

CHAPTER 206

VOTING SYSTEMS

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206.01 MS 1957 [Repealed, 1959 c 675 art 13 s 1]

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206.02 MS 1957 [Repealed, 1959 c 675 art 13 s 1]

206.02 MS 1982 [Repealed, 1984 c 447 s 32]

206.025 [Repealed, 1984 c 447 s 32]

206.026 [Repealed, 1984 c 447 s 32]

206.03 MS 1957 [Repealed, 1959 c 675 art 13 s 1]

206.03 MS 1982 [Repealed, 1984 c 447 s 32]

206.04 MS 1957 [Repealed, 1959 c 675 art 13 s 1]

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206.06 MS 1957 [Repealed, 1959 c 675 art 13 s 1]

206.06 MS 1982 [Repealed, 1984 c 447 s 32]

206.065 [Repealed, 1997 c 147 s 79]

206.07 MS 1957 [Repealed, 1959 c 675 art 13 s 1]

206.07 MS 1982 [Repealed, 1984 c 447 s 32]

206.075 [Repealed, 1984 c 447 s 32]

206.08 MS 1957 [Repealed, 1959 c 675 art 13 s 1]

206.08 Subdivision 1. MS 1982 [Repealed, 1984 c 447 s 32]

Subd. 2. MS 1982 [Repealed, 1984 c 447 s 32]

Subd. 3. MS 1983 Supp [Repealed, 1984 c 447 s 32]

Subd. 4. MS 1982 [Repealed, 1984 c 447 s 32]

206.09 MS 1957 [Repealed, 1959 c 675 art 13 s 1]

206.09 MS 1983 Supp [Repealed, 1984 c 447 s 32]

206.095 [Repealed, 1984 c 447 s 32]

- 206.10** MS 1957 [Repealed, 1959 c 675 art 13 s 1]
206.10 MS 1982 [Repealed, 1984 c 447 s 32]
206.11 MS 1957 [Repealed, 1959 c 675 art 13 s 1]
206.11 MS 1983 Supp [Repealed, 1984 c 447 s 32]
206.12 MS 1957 [Repealed, 1959 c 675 art 13 s 1]
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206.185 [Repealed, 1984 c 447 s 32]
206.19 MS 1957 [Repealed, 1959 c 675 art 13 s 1]
206.19 Subdivision 1. MS 1983 Supp [Repealed, 1984 c 447 s 32]
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206.195 [Repealed, 1984 c 447 s 32]
206.20 MS 1957 [Repealed, 1959 c 675 art 13 s 1]
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 Subd. 5. MS 1982 [Repealed, 1984 c 447 s 32]
206.211 [Repealed, 1984 c 447 s 32]
206.212 [Repealed, 1967 c 437 s 10]
206.22 [Repealed, 1959 c 675 art 13 s 1]

206.23 MS 1957 [Repealed, 1959 c 675 art 13 s 1]

206.23 MS 1982 [Repealed, 1984 c 447 s 32]

206.24-206.54 [Repealed, 1959 c 675 art 13 s 1]

206.55 MINNESOTA ELECTION LAW APPLIES.

The use of electronic voting systems is governed by sections 206.55 to 206.90 and by all other provisions of the Minnesota Election Law which are not inconsistent with sections 206.55 to 206.90.

History: 1984 c 447 s 1; 1997 c 147 s 47

206.56 DEFINITIONS.

Subdivision 1. **Scope.** The definitions in chapter 200 and in this section apply to sections 206.55 to 206.90.

Subd. 2. **Automatic tabulating equipment.** "Automatic tabulating equipment" includes apparatus necessary to automatically examine and count votes designated on ballot cards, and data processing machines which can be used for counting ballots and tabulating results.

Subd. 3. **Ballot.** "Ballot" includes ballot cards and paper ballots.

Subd. 4. [Repealed, 1997 c 147 s 79]

Subd. 5. **Ballot card.** "Ballot card" means a ballot which is marked so that votes may be counted by automatic tabulating equipment.

Subd. 6. [Repealed, 1997 c 147 s 79]

Subd. 7. **Counting center.** "Counting center" means a place selected by the governing body of a municipality where an electronic voting system is used for the automatic processing and counting of ballots.

Subd. 8. **Electronic voting system.** "Electronic voting system" means a system in which the voter records votes by means of marking a ballot, which is designed so that votes may be counted by automatic tabulating equipment at a counting center.

Subd. 9. **Marking device.** "Marking device" means any approved device for marking a ballot with ink or other substance which will enable the ballot to be tabulated by means of automatic tabulating equipment.

Subd. 10. [Repealed, 1997 c 147 s 79]

Subd. 11. [Repealed, 1997 c 147 s 79]

Subd. 12. [Repealed, 1997 c 147 s 79]

Subd. 13. [Repealed, 1997 c 147 s 79]

Subd. 14. **Question.** "Question" means a statement of any constitutional amendment, local ordinance, charter amendment, or other proposition being submitted to the voters at an election.

Subd. 15. [Repealed, 1997 c 147 s 79]

Subd. 16. **User list.** "User list" means a list of the chief election officials of each county and municipality responsible for preparation of a program to be used with an electronic voting system or for administration of a counting center.

Subd. 17. **Municipality.** "Municipality" means city, town, or school district:

History: 1984 c 447 s 2; 1986 c 362 s 6; 1986 c 444; 1987 c 266 art 1 s 61; 1997 c 147 s 48-52

206.57 EXAMINATION OF NEW VOTING SYSTEMS.

Subdivision 1. **Examination and report by secretary of state; approval.** A vendor of an electronic voting system may apply to the secretary of state to examine the system and to report as to its compliance with the requirements of law and as to its accuracy, durability, efficiency, and capacity to register the will of voters. The secretary of state or a designee shall examine the system submitted and file a report on it in the Office of

the Secretary of State. Examination is not required of every individual machine or counting device, but only of each type of electronic voting system before its adoption, use, or purchase and before its continued use after significant changes have been made in an approved system. The examination must include the ballot programming, vote counting, and vote accumulation functions of each voting system.

If the report of the secretary of state or the secretary's designee concludes that the kind of system examined complies with the requirements of sections 206.55 to 206.90 and can be used safely, the system shall be deemed approved by the secretary of state, and may be adopted and purchased for use at elections in this state. A voting system not approved by the secretary of state may not be used at an election in this state. The secretary of state may adopt permanent rules consistent with sections 206.55 to 206.90 relating to the examination and use of electronic voting systems.

Subd. 2. Examination fee. The secretary of state may assess a fee to accompany the application to cover the actual and necessary costs for the examinations and licenses provided for in this section. The fee must be deposited in the state treasury. The expenses of administering this section must be paid from appropriations to the secretary of state.

Subd. 3. [Repealed, 1993 c 337 s 20]

Subd. 4. Vendor bonds. Vendors of electronic voting systems shall certify to the secretary of state that they will not offer for sale a system which is not certified for use in Minnesota elections. The vendor shall furnish a bond in the amount of \$5,000 along with the certification to the secretary of state conditioned on offering the equipment for sale in accordance with Minnesota election laws and any conditions of the approval of the equipment granted as provided in this section.

Subd. 5. Voting system for disabled voters. After December 31, 2005, the voting method used in each polling place must include a voting system that is accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired in a manner that provides the same opportunity for access and participation, including privacy and independence, as for other voters.

Subd. 6. Required certification. In addition to the requirements in subdivision 1, a voting system must be certified by an independent testing authority approved by the secretary of state and conform to current standards for voting equipment issued by the Federal Election Commission or its successor, the Election Assistance Commission.

History: 1984 c 447 s 3; 1984 c 640 s 32; 1986 c 362 s 7; 1986 c 444; 1989 c 291 art 1 s 25; 1995 c 233 art 2 s 56; 1997 c 147 s 53; 2004 c 293 art 1 s 32,33

206.58 AUTHORIZATION FOR USE.

Subdivision 1. Municipalities. The governing body of a municipality, at a regular meeting or at a special meeting called for the purpose, may provide for the use of an electronic voting system in one or more precincts and at all elections in the precincts, subject to approval by the county auditor. The governing body shall disseminate information to the public about the use of a new voting system at least 60 days prior to the election and shall provide for instruction of voters with a demonstration voting system in a public place for the six weeks immediately prior to the first election at which the new voting system will be used.

No system may be adopted or used unless it has been approved by the secretary of state pursuant to section 206.57.

Subd. 2. May use experimental systems. The governing body of a municipality may provide for the experimental use of an electronic voting system in one or more precincts without formal adoption of the system. Use of the system at an election is as valid for all purposes as if the system had been permanently adopted.

If the governing body of a municipality decides to use an electronic voting system, it shall, at a regular or special meeting held not less than 30 days before the election, prescribe suitable rules and instructions consistent with sections 206.55 to 206.90 for using the system and shall submit the rules and instructions to the secretary of state for

approval. When approved, a printed copy of the rules and instructions must be posted prominently in the polling place and must remain open to inspection by the voters throughout election day.

Subd. 3. Counties. The governing body of a county may provide for the use of an electronic voting system in one or more precincts of the county at all elections. The governing body of the municipality shall give approval before an electronic voting system may be adopted or used in the municipality under the authority of this section. No system may be adopted or used unless it has been approved by the secretary of state pursuant to section 206.57.

Subd. 4. Certification of use of voting systems. If a municipality adopts the use of an electronic voting system, the municipal clerk shall certify to the secretary of state within 30 days from the date of adoption that an electronic voting system will be used in the municipality and the date when use will commence.

History: 1984 c 447 s 4; 1986 c 362 s 8; 1987 c 266 art 1 s 62; 1997 c 147 s 54

206.59 PAYMENT FOR VOTING SYSTEMS.

Payment for an electronic voting system may be provided for in the manner deemed in the best interests of the political division adopting and purchasing it. A municipality or county may make payment by appropriating money from the general fund, by levying a tax in the same manner as other taxes are levied, or by issuing and selling bonds or other certificates of indebtedness, which must be a charge upon the municipality or county adopting and purchasing the electronic voting system. Bonds or other certificates of indebtedness may be issued by a majority vote of the governing body of the municipality or county adopting and purchasing an electronic voting system, notwithstanding any contrary provision contained in any home rule charter or law of this state.

The bonds or certificates of indebtedness issued may bear interest at a rate not exceeding the rate provided in section 475.55 and may be made payable at a time not exceeding 20 years from the date of issue, as determined by the resolution or ordinance authorizing the issue. The bonds or certificates of indebtedness may be issued exclusive of and in addition to any limit of indebtedness fixed by the charter of a municipality, or by laws governing a municipality or county, but the bonds or certificates of indebtedness may not be issued or sold at less than par and accrued interest on them.

History: 1984 c 447 s 5; 1997 c 147 s 55

206.60 [Repealed, 1997 c 147 s 79]

206.61 BALLOTS.

Subdivision 1. Official responsible for providing ballots. The official charged with providing paper ballots when they are used shall provide all ballot cards, sample ballots, precinct summary statements, and other necessary supplies needed for electronic voting systems, except as otherwise provided by this section.

At general elections and primaries the county auditor of each county in which an electronic voting system is used shall provide all ballot cards and other necessary printed forms and supplies needed for the electronic voting system, including all forms needed for voting on candidates and questions, the ballots for which are required by the election laws to be provided by the state when paper ballots are used.

Subd. 2. [Repealed, 1997 c 147 s 79]

Subd. 3. Candidates' names. Candidates' names may be set in as large type as the length of the majority of names on the ballot permits. The remaining candidates' names may be set in smaller sizes of type as the length of each name requires, in order to fit the available space on the ballot card.

Subd. 4. Order of candidates. On the "State Partisan Primary Ballot" prepared for primary elections, and on the white ballot prepared for the general election, the order of the names of nominees or names of candidates for election shall be the same as

required for paper ballots. More than one column or row may be used for the same office or party.

Subd. 5. **Alternation.** The provisions of the election laws requiring the alternation of names of candidates must be observed as far as practicable by changing the order of the names on an electronic voting system in the various precincts so that each name appears on the machines or marking devices used in a municipality substantially an equal number of times in the first, last, and in each intermediate place in the list or group in which they belong. However, the arrangement of candidates' names must be the same on all voting systems used in the same precinct. If the number of names to be alternated exceeds the number of precincts, the election official responsible for providing the ballots, in accordance with subdivision 1, shall determine by lot the alternation of names.

Subd. 6. [Repealed, 1997 c 147 s 79]

Subd. 7. [Repealed, 1997 c 147 s 79]

Subd. 8. [Repealed, 1997 c 147 s 79]

History: 1984 c 447 s 7; 1987 c 175 s 13; 1997 c 147 s 56-58

206.62 SAMPLE BALLOTS.

The officials who prepare ballot cards shall provide each polling place with at least two sample ballots which are facsimiles of the card to be voted on in that precinct. The sample ballots may be either in full or reduced size. The sample ballots must be posted prominently in the polling place and must remain open to inspection by the voters throughout election day.

History: 1984 c 447 s 8; 1997 c 147 s 59

206.63 [Repealed, 1997 c 147 s 79]

206.64 ACCESSIBILITY; INSTRUCTIONS; ASSISTANCE TO VOTERS.

Subdivision 1. **General provisions for electronic system voting.** Each electronic voting system booth must be placed and protected so that it is accessible to only one voter at a time and is in full view of all the election judges and challengers at the polling place. The election judges shall admit one individual at a time to each booth after determining that the individual is eligible to vote. Voting by electronic voting system must be secret, except for voters who need assistance. A voter may remain inside the voting booth for three minutes. A voter who refuses to leave the voting booth after three minutes must be removed by the election judges.

Subd. 2. [Repealed, 1997 c 147 s 79]

History: 1984 c 447 s 10; 1997 c 147 s 60

206.66 VIOLATIONS; PENALTIES.

Subdivision 1. **Injuring voting machines.** An individual who intentionally injures or attempts to injure or render ineffectual any component of an electronic voting system, or who violates any of the provisions of sections 206.55 to 206.90, is guilty of a felony.

Subd. 2. **Violation of law, rules.** An individual who violates any rules adopted by the secretary of state or by the governing body of a municipality where an electronic voting system is used, or who violates any of the provisions of sections 206.55 to 206.90, is guilty of a gross misdemeanor.

Subd. 3. **Performance bond.** A vendor of electronic voting systems or related election services shall furnish the secretary of state with a sufficient bond conditioned on the performance of those machines, systems, or services in accordance with the Minnesota Election Law and any contract or agreement made with an election jurisdiction in Minnesota. The vendor bond required under section 206.57, subdivision 4, may serve as the performance bond required under this subdivision. The secretary of

state shall send notice of the receipt or forfeiture of a bond under this subdivision to each official on the user list.

History: 1984 c 447 s 11; 1989 c 291 art 1 s 26; 1997 c 147 s 61

206.68 [Repealed, 1997 c 147 s 79]

206.685 [Repealed, 1997 c 147 s 79]

206.69 [Repealed, 1997 c 147 s 79]

206.70 [Repealed, 1997 c 147 s 79]

206.71 [Repealed, 1997 c 147 s 79]

206.72 [Repealed, 1997 c 147 s 79]

206.73 [Repealed, 1997 c 147 s 79]

206.74 [Repealed, 1997 c 147 s 79]

206.75 [Repealed, 1997 c 147 s 79]

206.76 [Repealed, 1997 c 147 s 79]

206.77 [Repealed, 1997 c 147 s 79]

206.80 ELECTRONIC VOTING SYSTEMS.

An electronic voting system may not be employed unless it:

- (1) permits every voter to vote in secret;
- (2) permits every voter to vote for all candidates and questions for whom or upon which the voter is legally entitled to vote;
- (3) provides for write-in voting when authorized;
- (4) rejects by means of the automatic tabulating equipment, except as provided in section 206.84 with respect to write-in votes, all votes for an office or question when the number of votes cast on it exceeds the number which the voter is entitled to cast;
- (5) permits a voter at a primary election to select secretly the party for which the voter wishes to vote; and
- (6) rejects, by means of the automatic tabulating equipment, all votes cast in a primary election by a voter when the voter votes for candidates of more than one party.

History: 1984 c 447 s 22; 1987 c 222 s 4; 1988 c 646 s 9; 1997 c 147 s 62

206.81 ELECTRONIC VOTING SYSTEMS; EXPERIMENTAL USE.

(a) The secretary of state may approve an electronic voting system for experimental use at an election prior to its approval for general use.

(b) The secretary of state must approve one or more direct recording electronic voting systems for experimental use at an election before their approval for general use and may impose restrictions on their use. At least one voting system approved under this paragraph must permit sighted persons to vote and at least one system must permit a blind or visually impaired voter to cast a ballot independently and privately.

(c) Experimental use must be observed by the secretary of state or the secretary's designee and the results observed must be considered at any subsequent proceedings for approval for general use.

(d) The secretary of state may adopt rules consistent with sections 206.55 to 206.90 relating to experimental use. The extent of experimental use must be determined by the secretary of state.

History: 1984 c 447 s 23; 1986 c 444; 1997 c 147 s 63; 1Sp2001 c 10 art 18 s 38; 2004 c 293 art 1 s 34

206.82 PREPARATION OF ELECTRONIC VOTING SYSTEM PROGRAMS AND PLANS.

Subdivision 1. **Program.** A program for use in an election conducted by means of an electronic voting system shall be prepared at the direction of the county auditor or municipal clerk who is responsible for the conduct of the election and shall be independently verified by a competent person designated by that official. The term "competent person" as used in this section means a person who can demonstrate knowledge as a computer programmer and who is other than and wholly independent of any person operating or employed by the counting center or the corporation or other preparer of the program. A test deck prepared by a competent person shall be used for independent verification of the program; it shall test the maximum digits used in totaling the returns and shall be usable by insertion during the tabulation process as well as prior to tabulation. The secretary of state shall adopt rules further specifying test procedures.

Subd. 2. **Plan.** The municipal clerk in a municipality where an electronic voting system is used and the county auditor of a county in which a counting center serving more than one municipality is located shall prepare a plan which indicates acquisition of sufficient facilities, computer time, and professional services and which describes the proposed manner of complying with section 206.80. The plan must be signed, notarized, and submitted to the secretary of state more than 60 days before the first election at which the municipality uses an electronic voting system. Prior to July 1 of each subsequent general election year, the clerk or auditor shall submit to the secretary of state notification of any changes to the plan on file with the secretary of state. The secretary of state shall review each plan for its sufficiency and may request technical assistance from the Department of Administration or other agency which may be operating as the central computer authority. The secretary of state shall notify each reporting authority of the sufficiency or insufficiency of its plan within 20 days of receipt of the plan. The attorney general, upon request of the secretary of state, may seek a district court order requiring an election official to fulfill duties imposed by this subdivision or by rules promulgated pursuant to this section.

Subd. 3. **Bond.** Before a contract is awarded to any vendor for preparation of a program for use with an electronic voting system, the vendor shall furnish the secretary of state with a sufficient bond conditioned on preparing the program in conformity with Minnesota Election Law and the instructions delivered to the vendor by the county auditor or municipal clerk who is responsible for the conduct of the election. The secretary of state shall send notice of the receipt or forfeiture of any such bond to each official on the user list. On or before March 15 of every even-numbered year the county auditor shall send to the secretary of state the current user list for the county.

History: 1984 c 447 s 24; 1986 c 362 s 9; 1986 c 444; 1987 c 175 s 14

206.83 TESTING OF VOTING SYSTEMS.

The official in charge of elections shall have the voting system tested to ascertain that the system will correctly count the votes cast for all candidates and on all questions within 14 days prior to election day. Public notice of the time and place of the test must be given at least two days in advance by publication once in official newspapers. The test must be observed by at least two election judges, who are not of the same major political party, and must be open to representatives of the political parties, candidates, the press, and the public. The test must be conducted by processing a preaudited group of ballots punched or marked to record a predetermined number of valid votes for each candidate and on each question, and must include for each office one or more ballot cards which have votes in excess of the number allowed by law in order to test the ability of the voting system to reject those votes. If any error is detected, the cause must be ascertained and corrected and an errorless count must be made before the voting system may be used in the election. After the completion of the test, the programs used

and ballot cards must be sealed, retained, and disposed of as provided for paper ballots.

History: 1984 c 447 s 25; 1988 c 424 s 1; 1993 c 223 s 21; 1997 c 147 s 64

206.84 METHODS OF USING ELECTRONIC VOTING SYSTEMS.

Subdivision 1. **Instruction of judges, voters.** The officials in charge of elections shall determine procedures to instruct election judges and voters in the use of electronic voting system marking devices.

Subd. 2. [Repealed, 1997 c 147 s 79]

Subd. 3. **Ballots.** The ballot information must be in the same order provided for paper ballots, except that the information may be in vertical or horizontal rows, or on a number of separate pages. The secretary of state shall provide by rule for standard ballot formats for electronic voting systems.

Ballot cards may contain special printed marks and holes as required for proper positioning and reading of the ballots by electronic vote counting equipment. Ballot cards must contain an identification of the precinct for which they have been prepared which can be read visually and which can be tabulated by the automatic tabulating equipment.

Subd. 4. [Repealed, 1997 c 147 s 79]

Subd. 5. [Repealed, 1997 c 147 s 79]

Subd. 6. **Duties of official in charge.** The official in charge of elections in each municipality where an electronic voting system is used shall have the voting systems put in order, set, adjusted, and made ready for voting when delivered to the election precincts. The official shall also provide each precinct with a container for transporting ballot cards to the counting location after the polls close. The container shall be of sturdy material to protect the ballots from all reasonably foreseeable hazards including auto collisions. The election judges shall meet at the polling place at least one hour before the time for opening the polls. Before the polls open the election judges shall compare the ballot cards used with the sample ballots furnished to see that the names, numbers, and letters on both agree and shall certify to that fact on forms provided for the purpose. The certification must be filed with the election returns.

Subd. 7. **Spoiled ballot cards.** A voter who spoils a ballot card or makes an error may return it to the election judges and obtain another. Except as otherwise provided in sections 206.55 to 206.90, the election judges shall conduct the election in the manner prescribed for precincts using paper ballots in chapters 204C and 204D.

History: 1984 c 447 s 26; 1986 c 362 s 10; 1986 c 444; 1987 c 222 s 5; 1997 c 147 s 65-67

206.85 OFFICIALS IN CHARGE OF COUNTING.

Subdivision 1. **Duties of responsible official.** The official in charge of elections in a municipality where an electronic voting system is used must:

(a) be present or personally represented throughout the counting center proceedings;

(b) be responsible for acquiring sufficient facilities and personnel to ensure timely and lawful processing of votes;

(c) be responsible for the proper training of all personnel participating in counting center proceedings and deputize all personnel who are not otherwise election judges;

(d) maintain actual control over all proceedings and be responsible for the lawful execution of all proceedings in the counting center whether or not by experts;

(e) be responsible for assuring the lawful retention and storage of ballots and read-outs; and

(f) arrange for observation by the public and by candidates' representatives of counting center procedures by publishing the exact location of the counting center in a legal newspaper at least once during the week preceding the week of election and in

the newspaper of widest circulation once on the day preceding the election, or once the week preceding the election if the newspaper is a weekly.

The official may make arrangements with news reporters which permit prompt reporting of election results but which do not interfere with the timely and lawful completion of counting procedures.

Subd. 2. **Counting center in more than one municipality.** If a counting center serves more than one municipality, the county auditor of the county where the center is located is in sole charge of overall administration of the center and must

(a) establish procedures to implement the timely and lawful completion of the counting center proceedings;

(b) coordinate training of all counting center personnel and require additional training as needed;

(c) ask the county attorney, at least 30 days prior to an election, whether circumstances require that the municipalities sharing the use of a counting center resolve their respective duties and financial responsibilities by execution of a joint powers agreement pursuant to section 471.59;

(d) coordinate, and if necessary, exercise the duties imposed by this section on the official in charge of elections in a municipality where an electronic voting system is used; and

(e) limit the number of ballots to be counted at a single counting center to no more than 100,000.

History: 1984 c 447 s 27; 1986 c 362 s 11; 1986 c 444

206.86 COUNTING ELECTRONIC VOTING SYSTEM RESULTS.

Subdivision 1. **At the voting location.** In precincts where an electronic voting system is used, as soon as the polls are closed the election judges shall secure the voting systems against further voting. They shall then open the ballot box and count the number of ballot cards or envelopes containing ballot cards that have been cast to determine that the number of ballot cards does not exceed the number of voters shown on the election register or registration file. If there is an excess, the judges shall seal the ballots in a ballot container and transport the container to the county auditor or municipal clerk who shall process the ballots in the same manner as paper ballots are processed in section 204C.20, subdivision 2, then enter the ballots into the ballot counter. The total number of voters must be entered on the forms provided. The judges shall next count the write-in votes and enter the number of those votes on forms provided for the purpose.

Subd. 2. **Transportation of ballot cards.** The judges shall place all voted ballot cards, defective ballots, and damaged ballots in the container provided for transporting them to the counting center. The container must be sealed and delivered immediately to the counting center by two judges who are not of the same major political party. The judges shall also deliver to the counting center in a suitable container the unused ballot cards, the spoiled ballot envelope, and the ballot envelopes issued to the voters and deposited during the day in the ballot box.

Subd. 3. **Counting centers open; security.** Proceedings at the counting center are open to the public. They are under the direction of the official in charge of elections in each municipality where an electronic voting system is used and must be under the observation of at least two election judges who are not of the same major political party. Only persons employed and authorized for the purpose may touch any ballot card, ballot container, or statement of absentee ballot results.

Subd. 4. **Preliminary tabulation.** When the ballot cards arrive at a counting center where votes are counted by a multiple use computer, they must be given to the counting center election judges. For purposes of this subdivision a multiple use computer is automatic tabulating equipment which can perform functions other than counting votes. If the election judges at the precinct have determined that any ballot cards are not defective by reason of improper write-in votes, those ballot cards may be

counted by the automatic tabulating equipment before inspection by the counting center election judges. The results of this preliminary tabulation may be made available to the public if the tabulation is clearly identified as unofficial.

After any preliminary tabulation has been made, the ballot cards must be returned to the counting center election judges who shall examine them for physical defects and prepare replacements, if necessary, as provided in subdivision 5.

Subd. 5. Damaged, defective ballot cards. If a ballot card is damaged or defective so that it cannot be counted properly by the automatic tabulating equipment, a true duplicate copy must be made of the damaged ballot card in the presence of two judges not of the same major political party and must be substituted for the damaged ballot card. Likewise, a duplicate ballot card must be made of a defective ballot card which may not include the votes for the offices for which it is defective. Duplicate ballot cards must be clearly labeled "duplicate," indicate the precinct in which the corresponding damaged or defective ballot was cast, bear a serial number which must be recorded on the damaged or defective ballot card, and be counted in lieu of the damaged or defective ballot card. If a ballot card is damaged or defective so that it cannot be counted properly by the automatic tabulating equipment, the ballot card must be tallied at the counting center by two judges not of the same major political party and the totals for all these ballot cards must be added to the totals for the respective precincts.

Subd. 6. Final tabulation. A final tabulation of ballots must be obtained from the automatic tabulating equipment after all damaged or defective cards have been replaced. The final tabulation, together with the returns of write-in and absentee votes and the precinct summary statements prepared in accordance with section 204C.24, constitute the official return of each precinct. Upon completion of the count the returns are open to the public. The automatic tabulating equipment must be programmed to provide a complete recapitulation of all ballots processed. It may be programmed to provide information in addition to that required in the official return of each precinct, if the officials in charge of elections deem that advisable in order to provide election statistics to evaluate the performance of the electronic voting system or other aspects of the election.

History: 1984 c 447 s 28; 1997 c 147 s 68,69; 1999 c 132 s 38

206.87 CANVASSING BOARD DUTIES.

In a municipality where an electronic voting system is used the canvassing board shall be constituted and shall perform the same duties as provided in sections 204C.32, 204C.33, and 204C.39 on the canvassing of paper ballots.

History: 1984 c 447 s 29

206.88 PARTIAL RECOUNTS ON ELECTRONIC VOTING SYSTEMS.

The secretary of state may conduct a recount to verify the accuracy of vote counting and recording in one or more precincts in which an electronic voting system was used in the election. The results of the recount must be reported to the appropriate canvassing board. Time for notice of nomination, election, or contest for an office recounted pursuant to this section must begin upon certification of the results of the recount by the canvassing board.

History: 1989 c 291 art 1 s 27

206.90 OPTICAL SCAN VOTING SYSTEMS.

Subdivision 1. **Definition.** For the purposes of this section, "optical scan voting system" means an electronic voting system approved for use under sections 206.80 to 206.81 in which the voter records votes by marking with a pencil or other writing instrument a ballot on which the names of candidates, office titles, party designation in a partisan primary or election, and a statement of any question accompanied by the words "Yes" and "No" are printed.

Subd. 2. **Procedures.** To the extent possible, procedures for using an optical scan voting system must be the same as those used for other electronic voting systems, unless this section provides otherwise.

Subd. 3. **Availability of paper ballots.** At a state or county election where an optical scan voting system will be in use, the county auditor may provide ballot cards meeting the requirements of this section in lieu of paper ballots otherwise required to be prepared by the county auditor. In an election jurisdiction where an optical scan voting system has been adopted, the election official may provide paper ballots prepared in the same format used for the voting system.

Subd. 4. **Absentee voting.** An optical scan voting system may be used for absentee voting. The county auditor may supply an appropriate marking instrument to the voter along with the ballot.

Subd. 5. **Instruction of judges, voters.** In instructing judges and voters under section 206.84, subdivision 1, officials in charge of election precincts using optical scan voting systems shall include instruction on the proper mark for recording votes on ballot cards marked with a pencil or other writing instrument and the insertion by the voter of the ballot card into automatic tabulating equipment that examines and counts votes as the ballot card is deposited into the ballot box.

Subd. 6. **Ballots.** In precincts using optical scan voting systems, a single ballot card on which all ballot information is included must be printed in black ink on white colored material except that marks not to be read by the automatic tabulating equipment may be printed in another color ink.

On the front of the ballot must be printed the words "Official Ballot" and the date of the election and lines for the initials of at least two election judges.

When optical scan ballots are used, the offices to be elected must appear in the following order: federal offices; state legislative offices; constitutional offices; proposed constitutional amendments; county offices and questions; municipal offices and questions; school district offices and questions; special district offices and questions; and judicial offices.

On optical scan ballots, the names of candidates and the words "yes" and "no" for ballot questions must be printed as close to their corresponding vote targets as possible.

The line on an optical scan ballot for write-in votes must contain the words "write-in, if any."

If a primary ballot contains both a partisan ballot and a nonpartisan ballot, the instructions to voters must include a statement that reads substantially as follows: "THIS BALLOT CARD CONTAINS A PARTISAN BALLOT AND A NONPARTISAN BALLOT. ON THE PARTISAN BALLOT YOU ARE PERMITTED TO VOTE FOR CANDIDATES OF ONE POLITICAL PARTY ONLY." If a primary ballot contains political party columns on both sides of the ballot, the instructions to voters must include a statement that reads substantially as follows: "ADDITIONAL POLITICAL PARTIES ARE PRINTED ON THE OTHER SIDE OF THIS BALLOT. VOTE FOR ONE POLITICAL PARTY ONLY." At the bottom of each political party column on the primary ballot, the ballot must contain a statement that reads substantially as follows: "CONTINUE VOTING ON THE NONPARTISAN BALLOT." The instructions in section 204D.08, subdivision 4, do not apply to optical scan partisan primary ballots.

Subd. 7. **Voting booths.** In precincts where an optical scan voting system is used, the number of voting booths must be sufficient to provide for the number of voters expected. Information needed to enable voters to mark ballot cards quickly and correctly must be posted in each voting booth.

Subd. 8. **Duties of election officials.** The official in charge of elections in each municipality where an optical scan voting system is used shall have the automatic tabulating equipment that examines and counts votes as ballot cards are deposited into ballot boxes put in order, set, adjusted, and made ready for voting when delivered to the election precincts.

Subd. 9. **Spoiled ballot cards.** Automatic tabulating equipment capable of examining a ballot card for defects and returning it to the voter before it is counted and deposited into the ballot box must be programmed to return as a spoiled ballot a ballot card with votes for an office or question which exceed the number which the voter is entitled to cast and at a primary a ballot card with votes for candidates of more than one party.

Subd. 10. **Counting write-in votes.** In precincts using optical scan voting systems, the judges shall count the write-in votes and enter the number of those votes on forms provided for the purpose. When the write-in votes are recorded on a medium that cannot be examined for write-in votes by the automatic tabulating equipment or the automatic tabulating equipment does not reject, with respect to write-in votes, all votes for an office or question when the number of votes cast on it exceeds the number which the voter is entitled to count, all ballot envelopes or other medium on which write-in votes have been recorded must be serially numbered, starting with the number one and the same number must be placed on the ballot card of the voter. The judges shall compare the write-in votes with the votes cast on the ballot card. If the total number of votes for any office exceeds the number allowed by law, a notation to that effect must be entered on the back of the ballot card and the card must be returned to the counting center in an envelope marked "defective ballots"; however, valid votes on ballot cards containing invalid votes must be counted as provided in section 206.86, subdivision 5.

When the write-in votes are recorded on ballot cards that can be examined for write-in votes by the automatic tabulating equipment and the automatic tabulating equipment rejects all votes for an office or question when the number of votes cast on it exceeds the number which the voter is entitled to cast, the judges shall examine the ballot cards with write-in votes and count the valid write-in votes.

History: 1986 c 381 s 1; 1987 c 175 s 15; 1989 c 291 art 1 s 28; 1993 c 223 s 22; 1994 c 646 s 22; 1997 c 147 s 70,71; 1998 c 254 art 1 s 64; 2000 c 467 s 31; 2004 c 293 art 2 s 42