

Senate Study Bill 1204 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
STATE GOVERNMENT BILL BY
CHAIRPERSON SMITH)

A BILL FOR

1 An Act relating to the conduct of elections during emergencies.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 47.1, subsection 2, Code 2021, is amended
2 to read as follows:

3 2. *a.* The state commissioner of elections may exercise
4 emergency powers over any election being held in a district in
5 which either a natural or other disaster or extremely inclement
6 weather has occurred within fifteen days of the election.
7 ~~The state commissioner's decision to alter any conduct for~~
8 ~~an election using emergency powers must be approved by the~~
9 ~~legislative council. If the legislative council does not~~
10 ~~approve the secretary of state's use of emergency powers to~~
11 ~~conduct an election, the legislative council may choose to~~
12 ~~present and approve its own election procedures or choose to~~
13 ~~take no further action. The state commissioner of elections~~
14 ~~may also exercise emergency powers during an armed conflict~~
15 ~~involving United States armed forces, or mobilization of those~~
16 ~~forces, or if an election contest court finds that there were~~
17 ~~errors in the conduct of an election making it impossible to~~
18 ~~determine the result. The state commissioner of elections~~
19 shall exercise emergency powers as provided in section 47.12.

20 *b.* ~~If an emergency exists in all precincts of a county,~~
21 ~~the number of polling places shall not be reduced by more~~
22 ~~than thirty-five percent. The polling places allowed to open~~
23 ~~shall be equitably distributed in the county based on the~~
24 ~~ratio of regular polling places located in unincorporated~~
25 ~~areas in the county to regular polling places in incorporated~~
26 ~~areas in the county. The general assembly may, by concurrent~~
27 resolution, rescind an emergency declaratory order. If the
28 general assembly is not in session, the legislative council
29 may, by a majority vote, rescind the emergency declaratory
30 order. Rescission shall be effective upon filing of the
31 concurrent resolution or vote of the legislative council with
32 the secretary of state.

33 Sec. 2. Section 47.1, subsection 4, Code 2021, is amended by
34 striking the subsection.

35 Sec. 3. NEW SECTION. 47.12 Emergency election procedures.

1 1. For purposes of this section:

2 a. "*Election contest court*" means any of the courts
3 specified in sections 57.1, 58.4, 61.1, 62.1A, and 376.10.

4 b. "*Extremely inclement weather*" means a natural occurrence,
5 such as a rainstorm, windstorm, ice storm, blizzard, tornado,
6 or other weather conditions, that makes travel extremely
7 dangerous, that threatens the public health and safety, or that
8 damages and destroys public and private property.

9 c. "*Natural disaster*" means a natural occurrence, such
10 as a fire, flood, blizzard, earthquake, tornado, windstorm,
11 ice storm, or other events, that threatens the public health
12 and safety or that damages and destroys public and private
13 property.

14 d. "*Other disaster*" means an occurrence caused by machines
15 or people, such as fire, hazardous substance, or nuclear power
16 plant accident or incident, that threatens the public health
17 and safety or that damages and destroys public and private
18 property.

19 2. The county commissioner of elections, or the county
20 commissioner's designee, may notify the state commissioner
21 that due to a natural or other disaster or extremely inclement
22 weather an election cannot safely be conducted in the time
23 or place for which the election is scheduled to be held. If
24 the county commissioner or the county commissioner's designee
25 is unable to transmit notice of the hazardous conditions,
26 the notice may be given by any elected county official.
27 Verification of the county commissioner's agreement with the
28 severity of the conditions and the danger to the election
29 process shall be transmitted to the state commissioner as soon
30 as possible. Notice may be given by telephone or electronic
31 mail, but a signed notice shall also be delivered to the state
32 commissioner.

33 3. After receiving notice of hazardous conditions, the
34 state commissioner, or the state commissioner's designee, may
35 declare that an emergency exists in the affected precinct or

1 precincts. A copy of the declaration of the emergency shall
2 be provided to the county commissioner and posted on the
3 internet site for both the state commissioner and the county
4 commissioner.

5 4. a. When the state commissioner has declared that an
6 emergency exists due to a natural or other disaster or to
7 extremely inclement weather, the county commissioner, or the
8 county commissioner's designee, shall consult with the state
9 commissioner to develop a plan to conduct the election under
10 the emergency conditions.

11 b. Modifications may be made to the method for conducting
12 the election including relocation of polling places,
13 postponement of the hour of opening the polls, postponement of
14 the date of the election if no candidates for federal offices
15 are on the ballot, reduction in the number of precinct election
16 officials in nonpartisan elections, or other reasonable and
17 prudent modifications that will permit the election to be
18 conducted, but no modifications shall be made to requirements
19 for voter identification and absentee ballot request
20 and delivery. All modifications to the usual method for
21 conducting elections shall be approved in advance by the state
22 commissioner unless prior approval is impossible to obtain.

23 5. If an emergency exists in all precincts of a county,
24 the number of polling places shall not be reduced by more than
25 thirty-five percent. The polling places allowed to open shall
26 be equitably distributed in the county based on the ratio of
27 regular polling places located in unincorporated areas in the
28 county to regular polling places in incorporated areas in the
29 county.

30 6. a. A substitute polling place shall be as close as
31 possible to the originally designated polling place and shall
32 be within the same precinct if possible. Preference shall
33 be given to buildings that are accessible to the elderly and
34 disabled. Public buildings shall be made available without
35 charge by the authorities responsible for their administration.

1 If necessary, more than one precinct may be located in the same
2 room.

3 *b.* A notice of the location of the substitute polling place
4 shall comply with the requirements of section 49.23. If it
5 is unsafe or impossible to post the sign on the door of the
6 former polling place, the notice shall be posted in some other
7 visible place at or near the site of the former polling place.
8 The county commissioner shall inform all broadcast media and
9 print news organizations serving the jurisdiction of the
10 modifications and publish a notice on the county commissioner's
11 internet site.

12 7. An election, other than an election at which a federal
13 office appears on the ballot, may be postponed until the
14 following Tuesday. If the election involves more than one
15 precinct, the postponement must include all precincts within
16 the political subdivision. If the election is postponed,
17 ballots shall not be reprinted to reflect the modification in
18 the election date. The date of the close of voter registration
19 by mail for the election shall not be extended. Precinct
20 election registers prepared for the original election date may
21 be used or reprinted at the commissioner's discretion. Except
22 as provided in this section, a postponed election shall be
23 conducted in the same manner as an election taking place on the
24 regularly scheduled election day.

25 8. *a.* Absentee ballots shall be delivered to voters
26 pursuant to section 53.22 until the date the election is
27 actually held. Absentee ballots shall be accepted at the
28 commissioner's office until the hour the polls close on the
29 date the election is held. Absentee ballots that bear a
30 barcode traceable to a date of entry into the federal mail
31 system no later than the day before the election is actually
32 held shall be accepted if received no later than the length of
33 time prescribed for the usual conduct of the election. The
34 time shall be calculated from the date on which the election
35 is held, not the date for which the election was originally

1 scheduled.

2 *b.* If absentee ballots have been tabulated before the
3 election is postponed, the absentee ballots shall be sealed in
4 an envelope by the absentee and special voters precinct board
5 and stored securely until the date the election is actually
6 held. The sealed envelopes shall be opened by the absentee
7 and special voters precinct board on the date the election is
8 actually held, counters on the tabulating equipment, if any,
9 shall be reset to zero, and all absentee ballots tabulated on
10 the original election date shall be retabulated.

11 9. The absentee and special voters precinct board shall
12 meet to consider provisional ballots at the times specified in
13 sections 50.22 and 52.23, calculated from the date the election
14 is held. No absentee ballots shall be counted until the date
15 the election is held.

16 10. The canvass of votes shall be rescheduled for one week
17 after the originally scheduled canvass date.

18 11. *a.* If the emergency is declared while the polls are
19 open and the decision is made to postpone the election, each
20 precinct polling place in the political subdivision shall be
21 notified to close its doors and to halt all voting immediately.
22 People present in the polling place who are waiting to vote
23 shall not be given ballots. People who have received and
24 marked their ballots shall deposit them in the ballot box.
25 Unmarked ballots shall be returned to the precinct election
26 officials.

27 *b.* The precinct election officials shall seal all ballots
28 that were cast before the declaration of the emergency in
29 secure containers. The containers shall be clearly marked as
30 ballots from the postponed election. If it is safe to do so,
31 the ballot containers, election register, and other election
32 supplies shall be transported to the county commissioner's
33 office. The ballots shall be stored in a secure place. If
34 it is unsafe to travel to the county commissioner's office,
35 the chairperson of the precinct election board shall securely

1 store the ballots and the election register until it is safe
2 to return the ballots and election register to the county
3 commissioner. If no contest is pending six months after the
4 canvass for the election is completed, the unopened, sealed
5 ballot containers shall be destroyed.

6 *c.* If automatic tabulating equipment is used, the automatic
7 tabulating equipment shall be closed and sealed without
8 printing the results. Before the date the election is held,
9 the automatic tabulating equipment shall be reset to zero.
10 Documents showing the progress of the count, if any, shall be
11 sealed in an envelope and stored. No person shall reveal the
12 progress of the count. After six months, the sealed envelope
13 containing the vote totals shall be destroyed if no contest is
14 pending.

15 12. The state commissioner shall maintain records of each
16 emergency declaration. The records of emergency declarations
17 for federal elections shall be kept for twenty-two months
18 and records for all other elections shall be kept for six
19 months following the election. The records shall include the
20 following information:

21 *a.* The county in which the emergency occurred.

22 *b.* The date and time the emergency declaration was
23 requested.

24 *c.* The name and title of the person making the request.

25 *d.* The name and date of the election affected.

26 *e.* The jurisdiction for which the election is to be
27 conducted.

28 *f.* The number of precincts in the jurisdiction.

29 *g.* The number of precincts affected by the emergency.

30 *h.* The nature of the emergency.

31 *i.* The date or dates of the occurrence of the natural or
32 other disaster or extremely inclement weather.

33 *j.* The conditions affecting the conduct of the election.

34 *k.* Whether the polling places may safely be opened on time.

35 *l.* Any action taken such as but not limited to moving the

1 polling place, changing the voting system, or postponing the
2 election until the following Tuesday.

3 *m.* The method to be used to inform the public of changes
4 made in the election procedure.

5 *n.* The signature of the state commissioner or the state
6 commissioner's designee who was responsible for declaring the
7 emergency.

8 13. *a.* (1) If an emergency occurs that will adversely
9 affect the conduct of an election at which candidates for
10 federal office will appear on the ballot, the election shall
11 not be postponed or delayed. Emergency measures shall be
12 limited to relocation of polling places, modification of
13 the method of voting not including requirements for voter
14 identification and absentee ballot request and delivery,
15 reduction of the number of precinct election officials at
16 a precinct, and other modifications of prescribed election
17 procedures that will enable the election to be conducted on the
18 date and during the hours required by law.

19 (2) The primary election held in June of even-numbered years
20 and the general election held in November of even-numbered
21 years shall not be postponed. Special elections called by
22 the governor pursuant to section 69.14 shall not be postponed
23 unless no federal office appears on the ballot.

24 *b.* If a federal or state court order extends the time
25 established for closing the polls pursuant to section 49.73,
26 any person who votes after the statutory hour for closing the
27 polls shall vote only by casting a provisional ballot pursuant
28 to section 49.81. Provisional ballots cast after the statutory
29 hour for closing the polls shall be sealed in a separate
30 envelope from provisional ballots cast during the statutory
31 polling hours. The absentee and special voters precinct board
32 shall tabulate and report the results of the two sets of
33 provisional ballots separately.

34 14. A voter who is entitled to vote by absentee ballot under
35 the federal Uniformed and Overseas Citizens Absentee Voting

1 Act, 42 U.S.C. §1973ff et seq., and the provisions set forth
2 in chapter 53, subchapter II, may return an absentee ballot
3 via electronic transmission only if the voter is located in an
4 area designated by the federal department of defense to be an
5 imminent danger pay area or if the voter is an active member of
6 the army, navy, marine corps, merchant marine, coast guard, air
7 force, or Iowa national guard and is located outside the United
8 States or any of its territories. Procedures for the return of
9 absentee ballots by electronic transmission shall be determined
10 by the state commissioner by rule.

11 15. *a.* If an election contest court finds that there were
12 errors in the conduct of an election that make it impossible
13 to determine the result of the election, the contest court
14 shall notify the state commissioner of its finding. The state
15 commissioner shall order a repeat election to be held. The
16 repeat election date shall be set by the state commissioner.
17 The repeat election shall be conducted under the state
18 commissioner's supervision.

19 *b.* The repeat election shall be held at the earliest
20 possible time, but it shall not be held earlier than fourteen
21 days after the date the election was set aside. Voter
22 registration, publication, equipment testing, and other
23 applicable deadlines shall be calculated from the date of the
24 repeat election.

25 *c.* The repeat election shall be conducted under the same
26 procedures required for the election that was set aside,
27 except that all known errors in preparation and procedure
28 shall be corrected. The nominations from the initial election
29 shall be used in the repeat election unless the contest court
30 specifically rejects the initial nomination process in its
31 findings. Precinct election officials for the repeat election
32 may be replaced at the discretion of the auditor.

33 *d.* The following materials prepared for the original
34 election shall be used or reconstructed for the repeat
35 election:

1 (1) Ballots showing the date of repeat election, which may
2 be stamped on ballots printed for the original election.

3 (2) Notice of election showing the date of repeat election.

4 EXPLANATION

5 The inclusion of this explanation does not constitute agreement with
6 the explanation's substance by the members of the general assembly.

7 This bill relates to the conduct of elections during
8 emergencies.

9 The bill repeals the requirement that an exercise of
10 emergency powers by the state commissioner of elections be
11 approved by the legislative council prior to taking effect.
12 The bill allows the general assembly, or the legislative
13 council if the general assembly is not in session, to rescind
14 an emergency declaratory order.

15 The bill includes certain requirements that the state
16 commissioner of elections must meet in exercising emergency
17 powers, including those relating to polling places, the dates
18 of elections, the counting of ballots, and the contesting of
19 elections. The bill allows the state commissioner of elections
20 to call for a repeat election if an election contest court
21 determines that errors prevent the outcome of an election from
22 being determined accurately.