

REFERENCE TITLE: elections; manual audit revisions

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SB 1623

Introduced by
Senator Johnson

AN ACT

AMENDING SECTIONS 16-550, 16-551, 16-602, 16-621 AND 16-1011, ARIZONA REVISED
STATUTES; RELATING TO CONDUCT OF ELECTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 16-550, Arizona Revised Statutes, is amended to
3 read:

4 16-550. Receipt of voter's ballot

5 A. Upon receipt of the envelope containing the early ballot and the
6 completed affidavit, the county recorder or other officer in charge of
7 elections shall compare the signatures thereon with the signature of the
8 elector on his registration form. If satisfied that the signatures
9 correspond, the recorder or other officer in charge of elections shall hold
10 them unopened in accordance with the rules of the secretary of state.

11 B. The recorder or other officer in charge of elections shall
12 thereafter safely keep the affidavits and early ballots in his office until
13 delivered pursuant to section 16-551 **AND TALLYING OF BALLOTS SHALL NOT BEGIN**
14 **ANY EARLIER THAN SEVEN DAYS BEFORE ELECTION DAY.**

15 C. The county recorder shall send a list of all voters who were issued
16 early ballots to the election board of the precinct in which the voter is
17 registered.

18 Sec. 2. Section 16-551, Arizona Revised Statutes, is amended to read:

19 16-551. Early election board; classification

20 A. The board of supervisors or the governing body of the political
21 subdivision shall appoint one or more early election boards to serve at
22 places to be designated by the board of supervisors or the governing body to
23 canvass and tally early election ballots. Members of early election boards
24 shall be selected in accordance with the provisions for selecting members of
25 regular election boards as provided in section 16-531.

26 B. If an electronic voting system is in use for early voting, the
27 early election board shall consist of at least one inspector and two judges
28 who shall perform the processing requirements in accordance with the rules
29 issued by the secretary of state. The inspector and judges shall be
30 appointed in the same manner by party as provided in section 16-531.

31 C. All early ballots received by the county recorder or other officer
32 in charge of elections before 7:00 p.m. on election day and the original
33 affidavit of the voter shall be delivered to the early election boards for
34 processing as provided in the rules of the secretary of state. The office of
35 the county recorder or other officer in charge of elections shall remain open
36 until 7:00 p.m. on election day for the purpose of receiving early ballots.
37 In no event shall partial or complete tallies of the early election board be
38 released or divulged before all precincts have reported or one hour after the
39 closing of the polls on election day, whichever occurs first, **AND ANY PERSON**
40 **WHO UNLAWFULLY RELEASES INFORMATION REGARDING VOTE TALLIES OR WHO POSSESSES A**
41 **TALLY SHEET OR SUMMARY WITHOUT AUTHORIZATION FROM THE OFFICER IN CHARGE OF**
42 **ELECTIONS IS GUILTY OF A CLASS 6 FELONY.**

43 D. The necessary printed blanks for poll lists, tally lists, lists of
44 voters, ballots, oaths and returns, together with envelopes in which to
45 enclose the returns, shall be furnished by the board of supervisors or the

1 governing body of the political subdivision to the early election board for
2 each election precinct at the expense of the county or the political
3 subdivision.

4 Sec. 3. Section 16-602, Arizona Revised Statutes, is amended to read:
5 16-602. Removal of ballots from ballot boxes; disposition of
6 ballots folded together or excessive ballots;
7 designated margin; hand counts; vote count
8 verification committee

9 A. The ballots cast in the election shall first be removed from the
10 ballot box and counted without being opened, except as may be necessary to
11 ascertain that the number of ballots cast corresponds with the number of
12 names on the poll lists.

13 B. If two or more ballots are found folded together appearing as a
14 single ballot, they shall be laid aside until the count of the ballots is
15 completed. If it then appears by comparison of the count with the number of
16 names on the poll lists that the ballots thus folded together were cast by
17 one elector, they shall be destroyed. If the ballots in the box are still
18 found to exceed in number the names on the poll lists, the ballots, except
19 those destroyed, shall be replaced in the box, and one of the judges, without
20 looking in the box, shall draw therefrom, one at a time, and destroy
21 unopened, a number of ballots equal to the excess, and the election board
22 shall record on the poll lists the number of ballots so destroyed and shall
23 then sign the poll list.

24 C. For each countywide primary, general and presidential preference
25 election, the county officer in charge of the election shall conduct a hand
26 count at the central counting center ~~of~~ **IN THE FOLLOWING ORDER:**

27 1. At least two per cent of the precincts in that county, or two
28 precincts, whichever is greater, **SHALL BE SELECTED AT RANDOM FROM A POOL**
29 **CONSISTING OF EVERY PRECINCT IN THAT COUNTY.** The county political party
30 chairman for each political party that is entitled to continued
31 representation on the state ballot or the chairman's designee shall conduct
32 the selection of the precincts to be hand counted. The precincts shall be
33 selected by lot without the use of a computer, and the order of selection by
34 the county political party chairmen shall also be by lot. The selection of
35 the precincts shall not begin until all ballots voted in the precinct polling
36 places have been delivered to the central counting center. The unofficial
37 vote totals from all precincts shall be made public before selecting the
38 precincts to be hand counted. Only the ballots cast in the polling places
39 and ballots from direct recording electronic machines shall be included in
40 the hand counts conducted pursuant to this section. Provisional ballots,
41 conditional provisional ballots and write-in votes shall not be included in
42 the hand counts and the early ballots shall be grouped separately by the
43 officer in charge of elections for purposes of a separate manual audit
44 pursuant to subsection G.

1 2. FROM THE PRECINCTS THAT WERE RANDOMLY SELECTED PURSUANT TO
2 PARAGRAPH 1, the races to be counted ON ALL OF THE BALLOTS FROM EACH OF THE
3 SELECTED PRECINCTS shall include at least four contested races ON EACH
4 BALLOT, and shall include one federal race FROM EACH PRECINCT'S BALLOTS, one
5 statewide candidate race FROM EACH PRECINCT'S BALLOTS, one ballot measure
6 FROM EACH PRECINCT'S BALLOTS and one legislative race on ~~those~~ EACH
7 PRECINCT'S ballots. For the purposes of this section, a write-in candidacy
8 in a race does not constitute a contested race. In elections in which there
9 are candidates for president, the presidential race ON EACH SELECTED
10 PRECINCT'S BALLOTS shall be added to the four categories of hand counted
11 races. Each county chairman of a political party that is entitled to
12 continued representation on the state ballot or the chairman's designee shall
13 select by lot the individual races to be hand counted.

14 3. The county chairman of each political party shall designate and
15 provide the number of election board members as designated by the county
16 officer in charge of elections who shall perform the hand count under the
17 supervision of the county officer in charge of elections. ~~For each precinct~~
18 ~~that is to be audited, the county chairmen shall designate at least three~~
19 ~~board workers who are registered members of any or no political party,~~ and
20 the county election officer shall provide for compensation for those board
21 workers. If the board workers selected by the county chairmen fail to appear
22 and perform the hand count pursuant to this subsection, ~~no~~ THE COUNTY OFFICER
23 IN CHARGE OF ELECTIONS SHALL CONDUCT THE hand count ~~will be conducted and the~~
24 ~~electronic tabulation is deemed the official count.~~

25 D. If the randomly selected races result in a difference in any race
26 that is less than the designated margin when compared to the electronic
27 tabulation of those same ballots, the results of the electronic tabulation
28 constitute the official count for that race. If the randomly selected races
29 result in a difference in any race that is equal to or greater than the
30 designated margin when compared to the electronic tabulation of those same
31 ballots, a second hand count of those same ballots and races shall be
32 performed. If the second hand count results in a difference in any race that
33 is less than the designated margin when compared to the electronic tabulation
34 for those same ballots, THE electronic tabulation constitutes the official
35 count for that race. If the second hand count results in a difference in any
36 race that is equal to or greater than the designated margin when compared to
37 the electronic tabulation for those same ballots, the hand count shall be
38 expanded to include a total of twice the original number of randomly selected
39 precincts. Those additional precincts shall be selected by lot without the
40 use of a computer.

41 E. In any expanded count of randomly selected precincts, if the
42 randomly selected precinct hand counts result in a difference in any race
43 that is equal to or greater than the designated margin when compared to the
44 electronic tabulation of those same ballots, the final hand count shall be
45 extended to include the entire jurisdiction for that race. If the

1 jurisdictional boundary for that race would include any portion of more than
2 one county, the final hand count shall not be extended into the precincts of
3 that race that are outside of the county that is conducting the expanded hand
4 count. If the expanded hand count results in a difference in that race that
5 is less than the designated margin when compared to the electronic tabulation
6 of those same ballots, the electronic tabulation constitutes the official
7 count for that race.

8 F. If a final hand count is performed for an entire jurisdiction for a
9 race, the final hand count shall be repeated for that race until a hand count
10 for that race for the entire jurisdiction results in a count that is
11 identical to one other hand count for that race for the entire jurisdiction
12 and that hand count constitutes the official count for that race.

13 G. After the electronic tabulation of early ballots and at one or more
14 times selected by the chairman of the political parties entitled to continued
15 representation on the ballot or the chairman's designee, the ~~county officer~~
16 ~~in charge of elections~~ CHAIRMEN OR THE CHAIRMEN'S DESIGNEES shall randomly
17 select one or more batches of early ballots that have been tabulated to
18 include at least one batch from each machine used for tabulating early
19 ballots and shall securely sequester those ballots along with their
20 unofficial tally reports for a postelection manual audit. The ~~county officer~~
21 ~~in charge of elections~~ CHAIRMEN OR THE CHAIRMEN'S DESIGNEES shall randomly
22 select from those sequestered early ballots a number equal to one per cent of
23 the total number of early ballots cast or five thousand early ballots,
24 whichever is less. From those randomly selected early ballots, the county
25 officer in charge of elections shall conduct a manual audit of the same races
26 that are being hand counted pursuant to subsection C. If the manual audit of
27 the early ballots results in a difference in any race that is equal to or
28 greater than the designated margin when compared to the electronically
29 tabulated results for those same early ballots, the manual audit shall be
30 repeated for those same early ballots. If the second manual audit results in
31 a difference in that race that is equal to or greater than the designated
32 margin when compared to the electronically tabulated results for those same
33 early ballots, the manual audit shall be expanded only for that race to a
34 number of additional early ballots equal to one per cent of the total early
35 ballots cast or an additional five thousand ballots, whichever is less, to be
36 randomly selected from the batch or batches of sequestered early ballots. If
37 the expanded early ballot manual audit results in a difference for that race
38 that is equal to or greater than the designated margin when compared to any
39 of the earlier manual counts for that race, the manual counts shall be
40 repeated for that race until a manual count results in a difference in that
41 race that is less than the designated margin. If at any point in the manual
42 audit of early ballots the difference between any manual count of early
43 ballots is less than the designated margin when compared to the electronic
44 tabulation of those ballots, the electronic tabulation shall be included in

1 the canvass and no further manual audit of the early ballots shall be
2 conducted.

3 H. During any hand count of early ballots, the county officer in
4 charge of elections and election board workers shall attempt to determine the
5 intent of the voter in casting the ballot.

6 I. Notwithstanding any other law, the county officer in charge of
7 elections shall retain custody of the ballots for purposes of performing any
8 required hand counts and the officer shall provide for security for those
9 ballots.

10 J. The hand counts prescribed by this section shall begin within
11 twenty-four hours after the closing of the polls and shall be completed
12 before the canvassing of the election for that county. The results of those
13 hand counts shall be provided to the secretary of state, who shall make those
14 results publicly available on the secretary of state's web site.

15 K. For any county in which a hand count has been expanded to all
16 precincts in the jurisdiction, the secretary of state shall make available
17 the escrowed source code for that county to the superior court. The superior
18 court shall appoint a special master to review the computer software. The
19 special master shall have expertise in software engineering and shall not be
20 affiliated with an election software vendor nor with a candidate and shall
21 sign and be bound by a nondisclosure agreement regarding the source code
22 itself, and shall issue a public report to the court and to the secretary of
23 state regarding the special master's findings on the reasons for the
24 discrepancies. The secretary of state shall consider the reports for
25 purposes of reviewing the certification of that equipment and software for
26 use in this state.

27 L. The vote count verification committee is established in the office
28 of the secretary of state and all of the following apply:

29 1. At least thirty days before the 2006 primary election, the
30 secretary of state shall appoint seven persons to the committee, no more than
31 three of whom are members of the same political party.

32 2. Members of the committee shall have expertise in any two or more of
33 the areas of advanced mathematics, statistics, random selection methods,
34 systems operations or voting systems.

35 3. A person is not eligible to be a committee member if that person
36 has been affiliated with or received any income in the preceding five years
37 from any person or entity that provides election equipment or services in
38 this state.

39 4. The vote count verification committee shall meet and establish one
40 or more designated margins to be used in reviewing the hand counting of votes
41 as required pursuant to this section. The committee shall review and
42 consider revising the designated margins every two years for use in the
43 applicable elections. The committee shall provide the designated margins to
44 the secretary of state at least ten days before the primary election and at
45 least ten days before the general election, and the secretary of state shall

1 make that information publicly available on the secretary of state's web
2 site.

3 5. Members of the vote count verification committee are not eligible
4 to receive compensation but are eligible for reimbursement of expenses
5 pursuant to title 38, chapter 4, article 2. The committee is a public body
6 and its meetings are subject to title 38, chapter 3, article 3.1 and its
7 reports and records are subject to title 39, chapter 1.

8 Sec. 4. Section 16-621, Arizona Revised Statutes, is amended to read:
9 16-621. Proceedings at the counting center

10 A. All proceedings at the counting center shall be under the direction
11 of the board of supervisors or other officer in charge of elections and shall
12 be conducted in accordance with the approved instructions and procedures
13 manual provided for in section 16-452 under the observation of
14 representatives of each political party and the public, but no persons except
15 those authorized for the purpose shall touch any ballot or ballot card or
16 return. All persons who are engaged in processing and counting of the
17 ballots **SHALL BE QUALIFIED ELECTORS**, shall be deputized in writing and take
18 an oath that they will faithfully perform their assigned duties. There shall
19 be no preferential counting of ballots for the purpose of projecting the
20 outcome of the election. If any ballot is damaged or defective so that it
21 cannot properly be counted by the automatic tabulating equipment, a true
22 duplicate copy shall be made of the damaged ballot in the presence of
23 witnesses and substituted for the damaged ballot. All duplicate ballots
24 shall be clearly labeled "duplicate" and shall bear a serial number which
25 shall be recorded on the damaged or defective ballot.

26 B. If for any reason it becomes impracticable to count all or a part
27 of the ballots with tabulating equipment, the officer in charge of elections
28 may direct that they be counted manually, following as far as practicable the
29 provisions governing the counting of paper ballots.

30 Sec. 5. Section 16-1011, Arizona Revised Statutes, is amended to read:
31 16-1011. Counterfeiting election returns: classification

32 A. A person who knowingly forges or counterfeits returns of an
33 election purporting to have been held at a precinct or place where no
34 election was in fact held, or who knowingly substitutes, forges or
35 counterfeits returns of election instead of the true returns for a precinct
36 or place where an election was actually held, is guilty of a class ~~4~~ 3
37 felony.

38 **B. A PERSON WHO KNOWINGLY SUBSTITUTES, FORGES, COUNTERFEITS, CHANGES**
39 **OR MANIPULATES BALLOT TABULATIONS OR TOTALS OR ELECTION RESULTS BY ELECTRONIC**
40 **MEANS OR THROUGH THE USE OF A COMPUTER, MACHINE OR OTHER DEVICE IS GUILTY OF**
41 **A CLASS 3 FELONY.**