

Jacobs, ch.  
Eichhorn  
Boddiker  
Jochum  
Reynolds

HSB 660  
STATE GOVERNMENT

Succeeded By  
SF/O 2550

SENATE/HOUSE FILE \_\_\_\_\_  
BY (PROPOSED SECRETARY OF  
STATE BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to voting, including to information contained on  
2 abstracts of votes, to the definition of a valid vote for  
3 purposes of canvassing ballots after an election and during a  
4 recount, and to the procedures for requesting and conducting  
5 recounts of votes cast.

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

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1 Section 1. Section 39.3, Code 2001, is amended by adding  
2 the following new subsections:

3 NEW SUBSECTION. 8A. "Overvote" means when a voter marks  
4 more than the permitted number of choices for an office or  
5 question.

6 NEW SUBSECTION. 17. "Undervote" means when a voter marks  
7 fewer than the permitted number of choices for an office or  
8 question.

9 Sec. 2. Section 43.49, Code 2001, is amended by adding the  
10 following new subsection:

11 NEW SUBSECTION. 4. The number of overvotes and undervotes  
12 for each office on the ballot.

13 Sec. 3. Section 43.56, unnumbered paragraph 2, Code 2001,  
14 is amended by striking the unnumbered paragraph.

15 Sec. 4. Section 49.98, Code 2001, is amended by striking  
16 the section and inserting in lieu thereof the following:

17 49.98 COUNTING BALLOTS.

18 1. Ballots shall be counted according to the voters' marks  
19 on them as provided in sections 49.92 through 49.97, this  
20 section, and sections 49.98A and 49.98B. A ballot, or the  
21 votes on any part of the ballot, shall be counted if the  
22 ballot contains a clear indication that the voter has made a  
23 definite choice. A vote for any office or question on a  
24 ballot shall not be rejected solely because a voter failed to  
25 follow instructions for marking the ballot. If for any reason  
26 it is impossible to determine from a ballot, as marked, the  
27 choice of the voter for any office or question, the vote for  
28 that office or question shall not be counted. Failure to vote  
29 for any candidate for a particular office or for either choice  
30 for a question shall not invalidate valid marks made on the  
31 rest of the ballot.

32 2. When ballots are counted by automatic tabulating  
33 equipment, the vote tabulating devices shall be configured to  
34 sort out any ballots read as blank, or that contain overvotes  
35 for one or more offices or questions. If the ballots are

1 tabulated at the precinct, the voter shall be offered the  
2 opportunity to review the ballot and correct any errors.  
3 Absentee ballots counted by automatic tabulating equipment and  
4 ballots tabulated at a counting center established under  
5 section 52.34 shall be sorted for blank ballots and for  
6 overvotes. Blank and overvoted ballots shall be given to the  
7 resolution board and tabulated as required by this section and  
8 section 52.37.

9 3. If a voter uniformly uses a mark other than the mark  
10 prescribed in the ballot instructions, and does not use the  
11 prescribed mark anywhere else, and the mark the voter uses  
12 clearly indicates that the voter has made a choice for a  
13 candidate or a question on the ballot, the voter's marks shall  
14 be counted. However, no votes shall be counted if the voter's  
15 marks identify the ballot in violation of section 49.107,  
16 subsection 7.

17 4. A vote for an office or question shall be counted if  
18 the voter has marked the ballot in a manner that will be  
19 counted as an overvote by automatic tabulating equipment but  
20 the voter has indicated in a clear fashion that the voter has  
21 made a mistake and has attempted to correct it, either by an  
22 erasure or by otherwise indicating which mark is the voter's  
23 choice, if such indication does not violate section 49.107,  
24 subsection 7.

25 Sec. 5. NEW SECTION. 49.98A COUNTING STRAIGHT PARTY OR  
26 ORGANIZATION VOTES.

27 When a voter has marked a straight party or organization  
28 target for one political party or nonparty political  
29 organization, blank voting targets under an office shall be  
30 counted as votes for that party or organization. If the voter  
31 has marked any voting targets next to any of the following in  
32 addition to the straight party or organization target, those  
33 votes shall be counted as marked:

34 1. A candidate for a political party or nonparty political  
35 organization that differs from the straight party or

1 organization marked by the voter.

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

4 3. A write-in line.

5 However, if a voter has marked the voting target next to  
6 the name of more than one political party or organization,  
7 only votes cast for individual candidates shall be counted.

8 Sec. 6. NEW SECTION. 49.98B RULES FOR COUNTING BALLOTS.

9 The state commissioner of elections shall adopt rules to  
10 provide guidance for counting votes for each type of voting  
11 equipment and voting target on ballots in use in the state.  
12 The rules shall provide specific examples of the kinds of  
13 errors made by voters and the appropriate interpretation based  
14 upon the vote counting procedures of this chapter.

15 Sec. 7. Section 49.99, Code 2001, is amended to read as  
16 follows:

17 49.99 WRITING NAME ON BALLOT.

18 The voter may also write on the line provided for write-in  
19 votes the name of any person for whom the voter desires to  
20 vote and mark the voting target opposite the name. ~~If the~~  
21 ~~voter is using a voting system other than an electronic voting~~  
22 ~~system, as defined in section 52.17, the writing of the~~ Writing  
23 a name on the write-in line shall constitute a valid vote for  
24 the person whose name has been written on the ballot without  
25 regard to whether the voter has made a mark opposite the name.  
26 ~~However, when~~ When a write-in vote is cast using an electronic  
27 voting system, the ballot must also be marked in the  
28 corresponding space in order to be counted. However, precinct  
29 election officials, resolution boards, and recount boards  
30 shall count otherwise valid write-in votes cast without the  
31 mark in the corresponding space. Marking the voting target  
32 opposite a write-in line without writing a name on the line  
33 ~~shall not affect the validity of the remainder of the ballot~~  
34 be interpreted as no vote for that office.

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

1 the proper places on a ballot or on a voting machine for an  
2 office to which more than one person is to be elected, all but  
3 one of those votes for that person for that office are void  
4 and shall not be counted. If a write-in vote is duplicative  
5 of an otherwise correctly cast vote for a candidate whose name  
6 appears on the ballot, the write-in vote shall be interpreted  
7 as a confirmation of the voter's choice and shall be counted  
8 as one vote for the candidate.

9 The officials tabulating write-in votes shall disregard  
10 misspellings or variations in names or abbreviations for  
11 write-in candidates and shall count the variations in the form  
12 of the name for a single person if the officials can determine  
13 for whom the write-in votes were cast.

14 Sec. 8. Section 50.24, unnumbered paragraph 1, Code 2001,  
15 is amended to read as follows:

16 The county board of supervisors shall meet to canvass the  
17 vote on the first Monday or Tuesday after the day of each  
18 election to which this chapter is applicable, unless the law  
19 authorizing the election specifies another date for the  
20 canvass. If that Monday or Tuesday is a public holiday,  
21 section 4.1, subsection 34, controls. Upon convening, the  
22 board shall open and canvass the tally lists and shall prepare  
23 abstracts stating, in words written at length, the number of  
24 votes cast in the county, or in that portion of the county in  
25 which the election was held, for each office and on each  
26 question on the ballot for the election. The board shall  
27 contact the chairperson of the special precinct board before  
28 adjourning and include in the canvass any absentee ballots  
29 which were received after the polls closed in accordance with  
30 section 53.17 and which were canvassed by the special precinct  
31 board after election day. The abstract shall further indicate  
32 the name of each person who received votes for each office on  
33 the ballot, and the number of votes each person named received  
34 for that office, and the number of votes for and against each  
35 question submitted to the voters at the election. The votes

1 of all write-in candidates who each received less than two  
2 percent of the votes cast for an office shall be reported  
3 collectively under the heading "scattering". The abstract  
4 shall also show the number of overvotes and undervotes for  
5 each office or question on the ballot.

6 Sec. 9. Section 50.48, subsections 1, 2, and 3, Code 2001,  
7 are amended by striking the subsections and inserting in lieu  
8 thereof the following:

9 1. a. The county board of canvassers shall order a  
10 recount of the votes cast in all precincts in that county for  
11 a particular office or nomination if a written request for a  
12 recount is filed not later than five p.m. on the third day  
13 following the county board's canvass of the election in  
14 question. For elections for a state or federal office or  
15 nomination, the request shall be filed with the state  
16 commissioner of elections. Immediately upon receipt of a  
17 request for a recount in an election for a state or federal  
18 office or nomination, the state commissioner shall notify the  
19 commissioners of all counties in which votes were cast for the  
20 office or nomination for which a recount is requested. For  
21 county officers, city elections, school elections, and all  
22 other elections, except those for state or federal office, the  
23 request shall be filed with each commissioner of each county  
24 in which votes for that office or nomination were cast, or  
25 with the commissioner responsible for conducting the election  
26 if section 47.2, subsection 2, is applicable.

27 b. A recount may be requested only if the returns prepared  
28 pursuant to section 50.24 indicate that a candidate for an  
29 office or nomination was defeated or eliminated by one percent  
30 or less of the votes cast for that office or nomination, or  
31 that a political party or nonparty political organization did  
32 not retain or attain political party status by one percent or  
33 less of the votes required to be eligible for political party  
34 status.

35 c. A recount may be requested by one of the following:

1 (1) A candidate elected or defeated by one percent or less  
2 of the votes cast for that office or nomination.

3 (2) A political party or nonparty political organization  
4 that did not retain or attain political party status by one  
5 percent or less of the votes required to be eligible for  
6 political party status. A request by a political party or a  
7 political organization must be signed by an officer of that  
8 party or organization or by the political party or nonparty  
9 political organization candidate for the office of president  
10 of the United States or governor, whichever is applicable.

11 2. Immediately upon receipt of a request for a recount,  
12 the state commissioner or the commissioner receiving the  
13 written request, as applicable, shall send a copy of the  
14 request by certified mail to all candidates who received votes  
15 for the particular office or nomination for which a recount is  
16 requested. In addition, the commissioner shall notify the  
17 following persons by first-class mail or by telephone:

18 a. The chairperson of each state political party, if the  
19 office or nomination for which a recount is requested is a  
20 state or federal office.

21 b. The county chairperson of each county political party,  
22 if the office or nomination for which a recount is requested  
23 is a county office.

24 c. An officer of any nonparty political organization whose  
25 candidate received votes for the office or nomination for  
26 which a recount is requested.

27 3. a. In each county that a recount has been requested,  
28 the recount shall be conducted by a board which shall consist  
29 of the following:

30 (1) A designee of the candidate who received the highest  
31 number of votes cast for that office or nomination.

32 (2) A designee of the candidate who received the second  
33 highest number of votes cast for that office or nomination.

34 (3) A designee of the candidate who requested the recount,  
35 if such candidate is not otherwise allowed to designate a

1 board member under subparagraph (1) or (2).

2 (4) A person chosen jointly by the designees under  
3 subparagraphs (1) and (2) if subparagraph (3) does not apply.

4 b. If paragraph "a", subparagraph (3) does not apply, the  
5 commissioner shall convene the persons designated under  
6 paragraph "a", subparagraphs (1) and (2), not later than nine  
7 a.m. on the seventh day following the county board's canvass  
8 of the election in question. If those board members cannot  
9 agree on another member by eight a.m. on the ninth day  
10 following the canvass, they shall immediately so notify the  
11 chief judge of the judicial district in which the canvass is  
12 occurring, who shall appoint the other member not later than  
13 five p.m. on the eleventh day following the canvass.

14 Sec. 10. Section 50.48, subsection 4, unnumbered paragraph  
15 1, Code 2001, is amended to read as follows:

16 When all members of the recount board have been selected,  
17 the board shall undertake and complete the required recount as  
18 expeditiously as reasonably possible. The commissioner or the  
19 commissioner's designee shall supervise the handling of  
20 ballots or voting machine documents to ensure that the ballots  
21 and other documents are protected from alteration or damage.  
22 ~~The board shall open only the sealed ballot containers from~~  
23 ~~the precincts specified to be recounted in the request or by~~  
24 ~~the recount board.~~ The board shall recount only the ballots  
25 which were voted and counted for the office in question,  
26 including any disputed ballots returned as required in section  
27 50.5. If an electronic tabulating system was used to count  
28 the ballots, the recount board may request the commissioner to  
29 retabulate the ballots using the electronic tabulating system.  
30 The same program used for tabulating the votes on election day  
31 shall be used at the recount unless the program is believed or  
32 known to be flawed. The board shall recount the ballots in  
33 accordance with the method for counting ballots set forth by  
34 statute and by administrative rule. The ballots shall be  
35 counted according to the voters' marks on the ballots as

1 provided in sections 49.92 through 49.98C and not otherwise.  
2 A voter's definite choices shall be counted even if the  
3 recount board determines that the voter's choices differ from  
4 the manner in which the ballot was counted by the automatic  
5 tabulating equipment.

6 Sec. 11. Section 50.48, subsection 4, unnumbered paragraph  
7 2, Code 2001, is amended by striking the unnumbered paragraph.

8 Sec. 12. Section 50.48, subsection 5, Code 2001, is  
9 amended to read as follows:

10 5. If the recount ~~board's report is~~ board reports that the  
11 abstracts prepared pursuant to the county board's canvass were  
12 incorrect as to the number of votes cast for the candidates  
13 for the office or nomination in question, in that county or  
14 district, the commissioner shall at once so notify the county  
15 board. The county board shall reconvene within three days  
16 after being so notified, and shall correct its previous  
17 proceedings.

18 Sec. 13. Section 50.49, unnumbered paragraph 4, Code 2001,  
19 is amended to read as follows:

20 The petitioners requesting the recount shall post a bond as  
21 ~~required by section 50.48, subsection 2.~~ The amount of the  
22 bond shall be one thousand dollars for a public measure  
23 appearing on the ballot statewide or one hundred dollars for  
24 any other public measure. If the difference between the  
25 affirmative and negative votes cast on the public measure is  
26 less than the greater of fifty votes or one percent of the  
27 total number of votes cast for and against the question, a  
28 bond is not required. If votes cast on the question were  
29 canvassed in more than one county, the abstracts prepared by  
30 the county boards in all of those counties shall be totaled  
31 for purposes of this paragraph. If a bond is required, it  
32 shall be filed with the commissioner responsible for  
33 conducting the election.

34 Sec. 14. Section 50.49, Code 2001, is amended by adding  
35 the following new unnumbered paragraphs after unnumbered

1 paragraph 5:

2 NEW UNNUMBERED PARAGRAPH. After all recount proceedings on  
3 a public measure are completed and the official canvass of  
4 votes cast on the measure is corrected or completed, if  
5 necessary, any bond posted under this section shall be  
6 returned to the petitioners if the outcome of the election on  
7 the question is different as shown by the corrected or  
8 completed canvass. In all other cases, the bond shall be  
9 deposited in the election fund of the county with whose  
10 commissioner it was filed.

11 NEW UNNUMBERED PARAGRAPH. For purposes of this section,  
12 "public measure" includes judicial retention elections held  
13 pursuant to section 46.17.

14 EXPLANATION

15 This bill makes changes relating to information included on  
16 abstracts of votes, the definition of a valid vote, and  
17 procedures for requesting and conducting recounts of votes  
18 cast.

19 The bill requires that an abstract of votes for a primary  
20 or general election show the number of overvotes and  
21 undervotes for each office or question on the ballot. The  
22 bill defines overvote and undervote.

23 The bill provides that a vote shall not be rejected solely  
24 because a voter failed to follow instructions for marking the  
25 ballot and if a voter uniformly uses a mark other than the  
26 prescribed mark, the votes shall be counted. The bill also  
27 provides that failure to vote for each office or question on  
28 the ballot shall not invalidate valid marks made on the rest  
29 of the ballot.

30 The bill requires that vote tabulating devices be  
31 configured to sort for blank votes and overvotes. If  
32 tabulating takes place at the precinct, the voter shall be  
33 offered the opportunity to review the ballot and correct any  
34 errors. Blank and overvoted ballots that were cast absentee  
35 or that were tabulated at a counting center shall be given to

1 the resolution board for determination of whether the votes  
2 cast were valid. The bill provides that an overvote shall be  
3 counted if the voter has clearly indicated the voter's choice.

4 The bill provides that when a voter has marked a straight  
5 party or organization target and then marks the targets of  
6 candidates not of that party or organization or has made a  
7 write-in vote, the ballot shall be counted according to the  
8 votes cast under the individual offices. A blank voting  
9 target under an office shall be counted as a vote under the  
10 straight party or organization vote.

11 The bill directs the state commissioner of elections to  
12 adopt rules to provide guidance for counting votes.

13 The bill provides that a write-in vote shall be counted by  
14 precinct election officials, resolution boards, and recount  
15 boards even if the voter did not mark the voting target next  
16 to the write-in line and the vote was cast using an electronic  
17 voting system. The bill also provides that a write-in vote  
18 that duplicates a correctly cast vote for a candidate on the  
19 ballot shall be counted as one vote for the candidate. The  
20 bill further provides that officials tabulating write-in votes  
21 shall disregard misspellings or variations in names or  
22 abbreviations for write-in votes if the officials can  
23 determine for whom the write-in votes were cast.

24 The bill provides that a recount may be requested only if a  
25 candidate for an office or nomination was defeated or  
26 eliminated by 1 percent or less of the votes cast for that  
27 office or nomination or if a political party or nonparty  
28 political organization did not retain or attain political  
29 party status by 1 percent or less of the votes required to be  
30 eligible for such status. A recount may be requested by a  
31 candidate elected or defeated by 1 percent or less of the  
32 votes cast for that office or nomination or by the political  
33 party or nonparty political organization that failed to retain  
34 or attain political party status by 1 percent or less of the  
35 votes required. The bill provides that if the recount is

1 requested for a state or federal office, the request shall be  
2 filed with the state commissioner of elections.

3 The bill provides that the recount shall be for all  
4 precincts in which votes were cast for the office or  
5 nomination for which the recount is requested. The bill  
6 strikes the requirement that a bond be posted by the candidate  
7 requesting the recount. A bond is still required in some  
8 cases for a recount of the vote on a public measure.

9 The bill requires the state or county commissioner of  
10 elections, as applicable, to send a copy of the recount  
11 request to all candidates who received votes for the office or  
12 nomination. The bill requires the commissioner to also  
13 notify, by first-class mail or telephone, the chairperson of  
14 each state political party if the recount is a state or  
15 federal office, the chairperson of each county political party  
16 if the office is a county office, and an officer of a nonparty  
17 political organization whose candidate received votes for the  
18 office.

19 The bill provides that the recount board be composed of one  
20 designee of each of the candidates who received the highest  
21 and next highest number of votes for that office or nomination  
22 and a third designee of the candidate who requested the  
23 recount if the candidate is one who did not receive the  
24 highest or second highest number of votes. If there are only  
25 two designees, they are to jointly choose a third person.

26 The bill provides that the recount board shall count the  
27 definite choices of the voter even if the board determines  
28 that the voter's choices differ from the manner in which the  
29 ballot was counted by the automatic tabulating equipment.

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660

**CHESTER J. CULVER**  
**IOWA SECRETARY OF STATE**  
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To: Members of the General Assembly  
From: Secretary of State Chet Culver  
Date: November 20, 2001  
Re: Election Law – Recount provisions

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Significant steps have been taken by the Office of the Secretary of State to address potential problems in the way Iowa law addresses its elections. Since the 2000 Election, the bipartisan Legal Reform Task Force has examined Iowa's recount provisions and proposed the following Code changes.

The bill uses a 1% threshold requiring a candidate to come within 1% of the total votes needed to either win the election or achieve a benefit in order to qualify to request a recount. If the candidate meets the 1% threshold, a recount can be requested for any reason. There is no automatic recount provision.

Recount requests are required to be filed county-by-county. However, once a recount is requested, the recount will be conducted for all precincts in the state which voted for the office in question. All votes cast for the office will be recounted. The bond requirement is eliminated because the 1% threshold is at a level where a bond would not be required anyway under current law.

The make-up of the recount board has been reconfigured to account for all possible combinations of recount requesters. That is, the bill allows a winner to request a recount, allows a loser to request a recount, allows a candidate failing to achieve a benefit to request a recount, and allows more than one candidate to request a recount, if the candidate meets the 1% threshold. The draft also covers elections where there can be more than one winner. For example, in a city council election for a city without wards and where all council members have two year terms, the top five vote getters may be elected. The draft legislation allows a candidate in such a race who finished sixth, but finished within 1% of the candidate who received the fifth most votes, to request a recount.

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HSB 660



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MEMO

To: Members of the General Assembly  
From: Secretary of State Chet Culver  
Date: November 20, 2001  
Re: Election Law – Voter Definition

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Iowa has taken significant steps to address potential problems in the way we conduct elections in this state. Since the 2000 Election, the bi-partisan Legal Reform Task Force established by the Office of Secretary of State has examined Iowa's voter definition laws and proposed the following Code changes:

- A distinction has been made between the prescribed mark described in the instructions to the voters and the mark that can be counted as a valid vote. Many nonstandard marks will be easily detected by voting equipment and counted without any further intervention. Where certain kinds of errors can be anticipated, a description of the situation is given, as well as the interpretation to be made.
- Both the precinct and central count optical scan equipment should be configured to sort over-voted and blank ballots for further examination either by the voter or a resolution board. We do not recommend sorting for undervotes. The state commissioner of elections shall prescribe in administrative rules how to count votes for specific examples of predictable errors.

Memorandum # 5

3/20/02 Rereferred To: State Gov.

FEB 25 2002  
Place On Calendar

HOUSE FILE 2550  
BY COMMITTEE ON STATE GOVERNMENT

(SUCCESSOR TO HSB 660)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to voting, including to information contained on  
2 abstracts of votes, to the definition of a valid vote for  
3 purposes of canvassing ballots after an election and during a  
4 recount, and to the procedures for requesting and conducting  
5 recounts of votes cast.

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

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HF 2550

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2 the following new subsections:

3 NEW SUBSECTION. 8A. "Overvote" means when a voter marks  
4 more than the permitted number of choices for an office or  
5 question.

6 NEW SUBSECTION. 17. "Undervote" means when a voter marks  
7 fewer than the permitted number of choices for an office or  
8 question.

9 Sec. 2. Section 43.49, Code 2001, is amended by adding the  
10 following new subsection:

11 NEW SUBSECTION. 4. The number of overvotes and undervotes  
12 for each office on the ballot.

13 Sec. 3. Section 43.56, unnumbered paragraph 2, Code 2001,  
14 is amended by striking the unnumbered paragraph.

15 Sec. 4. Section 49.98, Code 2001, is amended by striking  
16 the section and inserting in lieu thereof the following:

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18 1. Ballots shall be counted according to the voters' marks  
19 on them as provided in sections 49.92 through 49.97, this  
20 section, and sections 49.98A and 49.98B. A ballot, or the  
21 votes on any part of the ballot, shall be counted if the  
22 ballot contains a clear indication that the voter has made a  
23 definite choice. A vote for any office or question on a  
24 ballot shall not be rejected solely because a voter failed to  
25 follow instructions for marking the ballot. If for any reason  
26 it is impossible to determine from a ballot, as marked, the  
27 choice of the voter for any office or question, the vote for  
28 that office or question shall not be counted. Failure to vote  
29 for any candidate for a particular office or for either choice  
30 for a question shall not invalidate valid marks made on the  
31 rest of the ballot.

32 2. When ballots are counted by automatic tabulating  
33 equipment, the vote tabulating devices shall be configured to  
34 sort out any ballots read as blank, or that contain overvotes  
35 for one or more offices or questions. If the ballots are

1 tabulated at the precinct, the voter shall be offered the  
2 opportunity to review the ballot and correct any errors.  
3 Absentee ballots counted by automatic tabulating equipment and  
4 ballots tabulated at a counting center established under  
5 section 52.34 shall be sorted for blank ballots and for  
6 overvotes. Blank and overvoted ballots shall be given to the  
7 resolution board and tabulated as required by this section and  
8 section 52.37.

9 3. If a voter uniformly uses a mark other than the mark  
10 prescribed in the ballot instructions, and does not use the  
11 prescribed mark anywhere else, and the mark the voter uses  
12 clearly indicates that the voter has made a choice for a  
13 candidate or a question on the ballot, the voter's marks shall  
14 be counted. However, no votes shall be counted if the voter's  
15 marks identify the ballot in violation of section 49.107,  
16 subsection 7.

17 4. A vote for an office or question shall be counted if  
18 the voter has marked the ballot in a manner that will be  
19 counted as an overvote by automatic tabulating equipment but  
20 the voter has indicated in a clear fashion that the voter has  
21 made a mistake and has attempted to correct it, either by an  
22 erasure or by otherwise indicating which mark is the voter's  
23 choice, if such indication does not violate section 49.107,  
24 subsection 7.

25 Sec. 5. NEW SECTION. 49.98A COUNTING STRAIGHT PARTY OR  
26 ORGANIZATION VOTES.

27 When a voter has marked a straight party or organization  
28 target for one political party or nonparty political  
29 organization, blank voting targets under an office shall be  
30 counted as votes for that party or organization. If the voter  
31 has marked any voting targets next to any of the following in  
32 addition to the straight party or organization target, those  
33 votes shall be counted as marked:

34 1. A candidate for a political party or nonparty political  
35 organization that differs from the straight party or

1 organization marked by the voter.

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

4 3. A write-in line.

5 However, if a voter has marked the voting target ~~op.~~ to  
6 the name of more than one political party or organization,  
7 only votes cast for individual candidates shall be counted.

8 Sec. 6. NEW SECTION. 49.98B RULES FOR COUNTING BALLOTS.

9 The state commissioner of elections shall adopt rules to  
10 provide guidance for counting votes for each type of voting  
11 equipment and voting target on ballots in use in the state.  
12 The rules shall provide specific examples of the kinds of  
13 errors made by voters and the appropriate interpretation based  
14 upon the vote counting procedures of this chapter.

15 Sec. 7. Section 49.99, Code 2001, is amended to read as  
16 follows:

17 49.99 WRITING NAME ON BALLOT.

18 The voter may also write on the line provided for write-in  
19 votes the name of any person for whom the voter desires to  
20 vote and mark the voting target opposite the name. ~~If the~~  
21 ~~voter is using a voting system other than an electronic voting~~  
22 ~~system, as defined in section 52.17, the writing of the writing~~  
23 a name on the write-in line shall constitute a valid vote for  
24 the person whose name has been written on the ballot without  
25 regard to whether the voter has made a mark opposite the name.  
26 ~~However, when~~ When a write-in vote is cast using an electronic  
27 voting system, the ballot must also be marked in the  
28 corresponding space in order to be counted. However, precinct  
29 election officials, resolution boards, and recount boards  
30 shall count otherwise valid write-in votes cast without the  
31 mark in the corresponding space. Marking the voting target  
32 opposite a write-in line without writing a name on the line  
33 ~~shall not affect the validity of the remainder of the ballot~~  
34 be interpreted as no vote for that office.

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

1 the proper places on a ballot or on a voting machine for an  
2 office to which more than one person is to be elected, all but  
3 one of those votes for that person for that office are void  
4 and shall not be counted. If a write-in vote is duplicative  
5 of an otherwise correctly cast vote for a candidate whose name  
6 appears on the ballot, the write-in vote shall be interpreted  
7 as a confirmation of the voter's choice and shall be counted  
8 as one vote for the candidate.

9 The officials tabulating write-in votes shall disregard  
10 misspellings or variations in names or abbreviations for  
11 write-in candidates and shall count the variations in the form  
12 of the name for a single person if the officials can determine  
13 for whom the write-in votes were cast.

14 Sec. 8. Section 50.24, unnumbered paragraph 1, Code 2001,  
15 is amended to read as follows:

16 The county board of supervisors shall meet to canvass the  
17 vote on the first Monday or Tuesday after the day of each  
18 election to which this chapter is applicable, unless the law  
19 authorizing the election specifies another date for the  
20 canvass. If that Monday or Tuesday is a public holiday,  
21 section 4.1, subsection 34, controls. Upon convening, the  
22 board shall open and canvass the tally lists and shall prepare  
23 abstracts stating, in words written at length, the number of  
24 votes cast in the county, or in that portion of the county in  
25 which the election was held, for each office and on each  
26 question on the ballot for the election. The board shall  
27 contact the chairperson of the special precinct board before  
28 adjourning and include in the canvass any absentee ballots  
29 which were received after the polls closed in accordance with  
30 section 53.17 and which were canvassed by the special precinct  
31 board after election day. The abstract shall further indicate  
32 the name of each person who received votes for each office on  
33 the ballot, and the number of votes each person named received  
34 for that office, and the number of votes for and against each  
35 question submitted to the voters at the election. The votes

1 of all write-in candidates who each received less than two  
2 percent of the votes cast for an office shall be reported  
3 collectively under the heading "scattering". The abstract  
4 shall also show the number of overvotes and undervotes for  
5 each office or question on the ballot.

6 Sec. 9. Section 50.48, subsections 1, 2, and 3, Code 2001,  
7 are amended by striking the subsections and inserting in lieu  
8 thereof the following:

9 1. a. The county board of canvassers shall order a  
10 recount of the votes cast in all precincts in that county for  
11 a particular office or nomination if a written request for a  
12 recount is filed not later than five p.m. on the third day  
13 following the county board's canvass of the election in  
14 question. For elections for a state or federal office or  
15 nomination, the request shall be filed with the state  
16 commissioner of elections. Immediately upon receipt of a  
17 request for a recount in an election for a state or federal  
18 office or nomination, the state commissioner shall notify the  
19 commissioners of all counties in which votes were cast for the  
20 office or nomination for which a recount is requested. For  
21 county officers, city elections, school elections, and all  
22 other elections, except those for state or federal office, the  
23 request shall be filed with each commissioner of each county  
24 in which votes for that office or nomination were cast, or  
25 with the commissioner responsible for conducting the election  
26 if section 47.2, subsection 2, is applicable.

27 b. A recount may be requested only if the returns prepared  
28 pursuant to section 50.24 indicate that a candidate for an  
29 office or nomination was defeated or eliminated by fifty or  
30 fewer votes when fewer than five thousand votes are cast for  
31 the office or nomination or by one percent or less of the  
32 votes cast for that office or nomination when five thousand or  
33 more votes are cast for the office or nomination, or that a  
34 political party or nonparty political organization did not  
35 retain or attain political party status by fifty or fewer

1 votes when fewer than five thousand votes are cast or by one  
2 percent or less of the votes required to be eligible for  
3 political party status when five thousand or more votes are  
4 cast.

5 c. A recount may be requested by one of the following:

6 (1) A candidate elected or defeated by fifty or fewer  
7 votes when fewer than five thousand votes are cast for the  
8 office or nomination or by one percent or less of the votes  
9 cast for that office or nomination when five thousand or more  
10 votes are cast for the office or nomination.

11 (2) A political party or nonparty political organization  
12 that did not retain or attain political party status by fifty  
13 or fewer votes when fewer than five thousand votes are cast or  
14 by one percent or less of the votes required to be eligible  
15 for political party status when five thousand or more votes  
16 are cast. A request by a political party or a political  
17 organization must be signed by an officer of that party or  
18 organization or by the political party or nonparty political  
19 organization candidate for the office of president of the  
20 United States or governor, whichever is applicable.

21 2. Immediately upon receipt of a request for a recount,  
22 the state commissioner or the commissioner receiving the  
23 written request, as applicable, shall send a copy of the  
24 request by certified mail to all candidates who received votes  
25 for the particular office or nomination for which a recount is  
26 requested. In addition, the commissioner shall notify the  
27 following persons by first-class mail or by telephone:

28 a. The chairperson of each state political party, if the  
29 office or nomination for which a recount is requested is a  
30 state or federal office.

31 b. The county chairperson of each county political party,  
32 if the office or nomination for which a recount is requested  
33 is a county office.

34 c. An officer of any nonparty political organization whose  
35 candidate received votes for the office or nomination for

1 which a recount is requested.

2 3. a. In each county that a recount has been requested,  
3 the recount shall be conducted by a board which shall consist  
4 of the following:

5 (1) A designee of the candidate who received the highest  
6 number of votes cast for that office or nomination.

7 (2) A designee of the candidate who received the second  
8 highest number of votes cast for that office or nomination.

9 (3) A designee of the candidate who requested the recount,  
10 if such candidate is not otherwise allowed to designate a  
11 board member under subparagraph (1) or (2).

12 (4) A person chosen jointly by the designees under  
13 subparagraphs (1) and (2) if subparagraph (3) does not apply.

14 b. If paragraph "a", subparagraph (3) does not apply, the  
15 commissioner shall convene the persons designated under  
16 paragraph "a", subparagraphs (1) and (2), not later than nine  
17 a.m. on the seventh day following the county board's canvass  
18 of the election in question. If those board members cannot  
19 agree on another member by eight a.m. on the ninth day  
20 following the canvass, they shall immediately so notify the  
21 chief judge of the judicial district in which the canvass is  
22 occurring, who shall appoint the other member not later than  
23 five p.m. on the eleventh day following the canvass.

24 Sec. 10. Section 50.48, subsection 4, unnumbered paragraph  
25 1, Code 2001, is amended to read as follows:

26 When all members of the recount board have been selected,  
27 the board shall undertake and complete the required recount as  
28 expeditiously as reasonably possible. The commissioner or the  
29 commissioner's designee shall supervise the handling of  
30 ballots or voting machine documents to ensure that the ballots  
31 and other documents are protected from alteration or damage.

32 ~~The board shall open only the sealed ballot containers from~~  
33 ~~the precincts specified to be recounted in the request or by~~  
34 ~~the recount board.~~ The board shall recount only the ballots  
35 which were voted and counted for the office in question,

1 including any disputed ballots returned as required in section  
2 50.5. If an electronic tabulating system was used to count  
3 the ballots, the recount board may request the commissioner to  
4 retabulate the ballots using the electronic tabulating system.  
5 The same program used for tabulating the votes on election day  
6 shall be used at the recount unless the program is believed or  
7 known to be flawed. The board shall recount the ballots in  
8 accordance with the method for counting ballots set forth by  
9 statute and by administrative rule. The ballots shall be  
10 counted according to the voters' marks on the ballots as  
11 provided in sections 49.92 through 49.98B and not otherwise.  
12 A voter's definite choices shall be counted even if the  
13 recount board determines that the voter's choices differ from  
14 the manner in which the ballot was counted by the automatic  
15 tabulating equipment.

16 Sec. 11. Section 50.48, subsection 4, unnumbered paragraph  
17 2, Code 2001, is amended by striking the unnumbered paragraph.

18 Sec. 12. Section 50.48, subsection 5, Code 2001, is  
19 amended to read as follows:

20 5. If the recount ~~board's report is~~ board reports that the  
21 abstracts prepared pursuant to the county board's canvass were  
22 incorrect as to the number of votes cast for the candidates  
23 for the office or nomination in question, in that county or  
24 district, the commissioner shall at once so notify the county  
25 board. The county board shall reconvene within three days  
26 after being so notified, and shall correct its previous  
27 proceedings.

28 Sec. 13. Section 50.49, unnumbered paragraph 4, Code 2001,  
29 is amended to read as follows:

30 The petitioners requesting the recount shall post a bond ~~as~~  
31 ~~required by section 50.48, subsection 2.~~ The amount of the  
32 bond shall be one thousand dollars for a public measure  
33 appearing on the ballot statewide or one hundred dollars for  
34 any other public measure. If the difference between the  
35 affirmative and negative votes cast on the public measure is

1 less than the greater of fifty votes or one percent of the  
2 total number of votes cast for and against the question, a  
3 bond is not required. If votes cast on the question were  
4 canvassed in more than one county, the abstracts prepared by  
5 the county boards in all of those counties shall be totaled  
6 for purposes of this paragraph. If a bond is required, it  
7 shall be filed with the commissioner responsible for  
8 conducting the election.

9 Sec. 14. Section 50.49, Code 2001, is amended by adding  
10 the following new unnumbered paragraphs after unnumbered  
11 paragraph 5:

12 NEW UNNUMBERED PARAGRAPH. After all recount proceedings on  
13 a public measure are completed and the official canvass of  
14 votes cast on the measure is corrected or completed, if  
15 necessary, any bond posted under this section shall be  
16 returned to the petitioners if the outcome of the election on  
17 the question is different as shown by the corrected or  
18 completed canvass. In all other cases, the bond shall be  
19 deposited in the election fund of the county with whose  
20 commissioner it was filed.

21 NEW UNNUMBERED PARAGRAPH. For purposes of this section,  
22 "public measure" includes judicial retention elections held  
23 pursuant to section 46.17.

24 EXPLANATION

25 This bill makes changes relating to information included on  
26 abstracts of votes, the definition of a valid vote, and  
27 procedures for requesting and conducting recounts of votes  
28 cast.

29 The bill requires that an abstract of votes for a primary  
30 or general election show the number of overvotes and  
31 undervotes for each office or question on the ballot. The  
32 bill defines overvote and undervote.

33 The bill provides that a vote shall not be rejected solely  
34 because a voter failed to follow instructions for marking the  
35 ballot and if a voter uniformly uses a mark other than the

1 prescribed mark, the votes shall be counted. The bill also  
2 provides that failure to vote for each office or question on  
3 the ballot shall not invalidate valid marks made on the rest  
4 of the ballot.

5 The bill requires that vote tabulating devices be  
6 configured to sort for blank votes and overvotes. If  
7 tabulating takes place at the precinct, the voter shall be  
8 offered the opportunity to review the ballot and correct any  
9 errors. Blank and overvoted ballots that were cast absentee  
10 or that were tabulated at a counting center shall be given to  
11 the resolution board for determination of whether the votes  
12 cast were valid. The bill provides that an overvote shall be  
13 counted if the voter has clearly indicated the voter's choice.

14 The bill provides that when a voter has marked a straight  
15 party or organization target and then marks the targets of  
16 candidates not of that party or organization or has made a  
17 write-in vote, the ballot shall be counted according to the  
18 votes cast under the individual offices. A blank voting  
19 target under an office shall be counted as a vote under the  
20 straight party or organization vote.

21 The bill directs the state commissioner of elections to  
22 adopt rules to provide guidance for counting votes.

23 The bill provides that a write-in vote shall be counted by  
24 precinct election officials, resolution boards, and recount  
25 boards even if the voter did not mark the voting target next  
26 to the write-in line and the vote was cast using an electronic  
27 voting system. The bill also provides that a write-in vote  
28 that duplicates a correctly cast vote for a candidate on the  
29 ballot shall be counted as one vote for the candidate. The  
30 bill further provides that officials tabulating write-in votes  
31 shall disregard misspellings or variations in names or  
32 abbreviations for write-in votes if the officials can  
33 determine for whom the write-in votes were cast.

34 The bill provides that a recount may be requested only if a  
35 candidate for an office or nomination was defeated or

1 eliminated by 50 or fewer votes when less than 5,000 votes are  
2 cast for the office or by 1 percent or less of the votes cast  
3 for that office or nomination when 5,000 or more votes are  
4 cast for the office or nomination or if a political party or  
5 nonparty political organization did not retain or attain  
6 political party status by 50 or fewer votes required to be  
7 eligible for such status when less than 5,000 votes are cast  
8 or by 1 percent or less of the votes required to be eligible  
9 for such status when 5,000 or more votes are cast. A recount  
10 may be requested by a candidate elected or defeated by the  
11 required amount of votes or by the political party or nonparty  
12 political organization that failed to retain or attain  
13 political party status by the required amount of votes. The  
14 bill provides that if the recount is requested for a state or  
15 federal office, the request shall be filed with the state  
16 commissioner of elections.

17 The bill provides that the recount shall be for all  
18 precincts in which votes were cast for the office or  
19 nomination for which the recount is requested. The bill  
20 strikes the requirement that a bond be posted by the candidate  
21 requesting the recount. A bond is still required in some  
22 cases for a recount of the vote on a public measure.

23 The bill requires the state or county commissioner of  
24 elections, as applicable, to send a copy of the recount  
25 request to all candidates who received votes for the office or  
26 nomination. The bill requires the commissioner to also  
27 notify, by first-class mail or telephone, the chairperson of  
28 each state political party if the recount is a state or  
29 federal office, the chairperson of each county political party  
30 if the office is a county office, and an officer of a nonparty  
31 political organization whose candidate received votes for the  
32 office.

33 The bill provides that the recount board be composed of one  
34 designee of each of the candidates who received the highest  
35 and next highest number of votes for that office or nomination

1 and a third designee of the candidate who requested the  
2 recount if the candidate is one who did not receive the  
3 highest or second highest number of votes. If there are only  
4 two designees, they are to jointly choose a third person.

5 The bill provides that the recount board shall count the  
6 definite choices of the voter even if the board determines  
7 that the voter's choices differ from the manner in which the  
8 ballot was counted by the automatic tabulating equipment.

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