SENATE FILE 531
BY COMMITTEE ON STATE GOVERNMENT

(SUCCESSOR TO SSB 1204)

(As Amended and Passed by the Senate March 9, 2021)

_____ = New Language by the Senate

A BILL FOR

An Act relating to the conduct of elections during emergencies.

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

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

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

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

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

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

1. For purposes of this section:

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

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

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

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

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

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

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

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

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

c. Notwithstanding paragraph "*b*", no modification made to the method for conducting elections shall be made to allow an election to be conducted solely by mail.

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

6. *a.* A substitute polling place shall be as close as possible to the originally designated polling place and shall be within the same precinct if possible. Preference shall

be given to buildings that are accessible to the elderly and disabled. Public buildings shall be made available without charge by the authorities responsible for their administration. If necessary, more than one precinct may be located in the same room.

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

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

8. *a.* Absentee ballots shall be delivered to voters pursuant to section 53.22 until the date the election is actually held. Absentee ballots shall be accepted at the commissioner's office until the hour the polls close on the date the election is held. Absentee ballots that bear a barcode traceable to a date of entry into the federal mail system no later than the day before the election is actually held shall be accepted if received no later than the length of

time prescribed for the usual conduct of the election. The time shall be calculated from the date on which the election is held, not the date for which the election was originally scheduled.

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

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

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

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

b. The precinct election officials shall seal all ballots that were cast before the declaration of the emergency in secure containers. The containers shall be clearly marked as ballots from the postponed election. If it is safe to do so, the ballot containers, election register, and other election supplies shall be transported to the county commissioner's

office. The ballots shall be stored in a secure place. If it is unsafe to travel to the county commissioner's office, the chairperson of the precinct election board shall securely store the ballots and the election register until it is safe to return the ballots and election register to the county commissioner. If no contest is pending six months after the canvass for the election is completed, the unopened, sealed ballot containers shall be destroyed.

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

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

a. The county in which the emergency occurred.

b. The date and time the emergency declaration was requested.

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

d. The name and date of the election affected.

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

f. The number of precincts in the jurisdiction.

g. The number of precincts affected by the emergency.

h. The nature of the emergency.

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

j. The conditions affecting the conduct of the election.

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

l. Any action taken such as but not limited to moving the polling place, changing the voting system, or postponing the election until the following Tuesday.

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

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

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

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

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

provisional ballots separately.

14. A voter who is entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. §1973ff et seq., and the provisions set forth in chapter 53, subchapter II, may return an absentee ballot via electronic transmission only if the voter is located in an area designated by the federal department of defense to be an imminent danger pay area or if the voter is an active member of the army, navy, marine corps, merchant marine, coast guard, air force, space force, or Iowa national guard and is located outside the United States or any of its territories. Procedures for the return of absentee ballots by electronic transmission shall be determined by the state commissioner by rule.

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

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

c. The repeat election shall be conducted under the same procedures required for the election that was set aside, except that all known errors in preparation and procedure shall be corrected. The nominations from the initial election shall be used in the repeat election unless the contest court specifically rejects the initial nomination process in its findings. Precinct election officials for the repeat election

may be replaced at the discretion of the auditor.

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

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

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