

CHAPTER 189**SAC AND FOX TRIBE SETTLEMENT
— NATURAL RESOURCES REGULATION***S.F. 304*

AN ACT relating to the exercise of regulatory authority by the department of natural resources and the natural resource commission within the boundaries of the Sac and Fox tribe settlement in Tama county, and providing for applicability and effective dates.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 481A.38, subsection 3, Code 2007, is amended to read as follows:

3. The department and the commission shall exercise regulatory authority regarding seasons, bag limits, possession limits, locality, the method of taking, or the taking of fish and wildlife ~~by members of the Sac and Fox tribe of the Mississippi in Iowa~~ within the boundaries of the Sac and Fox tribe settlement in Tama county only to the extent provided in a written agreement between the tribal council of the Sac and Fox tribe of the Mississippi in Iowa and the department. The written agreement shall not be construed to supersede or impair the regulatory authority exercised by the commission pursuant to the federal Migratory Bird Treaty Act, the federal Migratory Bird Stamp Hunting Act, the federal Endangered Species Act, or other federal law and shall not be construed to supersede or impair the regulatory authority exercised by the Sac and Fox tribe of the Mississippi in Iowa pursuant to any federal act, statute, or law. The department and the commission shall not unreasonably fail to enter into an agreement and shall pursue such an agreement in an expedient manner. This subsection shall become effective upon signing of the written agreement by the director of the department and the chairperson of the Sac and Fox tribe of the Mississippi in Iowa.

Sec. 2. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved May 25, 2007

CHAPTER 190**VOTING, VOTING MACHINES, AND OPTICAL SCAN VOTING SYSTEMS***S.F. 369*

AN ACT relating to voting machines and optical scan voting systems.

Be It Enacted by the General Assembly of the State of Iowa:

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

49.28 COMMISSIONER TO FURNISH REGISTERS AND SUPPLIES.

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

2. a. After the registration deadline and before election day the commissioner shall prepare

an election register for each precinct in which voting will occur on the day of the election. The precinct election register shall be a list of the names and addresses of all registered voters of the precinct. Inactive records listed in the election register shall be clearly identified with a special mark or symbol.

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

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

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

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

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

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

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

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

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

The commissioner shall not less than four nor more than twenty days before the day of each election, except those for which different publication requirements are prescribed by law, publish notice of the election. The notice shall contain a facsimile of the portion of the ballot containing the first rotation as prescribed by section 49.31, subsection 2, and shall show the names of all candidates or nominees and the office each seeks, and all public questions, to be voted upon at the election. The sample ballot published as a part of the notice may at the discretion of the commissioner be reduced in size relative to the actual ballot but such reduction shall not cause upper case letters appearing in candidates' names or in summaries of public measures on the published sample ballot to be less than ninety percent of the size of such upper case letters appearing on the actual ballot. The notice shall also state the date of the election, the hours the polls will be open, the location of each polling place at which voting is to occur in the election, the location of the polling places designated as early ballot pick-up sites, and the names of the precincts voting at each polling place, but the statement need not set forth any fact which is apparent from the portion of the ballot appearing as a part of the same notice. The notice shall include the full text of all public measures to be voted upon at the election. ~~The notice shall also include notice of testing required pursuant to sections 52.9, 52.35, and 52.38.~~

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

When all members of the recount board have been selected, the board shall undertake and complete the required recount as expeditiously as reasonably possible. The commissioner or the commissioner's designee shall supervise the handling of ballots or voting machine documents to ensure that the ballots and other documents are protected from alteration or damage. The board shall open only the sealed ballot containers from the precincts specified to be recounted in the request or by the recount board. The board shall recount only the ballots which were voted and counted for the office in question, including any disputed ballots returned as required in section 50.5. If an electronic tabulating system was used to count the ballots, the recount board may request the commissioner to retabulate the ballots using the electronic tab-

ulating system. The same program used for tabulating the votes on election day shall be used at the recount unless the program is believed or known to be flawed. If a voting machine was used, the paper record required in section 52.7, subsection 2, shall be the official record used in the recount. However, if the commissioner believes or knows that the paper records produced from a machine have been compromised due to damage, mischief, malfunction, or other cause, the printed ballot images produced from the internal audit log for that machine shall be the official record used in the recount.

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

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

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

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

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

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

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

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

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

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

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

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

52.2 PURCHASE.

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

2. Notwithstanding any provision to the contrary:

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

b. On or after the effective date of this Act, a county that utilizes a voting machine, as defined in section 52.1, and an optical scan voting system concurrently at the same precinct shall, when seeking to replace the voting machine, replace the voting machine with an electronic

ballot marking device that is compatible with an optical scan voting system in order to ensure that each precinct in the county shall have at least one electronic ballot marking device.

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

52.7 CONSTRUCTION OF MACHINE APPROVED — REQUIREMENTS.

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

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

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

c. Permit voting in absolute secrecy.

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

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

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

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

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

i. Accurately account for every vote cast upon it.

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

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

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

2. A voting machine shall be capable of producing a paper record that the voter may review before the voter casts the voter's ballot. The paper record shall meet all of the following requirements:

a. Be printed on paper separate from all other paper records.

b. Be readable by the voter without the use of an electronic device. It may also be machine-readable.

c. Not contain any information that will identify the person who cast the ballot.

d. Be stored at the polling place in a secure container, such that the voter is incapable of removing the paper record from the polling place.

3. After the polls close, the precinct election officials shall seal all paper records required by subsection 2 in the manner, and for the time period, prescribed in section 50.12.

Sec. 8. Section 52.9, unnumbered paragraph 2, Code 2007, is amended to read as follows:

It shall be the duty of the commissioner or the commissioner's duly authorized agents to examine and test the voting machines to be used at any election, after the machines have been prepared for the election and not less than twelve hours before the opening of the polls on the morning of the election. For any election to fill a partisan office, the county chairperson of each political party referred to in section 49.13 shall be notified in writing of the date, time said, and place the machines shall be examined and tested so that they may be present, or have a repre-

sentative present. For every election, the commissioner shall ~~include the~~ publish notice of the date, time, and place the examination and testing will be conducted. ~~The commissioner may include such~~ notice in the notice of the election published as ~~required by~~ pursuant to section 49.53. Those present for the examination and testing shall sign a certificate which shall read substantially as follows:

Sec. 9. Section 52.33, Code 2007, is amended to read as follows:

52.33 ABSENTEE VOTING BY ELECTRONIC OPTICAL SCAN VOTING SYSTEM.

In any county in which the board of supervisors has adopted voting by means of an electronic optical scan voting system, the commissioner ~~may elect to~~ shall also conduct absentee voting by use of such a system ~~if the system so used is compatible with the counting center serving the precinct polling places in the county where voting is by means of an electronic voting system.~~ In any other county, the commissioner may with approval of the board of supervisors conduct absentee voting by use of an electronic optical scan voting system. All provisions of chapter 53 shall apply to such absentee voting, so far as applicable. In counties where absentee voting is conducted by use of an electronic optical scan voting system, the special precinct counting board shall, at the time required by chapter 53, prepare absentee ballots for ~~delivery to the counting center~~ tabulation in the manner prescribed by this chapter.

The absentee and special precinct board shall follow the process prescribed in section 52.37, subsection 2 ~~1~~, in handling damaged or defective ballots and in counting write-in votes on ~~special paper~~ optical scan ballots.

Sec. 10. Section 52.35, unnumbered paragraph 1, Code 2007, is amended to read as follows:

~~Within five days before~~ Before the date of any election at which votes are to be cast by means of an electronic optical scan voting system ~~and tabulated at a counting center established under section 52.34, the commissioner in charge of the counting center where votes so cast are to be tabulated~~ shall have the automatic tabulating equipment, including the portable tabulating devices, tested to ascertain that it will correctly count the votes cast for all offices and on all public questions. Testing shall be completed not later than twelve hours before the opening of the polls on the morning of the election. The procedure for conducting the test shall be as follows:

Sec. 11. Section 52.35, subsections 1 and 3, Code 2007, are amended to read as follows:

1. For any election to fill a partisan office, the county chairperson of each political party shall be notified in writing of the date, time, and place the test will be conducted, so that they may be present or have a representative present. For every election, the commissioner shall ~~include such~~ publish notice of the date, time, and place the test will be conducted. ~~The commissioner may include such~~ notice in the notice of the election published as ~~required by~~ pursuant to section 49.53. The test shall be open to the public.

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

Sec. 12. Section 52.35, Code 2007, is amended by adding the following new subsection: NEW SUBSECTION. 4. Those present for the test shall sign a certificate which shall read substantially as follows:

The undersigned certify that we were present and witnessed the testing of the following tabulating devices, that we believe the devices are in proper condition for use in the election of (date); that following the test the vote totals were erased from the memory of each tabulating device and a report was produced showing that all vote totals in the memory were

set at 0000; that the devices were securely locked or sealed; and that the serial numbers and locations of the devices which were tested are listed below.

Signed

(name and political party affiliation,
if applicable)

.....

(name and political party affiliation,
if applicable)

.....

Voting equipment custodian

Dated

Precinct	Location	Serial Number
.....
.....
.....

Sec. 13. Sections 52.11 through 52.16, 52.21, 52.22, 52.32, 52.34, 52.36, 52.38, and 52.40, Code 2007, are repealed.

CONFORMING AMENDMENTS

Sec. 14. Section 39A.5, subsection 1, paragraph a, subparagraph (3), Code 2007, is amended to read as follows:

(3) Circulating, communicating, or attempting to circulate or communicate information with reference to the result of the counted ballots or making a compilation of vote subtotals before the polls are closed in violation of section 51.11, ~~52.40~~, or 53.23.

Sec. 15. Section 43.45, subsection 4, unnumbered paragraph 1, Code 2007, is amended to read as follows:

In precincts where ~~electronic~~ optical scan voting systems are used and ballots are counted in the precinct, precinct election officials shall do all of the following:

Sec. 16. Section 43.45, subsection 5, Code 2007, is amended by striking the subsection.

Sec. 17. Section 43.48, Code 2007, is amended by striking the section and inserting in lieu thereof the following:

43.48 ELECTOR MAY ASCERTAIN VOTE CAST.

The commissioner shall make available to the public the precinct counts produced by the voting equipment.

Sec. 18. Section 46.22, Code 2007, is amended to read as follows:
46.22 VOTING.

Voting at judicial elections shall be by separate paper ballot, ~~special paper ballot, ballot cards~~ optical scan ballot, or by voting machine in the space provided for public measures. If ~~separate~~ paper ballots are used, the election judges shall offer a ballot to each voter. If ~~special paper~~ optical scan ballots ~~or ballot cards~~ are used, either a separate ballot or a distinct heading may be used to distinguish the judicial ballot. Separate ballot boxes for the general election ballots and the judicial election ballots are not required. The general election ballot and the judicial election ballot may be voted in the same voting booth.

Sec. 19. Section 49.25, subsection 3, Code 2007, is amended to read as follows:

3. The commissioner shall furnish to each precinct where voting is to be by paper ballot, ~~special paper~~ or optical scan ballot, ~~or ballot card~~, rather than by voting machine, the necessary ballot boxes, suitably equipped with seals and locks and keys, and voting booths. The voting booths shall be approved by the board of examiners for voting machines and electronic optical scan voting systems and shall provide for voting in secrecy. At least one voting booth in each

precinct shall be accessible to persons with disabilities. If the lighting in the polling place is inadequate, the voting booths used in that precinct shall include lights. Ballot boxes shall be locked or sealed before the polls open and shall remain locked or sealed until the polls are closed, except as provided in sections ~~section~~ 51.7 and 52.40, or to provide necessary service to a malfunctioning portable vote tallying device. If a ballot box is opened prior to the closing of the polls, two precinct election officials not of the same party shall be present and observe the ballot box being opened.

Sec. 20. Section 49.30, subsection 1, Code 2007, is amended to read as follows:

1. Where ~~special paper~~ optical scan ballots are used, if it is not possible to include all offices and public measures on a single ballot, separate ballots may be provided for nonpartisan offices, judges, or public measures.

Sec. 21. Section 49.30, subsection 2, Code 2007, is amended by striking the subsection.

Sec. 22. Section 49.30, subsection 3, unnumbered paragraph 1, Code 2007, is amended to read as follows:

Where conventional paper ballots are used, separate paper ballots shall be used:

Sec. 23. Section 49.43, unnumbered paragraphs 1 and 2, Code 2007, are amended to read as follows:

If possible, all public measures and constitutional amendments to be voted upon by an elector shall be included on a single ~~special paper~~ ballot which shall also include all offices to be voted upon. However, if it is necessary, a separate ballot may be used as provided in section 49.30, subsection 1.

In precincts using paper ballots all public measures to be voted upon by a voter at a given election shall be printed upon one ballot of some color other than white. In precincts using voting machines all public measures shall be placed ~~in the question row on the machine; however, if it is impossible to place all the public measures on the machine ballot, or if only a portion of the registered voters of the precinct are entitled to vote upon any measure presented, the commissioner may provide a separate paper ballot for the public measure or measures.~~

Sec. 24. Section 49.44, unnumbered paragraphs 1 and 2, Code 2007, are amended to read as follows:

When a proposed constitutional amendment or other public measure to be decided by the voters of the entire state is to be voted upon, the state commissioner shall prepare a written summary of the amendment or measure including the number of the amendment or statewide public measure assigned by the state commissioner. The summary shall be printed immediately preceding the text of the proposed amendment or measure on the paper ballot or ~~special paper~~ optical scan ballot referred to in section 49.43. If the complete text of the public measure will not fit on the ~~special paper~~ ballot it shall be posted inside the voting booth. A copy of the full text shall be included with any absentee ballots.

In precincts where the amendment or measure will be voted on by machine, the summary shall be placed ~~in on~~ the voting machine ~~inserts~~ as required by section 52.25.

Sec. 25. Section 49.90, Code 2007, is amended to read as follows:

49.90 ASSISTING VOTER.

Any voter who may declare upon oath that the voter is blind, cannot read the English language, or is, by reason of any physical disability other than intoxication, unable to cast a vote without assistance, shall, upon request, be assisted by the two officers as provided in section 49.89, or alternatively by any other person the voter may select in casting the vote. The officers, or the person selected by the voter, shall cast the vote of the voter requiring assistance, and shall thereafter give no information regarding the vote cast. If any elector because of a disability cannot enter the building where the polling place for the elector's precinct of residence is located, the two officers shall take a paper ballot to the vehicle occupied by the elector

with a disability and allow the elector to cast the ballot in the vehicle. If an elector with a disability cannot cast a ballot on a voting machine the elector shall be allowed to cast a paper ballot, which shall be opened immediately after the closing of the polling place by the two precinct election officials designated under section 49.89, who shall register the votes cast thereon on a voting machine in the polling place before the votes cast there are tallied pursuant to section ~~52.21~~ 50.16. To preserve so far as possible the confidentiality of each ballot of an elector with a disability, the two officers shall proceed substantially in the same manner as provided in section 53.24. In precincts where all voters use paper ballots, those cast by voters with disabilities shall be deposited in the regular ballot box and counted in the usual manner.

Sec. 26. Section 49.99, unnumbered paragraph 1, Code 2007, is amended to read as follows:

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

Sec. 27. Section 52.3, Code 2007, is amended to read as follows:

52.3 TERMS OF PURCHASE — TAX LEVY.

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

Sec. 28. Section 52.4, Code 2007, is amended to read as follows:

52.4 EXAMINERS — TERM — REMOVAL.

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

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

Sec. 29. Section 52.5, Code 2007, is amended to read as follows:

52.5 TESTING AND EXAMINATION OF VOTING EQUIPMENT.

A person or corporation owning or being interested in a voting machine or electronic optical scan voting system may request that the state commissioner call upon the board of examiners to examine and test the machine or system. Within seven days of receiving a request for examination and test, the state commissioner shall notify the board of examiners of the request in writing and set a time and place for the examination and test.

The state commissioner shall formulate, with the advice and assistance of the examiners, and adopt rules governing the testing and examination of any voting machine or electronic optical scan voting system by the board of examiners. The rules shall prescribe the method to be used in determining whether the machine or system is suitable for use within the state and performance standards for voting equipment in use within the state. The rules shall provide that all electronic optical scan voting systems and voting machines approved for use by the examiners after April 9, 2003, shall meet voting systems performance and test standards, as adopted by the federal election commission on April 30, 2002, and as deemed adopted by Pub. L. No. 107-252, section 222. The rules shall include standards for determining when recertification is necessary following modifications to the equipment or to the programs used

in tabulating votes, and a procedure for rescinding certification if a system or machine is found not to comply with performance standards adopted by the state commissioner.

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

Sec. 30. Section 52.8, Code 2007, is amended to read as follows:
52.8 EXPERIMENTAL USE.

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

Sec. 31. Section 52.23, unnumbered paragraph 1, Code 2007, is amended to read as follows:

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

Sec. 32. Section 52.25, unnumbered paragraphs 1 and 2, Code 2007, are amended to read as follows:

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

The entire convention question, amendment or public measure shall be printed and displayed prominently in at least four places within the voting precinct, and inside each voting booth, ~~or on the left hand side inside the curtain of each voting machine,~~ the printing to be in conformity with the provisions of chapter 49. The public measure shall be summarized by the commissioner and in the largest type possible printed on the special paper ballots or ~~inserts used in~~ on the voting machines, except that:

Sec. 33. Section 52.26, subsection 1, unnumbered paragraph 1, Code 2007, is amended to read as follows:

Every electronic optical scan voting system approved by the state board of examiners for ~~voting machines and electronic~~ voting systems shall:

Sec. 34. Section 52.26, subsection 1, paragraph a, Code 2007, is amended to read as follows:

a. Provide for voting in secrecy, except as to persons entitled by sections 49.90 and 49.91

to assistance. The state board of examiners for voting machines and electronic voting systems shall determine whether the systems' voting booths provide for voting in secrecy.

Sec. 35. Section 52.27, Code 2007, is amended to read as follows:

52.27 COMMISSIONER TO PROVIDE ELECTRONIC OPTICAL SCAN VOTING EQUIPMENT.

The commissioner having jurisdiction of any precinct for which the board of supervisors has adopted voting by means of an electronic optical scan voting system shall, as soon as practicable thereafter, provide for use at each election held in the precinct ~~special paper optical scan~~ ballots and vote ballot marking devices in appropriate numbers. The commissioner shall have custody of all equipment required for use of the electronic optical scan voting system, and shall be responsible for maintaining it in good condition and for storing it between elections. All provisions of chapter 49 relative to times and circumstances under which voting machines are to be used in any election and the number of voting machines to be provided shall also govern the use of electronic optical scan voting systems, when applicable.

Sec. 36. Section 52.28, Code 2007, is amended to read as follows:

52.28 ELECTRONIC OPTICAL SCAN VOTING SYSTEM BALLOT FORMS.

The commissioner of each county in which the use of an electronic optical scan voting system in one or more precincts has been authorized shall determine the arrangement of candidates' names and public questions upon the ballot or ballots used with the system. The ballot information shall be arranged as required by chapters 43 and 49, and by any relevant provisions of any statutes which specify the form of ballots for special elections, so far as possible within the constraints of the physical characteristics of the electronic optical scan voting system in use in that county. The state commissioner may adopt rules requiring a reasonable degree of uniformity among counties in arrangement of electronic optical scan voting system ballots.

Sec. 37. Section 52.29, Code 2007, is amended to read as follows:

52.29 ELECTRONIC OPTICAL SCAN VOTING SYSTEM SAMPLE BALLOTS.

The commissioner shall provide for each precinct where an electronic optical scan voting system is in use at least four sample ~~special paper optical scan~~ ballots which shall be exact copies of the official ballots as printed for that precinct. The sample ballots shall be arranged in the form of a diagram showing the special paper optical scan ballot as it will appear to the voter in that precinct on election day. The sample ballots shall be posted prominently within the polling place, and shall be open to public inspection during the hours the polls are open on election day.

Sec. 38. Section 52.31, Code 2007, is amended to read as follows:

52.31 PROCEDURE WHERE VOTES CAST ON SPECIAL PAPER OPTICAL SCAN BALLOTS.

Preparations for voting and voting at any election in a precinct where votes are to be received on ~~special paper optical scan~~ ballots shall be in accordance with the provisions of chapter 49 governing voting upon conventional paper ballots with the following exceptions:

1. Before entering the voting booth each voter shall be cautioned to mark the ballot only with a vote ballot marking device provided in the booth or by the precinct election officials.
2. In each precinct where a portable ~~vote tallying system~~ automatic tabulating equipment is used and the ballots are tabulated by a device located in the precinct which is equipped with ~~a mechanism which will not permit more than one ballot to be inserted at a time~~, the voter may personally insert the ballot into the tabulating device.

Sec. 39. Section 52.37, Code 2007, is amended to read as follows:

52.37 COUNTING CENTER SPECIAL PRECINCT TABULATION PROCEDURE.

The tabulation of absentee and provisional ballots cast by means of an electronic optical

~~scan voting system, at a counting center established pursuant to this chapter, shall be conducted as follows:~~

~~1. The sealed ballot container from each precinct shall be delivered to the counting center by two election officials, not members of the same political party if the ballot contains partisan offices, who shall travel together in the same vehicle and shall have the container under their immediate joint control until they surrender it to the commissioner or the commissioner's designee in charge of the counting center. The commissioner may designate two precinct election officials, of different political parties if the ballot contains partisan offices, to collect the sealed ballot containers from more than one precinct to deliver to the counting center. The commissioner or designee shall, in the presence of the two precinct election officials who delivered the container, enter on a record kept for the purpose that the container was received, the time the container was received, and the condition of the seal upon receipt.~~

~~In nonpartisan elections the election officials delivering the ballots are not required to be members of any political party, or to be members of different political parties.~~

~~2. 1. After the record required by subsection 1 has been made, the ballot container shall be opened. If any ballot is found damaged or defective, so that it cannot be counted properly by the automatic tabulating equipment, a true duplicate shall be made by the resolution board team and substituted for the damaged or defective ballot, or, as an alternative, the valid votes on a defective ballot may be manually counted at the counting center by the resolution special precinct election board, whichever method is best suited to the system being used. All duplicate ballots shall be clearly labeled as such, and shall bear a serial number which shall also be recorded on the damaged or defective ballot.~~

~~The resolution special precinct election board shall also tabulate any write-in votes which were cast. Write-in votes cast for a candidate whose name appears on the ballot for the same office shall be counted as a vote for the candidate indicated, if the vote is otherwise properly cast.~~

~~Ballots which are rejected by the tabulating equipment as blank because they have been marked with an unreadable marker shall be duplicated or tabulated as required by this subsection for damaged or defective ballots. The commissioner may instruct the resolution special precinct election board to mark over voters' unreadable marks using a marker compatible with the tabulating equipment. The resolution special precinct election board shall take care to leave part of the original mark made by the voter. If it is impossible to mark over the original marks made by the voter without completely obliterating them, the ballot shall be duplicated.~~

~~3. 2. The record printed by the automatic tabulating equipment, with the addition of a record of any write-in or other votes manually counted pursuant to this chapter, shall constitute the official return of the absentee ballot and special voter's precinct. Upon completion of the tabulation of the votes from each individual precinct, the result shall be announced and reported in substantially the manner required by section 50.11.~~

~~4. 3. If for any reason it becomes impracticable to count all or any part of the ballots with the automatic ~~tabulation~~ tabulating equipment, the commissioner may direct that they be counted manually, in accordance with chapter 50 so far as applicable.~~

Sec. 40. Section 331.383, Code 2007, is amended to read as follows:

331.383 DUTIES AND POWERS RELATING TO ELECTIONS.

The board shall ensure that the county commissioner of elections conducts primary, general, city, school, and special elections in accordance with applicable state law. The board shall canvass elections in accordance with sections 43.49 to 43.51, 43.60 to 43.62, 46.24, 50.13, 50.24 to 50.29, 50.44 to 50.47, 260C.39, 275.25, 277.20, 376.1, 376.7, and 376.9. The board shall prepare and deliver a list of persons nominated in accordance with section 43.55, provide for a recount in accordance with section 50.48, provide for election precincts in accordance with sections 49.3, 49.4, 49.6 to 49.8 and 49.11, pay election costs as provided in section 47.3, participate in election contests as provided in sections 62.1A and 62.9, and perform other election duties required by state law. The board may authorize additional precinct election officials as provided in section 51.1, provide for the use of a voting machine or electronic optical scan

voting system as provided in sections 52.2, 52.3, and 52.8, and 52.34, and exercise other election powers as provided by state law.

Sec. 41. Section 331.441, subsection 2, paragraph b, subparagraph (1), Code 2007, is amended to read as follows:

(1) Voting machines or an electronic optical scan voting system.

Sec. 42. Section 364.2, subsection 4, paragraph b, Code 2007, is amended to read as follows:

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

Approved May 25, 2007

CHAPTER 191

CIVIL RIGHTS — SEXUAL ORIENTATION OR GENDER IDENTITY

S.F. 427

AN ACT relating to the Iowa civil rights act and discrimination based upon a person's sexual orientation or gender identity.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 216.2, Code 2007, is amended by adding the following new subsections:
NEW SUBSECTION. 9A. "Gender identity" means a gender-related identity of a person, regardless of the person's assigned sex at birth.

NEW SUBSECTION. 12A. "Sexual orientation" means actual or perceived heterosexuality, homosexuality, or bisexuality.

Sec. 2. Section 216.5, subsections 6 and 8, Code 2007, are amended to read as follows:

6. To issue such publications and reports of investigations and research as in the judgment of the commission shall tend to promote goodwill among the various racial, religious, and ethnic groups of the state and which shall tend to minimize or eliminate discrimination in public accommodations, employment, apprenticeship and on-the-job training programs, vocational schools, or housing because of race, creed, color, sex, sexual orientation, gender identity, national origin, religion, ancestry, or disability.