

REFERENCE TITLE: elections; recounts; contests

State of Arizona  
House of Representatives  
Forty-seventh Legislature  
Second Regular Session  
2006

# HB 2492

Introduced by  
Representative Knaperek

AN ACT

AMENDING SECTIONS 16-201, 16-322, 16-341, 16-446, 16-624, 16-663, 16-664 AND 16-676, ARIZONA REVISED STATUTES; RELATING TO ELECTIONS AND ELECTORS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Section 16-201, Arizona Revised Statutes, is amended to  
3 read:  
4 16-201. Primary elections  
5 On the ~~eighth~~ TWELFTH Tuesday prior to a general or special election at  
6 which candidates for public office are to be elected, a primary election  
7 shall be held.  
8 Sec. 2. Section 16-322, Arizona Revised Statutes, is amended to read:  
9 16-322. Number of signatures required on nomination petitions  
10 A. Nomination petitions shall be signed:  
11 1. If for a candidate for the office of United States senator or for a  
12 state office, excepting members of the legislature and superior court judges,  
13 by a number of qualified electors who are qualified to vote for the candidate  
14 whose nomination petition they are signing equal to at least one-half of one  
15 per cent of the voter registration of the party of the candidate in at least  
16 three counties in the state, but not less than one-half of one per cent nor  
17 more than ten per cent of the total voter registration of ~~his~~ THE CANDIDATE'S  
18 party in the state.  
19 2. If for a candidate for the office of representative in Congress, by  
20 a number of qualified electors who are qualified to vote for the candidate  
21 whose nomination petition they are signing equal to at least one-half of one  
22 per cent but not more than ten per cent of the total voter registration of  
23 the party designated in the district from which such representative shall be  
24 elected.  
25 3. If for a candidate for the office of member of the legislature, by  
26 a number of qualified electors who are qualified to vote for the candidate  
27 whose nomination petition they are signing equal to at least one per cent but  
28 not more than three per cent of the total voter registration of the party  
29 designated in the district from which the member of the legislature may be  
30 elected.  
31 4. If for a candidate for a county office or superior court judge, by  
32 a number of qualified electors who are qualified to vote for the candidate  
33 whose nomination petition they are signing equal to at least two per cent but  
34 not more than ten per cent of the total voter registration of the party  
35 designated in the county or district, provided that in counties with a  
36 population of two hundred thousand persons or more, a candidate for a county  
37 office shall have nomination petitions signed by a number of qualified  
38 electors who are qualified to vote for the candidate whose nomination  
39 petition they are signing equal to at least one-half of one per cent but not  
40 more than ten per cent of the total voter registration of the party  
41 designated in the county or district.  
42 5. If for a candidate for a community college district, by a number of  
43 qualified electors who are qualified to vote for the candidate whose  
44 nomination petition they are signing equal to at least one-half of one per

1 cent but not more than ten per cent of the total voter registration in the  
2 precinct as established pursuant to section 15-1441.

3 6. If for a candidate for county precinct committeeman, by a number of  
4 qualified electors who are qualified to vote for the candidate whose  
5 nomination petition they are signing equal to at least two per cent but not  
6 more than ten per cent of the party voter registration in the precinct or ten  
7 signatures, whichever is less.

8 7. If for a candidate for justice of the peace or constable, by a  
9 number of qualified electors who are qualified to vote for the candidate  
10 whose nomination petition they are signing equal to at least two per cent but  
11 not more than ten per cent of the party voter registration in the precinct.

12 8. If for a candidate for mayor or other office nominated by a city at  
13 large, by a number of qualified electors who are qualified to vote for the  
14 candidate whose nomination petition they are signing equal to at least five  
15 per cent and not more than ten per cent of the designated party vote in the  
16 city.

17 9. If for an office nominated by ward, precinct or other district of a  
18 city, by a number of qualified electors who are qualified to vote for the  
19 candidate whose nomination petition they are signing equal to at least five  
20 per cent and not more than ten per cent of the designated party vote in the  
21 ward, precinct or other district.

22 10. If for a candidate for an office nominated by a town at large, by a  
23 number of qualified electors who are qualified to vote for the candidate  
24 whose nomination petition they are signing equal to at least five per cent  
25 and not more than ten per cent of the vote in the town.

26 11. If for a candidate for a governing board of a school district, by a  
27 number of qualified electors who are qualified to vote for the candidate  
28 whose nomination petition they are signing equal to at least one-half of one  
29 per cent of the total voter registration in the school district if the  
30 governing board members are elected at large or one per cent of the total  
31 voter registration in the single member district if governing board members  
32 or joint technological education district board members are elected from  
33 single member districts. Notwithstanding the total voter registration in the  
34 school district or single member district, the maximum number of signatures  
35 required by this paragraph is four hundred.

36 12. If for a candidate for a governing body of a special district as  
37 described in title 48 by a number of qualified electors who are qualified to  
38 vote for the candidate whose nomination petition they are signing equal to at  
39 least one-half of one per cent of the vote in the special district but not  
40 more than two hundred fifty and not fewer than five signatures.

41 B. The basis of percentage in each instance referred to in subsection  
42 A of this section, except in cities, towns and school districts, shall be the  
43 number of voters registered in the designated party of the candidate as  
44 reported pursuant to section 16-168, subsection G on ~~March~~ JANUARY 1 of the  
45 year in which the general election is held. In cities, the basis of

1 percentage shall be the vote of the party for mayor at the last preceding  
2 election at which a mayor was elected. In towns, the basis of percentage  
3 shall be the highest vote cast for an elected official of the town at the  
4 last preceding election at which an official of the town was elected. In  
5 school districts, the basis of percentage shall be the total number of voters  
6 registered in the school district or single member district, whichever  
7 applies. The total number of voters registered for school districts shall be  
8 calculated using the periodic reports prepared by the county recorder  
9 pursuant to section 16-168, subsection G. The count that is reported on  
10 ~~March~~ JANUARY 1 of the year in which the general election is held shall be  
11 the basis for the calculation of total voter registration for school  
12 districts.

13 C. In primary elections the signature requirement for party nominees,  
14 other than nominees of the parties entitled to continued representation  
15 pursuant to section 16-804, is at least one-tenth of one per cent of the  
16 total vote for the winning candidate or candidates for governor or  
17 presidential electors at the last general election within the district.  
18 Signatures must be obtained from qualified electors who are qualified to vote  
19 for the candidate whose nomination petition they are signing.

20 D. If new boundaries for congressional districts, legislative  
21 districts, supervisorial districts, justice precincts or election precincts  
22 are established and effective subsequent to ~~March~~ JANUARY 1 of the year of a  
23 general election and prior to the date for filing of nomination petitions,  
24 the basis for determining the required number of nomination petition  
25 signatures is the number of registered voters in the designated party of the  
26 candidate in the elective office, district or precinct on the day the new  
27 districts or precincts are effective.

28 Sec. 3. Section 16-341, Arizona Revised Statutes, is amended to read:  
29 16-341. Nomination petition; method and time of filing; form;  
30 qualifications and number of petitioners required

31 A. Any qualified elector who is not a registered member of a political  
32 party that is recognized pursuant to this title may be nominated as a  
33 candidate for public office otherwise than by primary election or by party  
34 committee pursuant to this section.

35 B. This article shall not be used to place on the general election  
36 ballot the name of a political party which fails to meet the qualifications  
37 specified in section 16-802 or 16-804, or the name of any candidate  
38 representing such party or the name of a candidate who has filed a nomination  
39 petition in the immediately preceding primary election and has failed to  
40 qualify as the result of an insufficient number of valid signatures.

41 C. A nomination petition stating the name of the office to be filled,  
42 the name and residence of the candidate and other information required by  
43 this section shall be filed ~~at the same time and~~ NO LATER THAN JUNE 15 IN THE  
44 YEAR IN WHICH THE ELECTION IS HELD AND SHALL BE FILED with the same officer  
45 with whom primary nomination papers and petitions are required to be filed as

1 prescribed in section 16-311. The petition shall be signed only by voters  
2 who have not signed the nomination petitions of a candidate for the office to  
3 be voted for at that primary election.

4 D. The nomination petition shall be in substantially the following  
5 form:

6 ~~"~~The undersigned, qualified electors of \_\_\_\_\_  
7 county, state of Arizona, do hereby nominate \_\_\_\_\_, who  
8 resides at \_\_\_\_\_ in the county of \_\_\_\_\_, as a  
9 candidate for the office of \_\_\_\_\_ at the general (or  
10 special, as the case may be) election to be held on the  
11 \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

12 I hereby declare that I have not signed the  
13 nomination petitions of any candidate for the office  
14 to be voted for at this primary election, and I do  
15 hereby select the following designation under which  
16 name the said candidate shall be placed on the  
17 official ballot (here insert such designation not  
18 exceeding three words in length as the signers may  
19 select).~~"~~

20 E. The nomination petition shall conform as nearly as possible to the  
21 provisions relating to nomination petitions of candidates to be voted for at  
22 primary elections and shall be signed by at least the number of persons who  
23 are registered to vote determined by calculating three per cent of the  
24 persons who are registered to vote of the state, county, subdivision or  
25 district for which the candidate is nominated who are not members of a  
26 political party that is qualified to be represented by an official party  
27 ballot at the next ensuing primary election and accorded representation on  
28 the general election ballot.

29 F. The percentage of persons who are registered to vote necessary to  
30 sign the nomination petition shall be determined by the total number of  
31 registered voters from other than political parties that are qualified to be  
32 represented by an official party ballot at the next ensuing primary election  
33 and accorded representation on the general election ballot in the state,  
34 county, subdivision or district on ~~March~~ JANUARY 1 of the year in which the  
35 general election is held. Notwithstanding the method prescribed by  
36 subsection E of this section and this subsection for calculating the minimum  
37 number of signatures necessary, any person who is registered to vote in the  
38 state, county, subdivision or district for which the candidate is nominated  
39 is eligible to sign the nomination petition without regard to the signer's  
40 party affiliation.

41 G. For the purposes of this section, a nomination petition for the  
42 office of presidential elector shall include a group of names of candidates  
43 equal to the number of United States senators and representatives in Congress  
44 from this state instead of separate nomination petitions for each candidate  
45 for the office of presidential elector. A valid signature on a petition

1 containing a group of presidential electors candidates is counted as a  
2 signature for the nomination of each of the candidates. The presidential  
3 candidate whom the candidates for presidential elector will represent shall  
4 designate in writing to the secretary of state the names of the candidates  
5 who will represent the presidential candidate before any signatures for the  
6 candidate can be accepted for filing.

7 H. A person who files a nomination paper pursuant to this section for  
8 the office of president of the United States shall designate in writing to  
9 the secretary of state at the time of filing the name of the candidate's  
10 vice-presidential running mate, the names of the presidential electors who  
11 will represent that candidate and a statement that is signed by the  
12 vice-presidential running mate and the designated presidential electors and  
13 that indicates their consent to be designated. A nomination paper for each  
14 presidential elector designated shall be filed with the candidate's  
15 nomination paper. The number of presidential electors shall equal the number  
16 of United States senators and representatives in Congress from this state.

17 I. A candidate who does not file a timely nomination petition that  
18 complies with this section is not eligible to have the candidate's name  
19 printed on the official ballot for that office. The filing officer shall not  
20 accept the nomination paper of a candidate for state or local office unless  
21 the candidate provides or has provided all of the following:

22 1. The nomination petition required by this title.

23 2. A political committee statement of organization or the five hundred  
24 dollar threshold exemption statement for that office.

25 3. The financial disclosure statement as prescribed for candidates for  
26 that office.

27 Sec. 4. Section 16-446, Arizona Revised Statutes, is amended to read:  
28 16-446. Specifications of electronic voting system

29 A. An electronic voting system consisting of a voting or marking  
30 device in combination with vote tabulating equipment shall provide facilities  
31 for voting for candidates at both primary and general elections.

32 B. An electronic voting system shall:

33 1. Provide for voting in secrecy when used with voting booths.

34 2. Permit each elector to vote at any election for any person for any  
35 office whether or not nominated as a candidate, to vote for as many persons  
36 for an office as ~~he~~ THE ELECTOR is entitled to vote for, ~~AND~~ to vote for or  
37 against any question upon which ~~he~~ THE ELECTOR is entitled to vote, and the  
38 vote tabulating equipment shall reject choices recorded on ~~his~~ THE ELECTOR'S  
39 ballot card or paper ballot if the number of choices exceeds the number which  
40 ~~he~~ THE ELECTOR is entitled to vote for the office or on the measure.

41 3. Prevent the elector from voting for the same person more than once  
42 for the same office.

43 4. Be suitably designed for the purpose used, ~~AND~~ of durable  
44 construction, ~~and~~ may be used safely, efficiently and accurately in the  
45 conduct of elections and counting ballots.

1           5. Be provided with means for sealing the voting or marking device  
2 against any further voting after the close of the polls and the last voter  
3 has voted.

4           6. When properly operated, record correctly and count accurately every  
5 vote cast.

6           7. Provide a paper document or ballot that ~~visually~~ indicates the  
7 voter's selections **AND ALLOWS THE VOTER TO CONFIRM THOSE SELECTIONS BEFORE**  
8 **COMPLETION OF VOTING.**

9           Sec. 5. Section 16-624, Arizona Revised Statutes, is amended to read:

10          16-624. Disposition of official returns and ballots

11          A. Upon receipt of the packages and envelopes containing the returns  
12 and the voted ballots, the officer in charge of elections shall ~~deposit~~  
13 **MAINTAIN** the package or envelope containing the ballots in ~~the safe of the~~  
14 ~~county treasurer, who shall keep it~~ **SECURE CONTAINERS OR IN A SECURE ROOM, OR**  
15 **BOTH, AT THE TABULATING LOCATION FOR THOSE BALLOTS. THE BALLOTS SHALL REMAIN**  
16 unopened and unaltered for twenty-four months for elections for a federal  
17 office or for six months for all other elections, at which time ~~he~~ **THE**  
18 **OFFICER IN CHARGE OF ELECTIONS** shall destroy ~~it~~ **THE PACKAGES OR ENVELOPES**  
19 without opening or examining the contents. **FOR ACCESSIBLE VOTING DEVICES**  
20 **THAT STORE RECORDS OF VOTING IN ELECTRONIC MEMORY CARDS, THE OFFICER IN**  
21 **CHARGE OF ELECTIONS SHALL MAINTAIN THE ELECTRONIC MEMORY CARDS IN A SECURE**  
22 **CONTAINER AT THE TABULATING LOCATION FOR OTHER BALLOTS AND SHALL RETAIN THE**  
23 **MEMORY CARDS FOR THE TIME PRESCRIBED FOR BALLOTS. ON COMPLETION OF THE**  
24 **STORAGE PERIOD, THE OFFICER IN CHARGE OF ELECTIONS SHALL ERASE OR OTHERWISE**  
25 **REMOVE FROM THE ELECTRONIC MEMORY CARDS THE RECORDS OF VOTING.**

26          B. Irregular ballots shall be preserved for six months after the  
27 election and the packages containing them may be opened and the contents  
28 examined only upon an order of court. At the expiration of such time, the  
29 ballots may be disposed of in the discretion of the officer or board having  
30 charge of them.

31          C. The officer in charge of elections shall produce the other packages  
32 or envelopes before the board of supervisors when it is in session for the  
33 purpose of canvassing the returns.

34          D. If a recount is ordered or a contest begun within six months, the  
35 ~~county treasurer~~ **OFFICER IN CHARGE OF ELECTIONS WITH CUSTODY OF THE BALLOTS**  
36 may be ordered by the court to deliver to it the packages or envelopes  
37 containing the ballots, and thereupon they shall be in the custody and  
38 control of the court.

39          Sec. 6. Section 16-663, Arizona Revised Statutes, is amended to read:

40          16-663. Recount of votes; method

41          A. The superior court to which the facts requiring a recount are  
42 certified shall forthwith make and enter an order requiring a recount of the  
43 votes cast for such office, measure or proposal. The recount shall be  
44 conducted in accordance with the laws pertaining to contests of elections.

1 B. When the court orders a recount of votes which were cast and  
2 tabulated on electronic voting equipment, such recount shall be pursuant to  
3 section 16-664.

4 C. FOR A RECOUNT OF AN ELECTION IN WHICH VOTER VERIFIABLE PAPER  
5 RECEIPTS ARE GENERATED THAT ARE NOT OFFICIAL BALLOTS, THE COURT SHALL NOT  
6 CONDUCT THE RECOUNT USING ANYTHING OTHER THAN THE ELECTRONIC TABULATING  
7 SYSTEM, UNLESS THE COURT DETERMINES THAT IT IS IMPRACTICABLE TO CONDUCT THE  
8 RECOUNT WITH THE ORIGINAL AUTOMATIC TABULATING SYSTEM AND THAT THE EMERGENCY  
9 MANUAL TABULATION OF THE PAPER RECEIPTS IS THEREFORE REQUIRED. FOR THE  
10 PURPOSES OF THIS SUBSECTION, THE USE OF THE ORIGINAL AUTOMATIC TABULATING  
11 EQUIPMENT IS IMPRACTICABLE IF THE EQUIPMENT IS NOT FUNCTIONAL AND IS  
12 INCAPABLE OF TABULATING THE VOTES UNDER ANY CIRCUMSTANCES.

13 Sec. 7. Section 16-664, Arizona Revised Statutes, is amended to read:

14 16-664. Recount of votes by automatic tabulating system

15 A. In the event of a court-ordered recount of votes that were cast and  
16 tabulated on electronic voting equipment for a state primary, state general  
17 or state special election, the secretary of state shall order the ballots  
18 recounted on ~~an~~ THE SAME automatic tabulating system AND MACHINES THAT WERE  
19 USED IN THE ORIGINAL TABULATION. ~~to be furnished and~~ THE MACHINES SHALL BE  
20 programmed under the supervision of the secretary of state. THE SECRETARY OF  
21 STATE MAY DESIGNATE THE COUNTY OFFICER IN CHARGE OF ELECTIONS TO SUPERVISE  
22 THE RECOUNT AND TO FURNISH AND PROGRAM THE AUTOMATIC TABULATING SYSTEM. In  
23 the event of a court-ordered recount for elections other than for the office  
24 of supervisor, the secretary of state may designate the county board of  
25 supervisors to perform the duties assigned to the secretary of state.

26 B. If the office of secretary of state is contested, the governor  
27 shall order the ballots recounted on an automatic tabulating system to be  
28 furnished and programmed under the supervision of the governor.

29 C. The programs to be used in the recount of votes pursuant to this  
30 section shall differ from the programs prescribed by section 16-445 and used  
31 in the initial tabulation of the votes.

32 D. THE OFFICER SUPERVISING THE RECOUNT PURSUANT TO THIS SECTION SHALL  
33 HAVE THE AUTOMATIC TABULATING EQUIPMENT AND PROGRAMS TESTED TO ASCERTAIN THAT  
34 THE EQUIPMENT AND PROGRAMS WILL CORRECTLY COUNT THE VOTES CAST FOR ALL  
35 OFFICES AND ON ALL MEASURES. THE TEST SHALL BE OBSERVED BY AT LEAST TWO  
36 ELECTION INSPECTORS, WHO SHALL NOT BE OF THE SAME POLITICAL PARTY, AND SHALL  
37 BE OPEN TO REPRESENTATIVES OF THE POLITICAL PARTIES, CANDIDATES, THE PRESS  
38 AND THE PUBLIC. THE TEST SHALL BE CONDUCTED BY PROCESSING A PREAUDITED GROUP  
39 OF BALLOTS SO PUNCHED OR MARKED AS TO RECORD A PREDETERMINED NUMBER OF VALID  
40 VOTES FOR EACH CANDIDATE AND ON EACH MEASURE AND SHALL INCLUDE FOR EACH  
41 OFFICE ONE OR MORE BALLOTS THAT HAVE VOTES IN EXCESS OF THE NUMBER ALLOWED BY  
42 LAW IN ORDER TO TEST THE ABILITY OF THE AUTOMATIC TABULATING EQUIPMENT AND  
43 PROGRAMS TO REJECT THOSE VOTES. IF ANY ERROR IS DETECTED, THE CAUSE THEREFOR  
44 SHALL BE ASCERTAINED AND CORRECTED AND AN ERRORLESS COUNT SHALL BE MADE  
45 BEFORE THE AUTOMATIC TABULATING EQUIPMENT AND PROGRAMS ARE APPROVED. A COPY

1 OF A REVISED PROGRAM SHALL BE FILED WITH THE SECRETARY OF STATE WITHIN  
2 FORTY-EIGHT HOURS AFTER THE REVISION IS MADE. IF THE ERROR WAS CREATED BY  
3 AUTOMATIC TABULATING EQUIPMENT MALFUNCTION, A REPORT STATING THE CAUSE AND  
4 THE CORRECTIVE ACTION TAKEN SHALL BE FILED WITH THE SECRETARY OF STATE WITHIN  
5 FORTY-EIGHT HOURS AFTER THE CORRECTION IS MADE. AFTER THE COMPLETION OF THE  
6 COUNT, THE PROGRAMS USED AND THE BALLOTS SHALL BE SEALED, RETAINED AND  
7 DISPOSED OF AS PROVIDED FOR PAPER BALLOTS.

8 Sec. 8. Section 16-676, Arizona Revised Statutes, is amended to read:

9 16-676. Time for hearing contest; continuance; findings of the  
10 court; judgment

11 A. In any contest brought under ~~the provisions of~~ section 16-672 or  
12 16-674, upon the filing of the answer, or if no answer is filed, upon the  
13 expiration of the time specified in the summons, the court shall set a time  
14 for the hearing of the contest, not later than ten days after the date on  
15 which the statement of contest was filed, which may be continued for not to  
16 exceed five days for good cause shown.

17 B. The court shall continue in session to hear and determine all  
18 issues arising in contested elections **AND MAY ORDER A RECOUNT OF THE VOTES IF**  
19 **THE COURT DEEMS IT NECESSARY TO RESOLVE THE CONTEST.** After hearing the  
20 proofs and allegations of the parties, and within five days after the  
21 submission thereof, the court shall file its findings and immediately  
22 thereafter shall pronounce judgment, either confirming or annulling and  
23 setting aside the election.

24 C. If in an election contest it appears that a person other than the  
25 contestee has the highest number of legal votes, the court shall declare that  
26 person elected and that the certificate of election of the person whose  
27 office is contested is of no further legal force or effect.