31 PROCEDURE WHERE VOTES CAST ON ~~SPECIAL PAPER~~ OPTICAL
20 22 SCAN BALLOTS.
20 23 Preparations for voting and voting at any election in a
20 24 precinct where votes are to be received on ~~special paper~~
20 25 optical scan ballots shall be in accordance with the
20 26 provisions of chapter 49 governing voting upon conventional
20 27 paper ballots with the following exceptions:
20 28 1. Before entering the voting booth each voter shall be
20 29 cautioned to mark the ballot only with a ~~vote ballot~~ marking
20 30 device provided in the booth or by the precinct election
20 31 officials.
20 32 2. In each precinct where a portable ~~vote tallying system~~
20 33 automatic tabulating equipment is used ~~and the ballots are~~
~~20 34 tabulated by a device located in the precinct which is~~
~~20 35 equipped with a mechanism which will not permit more than one~~
~~21 1 ballot to be inserted at a time, the voter may personally~~

21 2 insert the ballot into the tabulating device.
21 3 Sec. 40. Section 52.37, Code 2007, is amended to read as
21 4 follows:
21 5 52.37 ~~COUNTING CENTER~~ SPECIAL PRECINCT TABULATION
21 6 PROCEDURE.
21 7 The tabulation of absentee and provisional ballots cast by
21 8 means of an electronic optical scan voting system, ~~at a~~
~~21 9 counting center established pursuant to this chapter,~~ shall be
21 10 conducted as follows:
21 11 1. ~~The sealed ballot container from each precinct shall be~~
~~21 12 delivered to the counting center by two election officials,~~
~~21 13 not members of the same political party if the ballot contains~~
~~21 14 partisan offices, who shall travel together in the same~~
~~21 15 vehicle and shall have the container under their immediate~~
~~21 16 joint control until they surrender it to the commissioner or~~
~~21 17 the commissioner's designee in charge of the counting center.~~
~~21 18 The commissioner may designate two precinct election~~
~~21 19 officials, of different political parties if the ballot~~
~~21 20 contains partisan offices, to collect the sealed ballot~~
~~21 21 containers from more than one precinct to deliver to the~~
~~21 22 counting center. The commissioner or designee shall, in the~~
~~21 23 presence of the two precinct election officials who delivered~~
~~21 24 the container, enter on a record kept for the purpose that the~~
~~21 25 container was received, the time the container was received,~~
~~21 26 and the condition of the seal upon receipt.~~
21 27 In nonpartisan elections the election officials delivering
~~21 28 the ballots are not required to be members of any political~~
~~21 29 party, or to be members of different political parties.~~
21 30 2. 1. After the record required by subsection 1 has been
~~21 31 made, the ballot container shall be opened. If any ballot is~~
21 32 found damaged or defective, so that it cannot be counted
21 33 properly by the automatic tabulating equipment, a true
21 34 duplicate shall be made by the resolution board team and
21 35 substituted for the damaged or defective ballot, or, as an
22 1 alternative, the valid votes on a defective ballot may be
22 2 manually counted ~~at the counting center~~ by the resolution
22 3 special precinct election board, whichever method is best
22 4 suited to the system being used. All duplicate ballots shall
22 5 be clearly labeled as such, and shall bear a serial number
22 6 which shall also be recorded on the damaged or defective
22 7 ballot.
22 8 The resolution special precinct election board shall also
22 9 tabulate any write-in votes which were cast. Write-in votes
22 10 cast for a candidate whose name appears on the ballot for the
22 11 same office shall be counted as a vote for the candidate
22 12 indicated, if the vote is otherwise properly cast.
22 13 Ballots which are rejected by the tabulating equipment as
22 14 blank because they have been marked with an unreadable marker
22 15 shall be duplicated or tabulated as required by this
22 16 subsection for damaged or defective ballots. The commissioner
22 17 may instruct the resolution special precinct election board to
22 18 mark over voters' unreadable marks using a marker compatible
22 19 with the tabulating equipment. The resolution special
~~22 20 precinct election~~ board shall take care to leave part of the
22 21 original mark made by the voter. If it is impossible to mark
22 22 over the original marks made by the voter without completely
22 23 obliterating them, the ballot shall be duplicated.
22 24 3- 2. The record printed by the automatic tabulating
22 25 equipment, with the addition of a record of any write-in or
22 26 other votes manually counted pursuant to this chapter, shall
22 27 constitute the official return of the absentee ballot and
~~22 28 special voter's precinct. Upon completion of the tabulation~~
~~22 29 of the votes from each individual precinct, the result shall~~
~~22 30 be announced and reported in substantially the manner required~~
~~22 31 by section 50.11.~~
22 32 4- 3. If for any reason it becomes impracticable to count
22 33 all or any part of the ballots with the automatic ~~tabulation~~
22 34 tabulating equipment, the commissioner may direct that they be
22 35 counted manually, in accordance with chapter 50 so far as
23 1 applicable.
23 2 Sec. 41. Section 331.383, Code 2007, is amended to read as
23 3 follows:
23 4 331.383 DUTIES AND POWERS RELATING TO ELECTIONS.
23 5 The board shall ensure that the county commissioner of
23 6 elections conducts primary, general, city, school, and special
23 7 elections in accordance with applicable state law. The board
23 8 shall canvass elections in accordance with sections 43.49 to
23 9 43.51, 43.60 to 43.62, 46.24, 50.13, 50.24 to 50.29, 50.44 to
23 10 50.47, 260C.39, 275.25, 277.20, 376.1, 376.7, and 376.9. The
23 11 board shall prepare and deliver a list of persons nominated in
23 12 accordance with section 43.55, provide for a recount in

23 13 accordance with section 50.48, provide for election precincts
23 14 in accordance with sections 49.3, 49.4, 49.6 to 49.8 and
23 15 49.11, pay election costs as provided in section 47.3,
23 16 participate in election contests as provided in sections 62.1A
23 17 and 62.9, and perform other election duties required by state
23 18 law. The board may authorize additional precinct election
23 19 officials as provided in section 51.1, provide for the use of
23 20 a voting machine or ~~electronic~~ optical scan voting system as
23 21 provided in sections 52.2, 52.3, ~~and 52.8, and 52.34,~~ and
23 22 exercise other election powers as provided by state law.

23 23 Sec. 42. Section 331.441, subsection 2, paragraph b,
23 24 subparagraph (1), Code 2007, is amended to read as follows:

23 25 (1) Voting machines or an ~~electronic~~ optical scan voting
23 26 system.

23 27 Sec. 43. Section 364.2, subsection 4, paragraph b, Code
23 28 2007, is amended to read as follows:

23 29 b. Such an ordinance shall not become effective unless
23 30 approved at an election. The proposal may be submitted by the
23 31 council on its own motion to the voters at any city election.
23 32 Upon receipt of a valid petition as defined in section 362.4
23 33 requesting that a proposal be submitted to the voters, the
23 34 council shall submit the proposal at the next regular city
23 35 election or at a special election called for that purpose
24 1 before the next regular city election. However, the city
24 2 council may dispense with such election as to the grant,
24 3 amendment, extension, or renewal of an electric light and
24 4 power, heating, or gasworks franchise unless there is a valid
24 5 petition requesting submission of the proposal to the voters,
24 6 or the party seeking such franchise, grant, amendment,
24 7 extension, or renewal requests an election. If a majority of
24 8 those voting approves the proposal, the city may proceed as
24 9 proposed. The complete text of the ordinance shall be
24 10 included on the ballot if conventional paper ballots are used.
24 11 If an ~~electronic~~ optical scan voting system or voting machine
24 12 is used, the proposal shall be stated on the optical scan
24 13 ballot and on the machine, and the full text of the ordinance
24 14 posted for the voters pursuant to section 52.25. All absentee
24 15 voters shall receive the full text of the ordinance.

24 16 EXPLANATION

24 17 This bill makes numerous changes relating to voting
24 18 machines (direct recording electronic devices) and optical
24 19 scan voting systems.

24 20 The bill amends Code section 49.28 to provide that when
24 21 voting machines are used in a precinct, the commissioner shall
24 22 make a supply of paper ballots available in case of a power
24 23 failure, machine malfunction, or any other condition that
24 24 prevents a person from casting the person's ballot on the
24 25 voting machine.

24 26 Code sections 49.53, 52.9, and 52.35 are amended to strike
24 27 the requirement that notice of testing of voting machines and
24 28 voting system tabulating devices be included with the notice
24 29 of the election. The bill provides that notice of testing may
24 30 be published separately or may be published with the notice of
24 31 the election. Code section 52.35 is also amended to add the
24 32 provisions of Code section 52.38. Both Code sections relate
24 33 to testing of tabulating devices used with optical scan voting
24 34 systems. The bill repeals Code section 52.38.

24 35 Code section 50.48, containing the general provisions for
25 1 recounts, is amended to provide that if a voting machine was
25 2 used in the election, the paper record produced by the machine
25 3 for voter review shall be the official record in a recount
25 4 unless the county commissioner of elections believes or knows
25 5 that the paper records for a machine have been compromised in
25 6 some manner.

25 7 Code section 52.1, relating to voting machines and
25 8 electronic voting system requirements, is amended to rewrite
25 9 several of the definitions. "Electronic voting system", is
25 10 changed to "optical scan voting system", and other changes are
25 11 made to related terminology.

25 12 Code section 52.2 is amended to provide that on or after
25 13 the effective date of the bill a county whose voting system
25 14 primarily utilizes voting machines shall, when replacing the
25 15 system, replace the system with an optical scan voting system
25 16 only, and the federal law requirements relating to disabled
25 17 voters shall be met through the use of an electronic ballot
25 18 marking device that is compatible with an optical scan voting
25 19 system. The bill further provides that on or after the
25 20 effective date of the bill those counties that utilize both a
25 21 voting machine and an optical scan voting system shall, when
25 22 replacing a voting machine, replace the voting machine with an
25 23 electronic ballot marking device that is compatible with an

25 24 optical scan voting system.
25 25 Code section 52.7, relating to requirements for
25 26 construction of voting machines, is stricken and rewritten for
25 27 ease of reading and also to provide that, for all elections
25 28 held on or after November 4, 2008, voting machines shall
25 29 provide a paper record for review by the voter at the polling
25 30 place.
25 31 Code section 52.33 is amended to provide that any county
25 32 using an optical scan voting system shall also conduct
25 33 absentee voting by use of such a system.
25 34 The bill repeals Code sections relating to use of voting
25 35 machines that are lever machines.
26 1 The bill repeals Code sections authorizing and referring to
26 2 the use of counting centers to tabulate optical scan ballots
26 3 at a central location rather than at each precinct.
26 4 The bill makes conforming amendments related to the
26 5 terminology changes in Code section 52.1 and the Code section
26 6 repeals.
26 7 LSB 1607HV 82
26 8 sc:nh/je/5