

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HOUSE BILL 2451

AN ACT

AMENDING SECTION 16-447, ARIZONA REVISED STATUTES; AMENDING SECTION 16-461, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2008, CHAPTER 11, SECTION 1; AMENDING SECTIONS 16-510 AND 16-602, ARIZONA REVISED STATUTES; AMENDING SECTION 16-621, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2007, CHAPTER 295, SECTION 4; REPEALING SECTION 16-621, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2007, CHAPTER 259, SECTION 1; 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 16-447, Arizona Revised Statutes, is amended to
3 read:

4 16-447. Voting devices; inspection; specifications and number
5 of booths

6 A. Beginning on January 1, 2006, the board of supervisors shall
7 provide at each polling place at least one device that complies with the help
8 America vote act of 2002 (P.L. 107-252) and that is certified by the
9 secretary of state for use by voters with disabilities.

10 B. ~~Prior to~~ BEFORE any election at which electronic voting devices are
11 used, the board of supervisors or other authority in charge of elections
12 shall have the voting devices prepared for the election and shall mail a
13 notice to the chairmen of the county committees of the different political
14 parties, stating when and where the voting devices may be inspected before
15 they are sealed and delivered to the polling places.

16 C. The board of supervisors or other authority in charge of elections
17 shall have delivered to each polling place a sufficient number of voting
18 booths and voting or marking devices. The voting booths shall be durably
19 constructed and shall be of sufficient size and so designed as to enable the
20 voter to mark ~~his~~ THE VOTER'S ballot in secrecy.

21 D. In any election, the election officer in charge of the election
22 shall determine the number of voting devices to be used.

23 E. THE BOARD OF SUPERVISORS SHALL DESIGNATE A PERSON TO OBSERVE THE
24 INSTALLATION AND MODIFICATION OF ANY ELECTION MANAGEMENT SOFTWARE OR COMPUTER
25 PROGRAMMING USED FOR COUNTY ELECTION ADMINISTRATION. THE BOARD OF
26 SUPERVISORS SHALL ALSO DESIGNATE A PERSON TO ACT AS A SUBSTITUTE IF THE
27 PRIMARY DESIGNEE IS UNAVAILABLE. THE PERSONS DESIGNATED MAY BE COUNTY
28 EMPLOYEES BUT MAY NOT BE EMPLOYED BY OR UNDER THE SUPERVISION OF THE OFFICER
29 IN CHARGE OF ELECTIONS.

30 Sec. 2. Section 16-461, Arizona Revised Statutes, as amended by Laws
31 2008, chapter 11, section 1, is amended to read:

32 16-461. Sample primary election ballots; submission to party
33 chairmen for examination; preparation, printing and
34 distribution of ballot

35 A. At least forty-five days before a primary election, the officer in
36 charge of that election shall:

- 37 1. Prepare a proof of a sample ballot.
- 38 2. Submit the sample ballot proof of each party to the county chairman
39 or in city or town primaries to the city or town chairman.
- 40 3. Mail a sample ballot proof to each candidate for whom a nomination
41 paper and petitions have been filed.

42 B. Within five days after receipt of the sample ballot, the county
43 chairman of each political party shall suggest to the election officer any
44 change the chairman considers should be made in the chairman's party ballot,
45 and if upon examination the election officer finds an error or omission in

1 the ballot the officer shall correct it. The election officer shall cause
2 the sample ballots to be printed and distributed as required by law, shall
3 maintain a copy of each sample ballot and shall post a notice indicating that
4 sample ballots are available on request. The official sample ballot shall be
5 printed on colored paper or white paper with a different colored stripe for
6 each party that is represented on that ballot. For voters who are not
7 registered with a party that is entitled to continued representation on the
8 ballot pursuant to section 16-804, the election officer may print and
9 distribute the required sample ballots in an alternative format, including a
10 reduced size format.

11 C. Not later than forty days before a primary election, the county
12 chairman of a political party may request one sample primary election ballot
13 of the chairman's party for each election precinct.

14 D. The board of supervisors shall have printed mailer-type sample
15 ballots for a primary election and shall mail at least eleven days before the
16 election one sample ballot of a political party to each household containing
17 a registered voter of that political party. **EACH SAMPLE BALLOT SHALL CONTAIN
18 THE FOLLOWING STATEMENT: "THIS IS A SAMPLE BALLOT AND CANNOT BE USED AS AN
19 OFFICIAL BALLOT UNDER ANY CIRCUMSTANCES"**. A certified claim shall be
20 presented to the secretary of state by the board of supervisors for the
21 actual cost of printing, labeling and postage of each sample ballot actually
22 mailed, and the secretary of state shall direct payment of the authenticated
23 claim from funds of the secretary of state's office.

24 E. For city and town elections, the governing body of a city or town
25 may have printed mailer-type sample ballots for a primary election. If the
26 city or town has printed such sample ballots, the city or town shall provide
27 for the distribution of such ballots and shall bear the expense of printing
28 and distribution of such sample ballots.

29 F. The return address on the mailer-type sample ballots shall not
30 contain the name of an appointed or elected public officer nor may the name
31 of an appointed or elected public officer be used to indicate who produced
32 the sample ballot.

33 G. The great seal of the state of Arizona shall be imprinted along
34 with the words "official voting materials" on the mailing face of each sample
35 ballot. In county, city or town elections the seal of such jurisdiction
36 shall be substituted for the state seal.

37 Sec. 3. Section 16-510, Arizona Revised Statutes, is amended to read:
38 16-510. Sample ballots; preparation and distribution

39 A. Before printing the sample ballots for the general election the
40 board of supervisors shall send to each candidate whose name did not appear
41 on the preceding primary election ballot a ballot proof of the sample ballot
42 for ~~his~~ **THE CANDIDATE'S** review.

43 B. The board of supervisors shall print and distribute, for the
44 information of voters at each polling place, a number of sample ballots as it
45 deems necessary.

1 C. The board of supervisors shall have printed mailer-type sample
2 ballots for a general election and shall mail at least eleven days ~~prior to~~
3 **BEFORE** the election one such sample ballot to each household in the county
4 containing a registered voter. **EACH SAMPLE BALLOT SHALL CONTAIN THE**
5 **FOLLOWING STATEMENT: "THIS IS A SAMPLE BALLOT AND CANNOT BE USED AS AN**
6 **OFFICIAL BALLOT UNDER ANY CIRCUMSTANCES".** A certified claim shall be
7 presented to the secretary of state by the board of supervisors for the
8 actual cost of printing, labeling and postage of each such sample ballot
9 actually mailed, and the secretary of state shall direct payment of such
10 authenticated claim from funds of his office.

11 D. For city and town elections, the governing body of a city or town
12 may have printed mailer-type sample ballots for a general election. If the
13 city or town has printed such sample ballots, the city or town shall provide
14 for the distribution of such ballots and shall bear the expense of printing
15 and distributing such sample ballots.

16 E. For special district elections, the governing body of a special
17 district may have printed mailer-type sample ballots. If the special
18 district has printed such sample ballots, the special district shall provide
19 for the distribution of such ballots and shall bear the expense of printing
20 and distributing such sample ballots.

21 Sec. 4. Section 16-602, Arizona Revised Statutes, is amended to read:
22 16-602. Removal of ballots from ballot boxes; disposition of
23 ballots folded together or excessive ballots;
24 designated margin; hand counts; vote count
25 verification committee

26 A. The ballots cast in the election shall first be removed from the
27 ballot box and counted without being opened, except as may be necessary to
28 ascertain that the number of ballots cast corresponds with the number of
29 names on the poll lists. **FOR ANY PRIMARY OR GENERAL ELECTION IN WHICH THE**
30 **VOTES ARE CAST ON AN ELECTRONIC VOTING MACHINE OR TABULATOR, THE ELECTION**
31 **JUDGE SHALL COMPARE THE NUMBER OF VOTES CAST AS INDICATED ON THE MACHINE OR**
32 **TABULATOR WITH THE NUMBER OF VOTES CAST AS INDICATED ON THE POLL LIST AND THE**
33 **NUMBER OF PROVISIONAL BALLOTS CAST AND THAT INFORMATION SHALL BE NOTED IN A**
34 **WRITTEN REPORT PREPARED AND SUBMITTED TO THE OFFICER IN CHARGE OF ELECTIONS**
35 **ALONG WITH OTHER TALLY REPORTS.**

36 B. If two or more ballots are found folded together appearing as a
37 single ballot, they shall be laid aside until the count of the ballots is
38 completed. If it then appears by comparison of the count with the number of
39 names on the poll lists that the ballots thus folded together were cast by
40 one elector, they shall be destroyed. If the ballots in the box are still
41 found to exceed in number the names on the poll lists, the ballots, except
42 those destroyed, shall be replaced in the box, and one of the judges, without
43 looking in the box, shall draw therefrom, one at a time, and destroy
44 unopened, a number of ballots equal to the excess, and the election board

1 shall record on the poll lists the number of ballots so destroyed and shall
2 then sign the poll list.

3 C. For each countywide primary, general and presidential preference
4 election, the county officer in charge of the election shall conduct a hand
5 count at the central counting center in the following order:

6 1. At least two per cent of the precincts in that county, or two
7 precincts, whichever is greater, shall be selected at random from a pool
8 consisting of every precinct in that county. The county political party
9 chairman for each political party that is entitled to continued
10 representation on the state ballot or the chairman's designee shall conduct
11 the selection of the precincts to be hand counted. The precincts shall be
12 selected by lot without the use of a computer, and the order of selection by
13 the county political party chairmen shall also be by lot. The selection of
14 the precincts shall not begin until all ballots voted in the precinct polling
15 places have been delivered to the central counting center. The unofficial
16 vote totals from all precincts shall be made public before selecting the
17 precincts to be hand counted. Only the ballots cast in the polling places
18 and ballots from direct recording electronic machines shall be included in
19 the hand counts conducted pursuant to this section. Provisional ballots,
20 conditional provisional ballots and write-in votes shall not be included in
21 the hand counts and the early ballots shall be grouped separately by the
22 officer in charge of elections for purposes of a separate manual audit
23 pursuant to subsection G of this section.

24 2. The races to be counted on the ballots from the precincts that were
25 selected pursuant to paragraph 1 of this subsection for each primary and
26 general election shall include up to five contested races. After the county
27 recorder or other officer in charge of elections separates the primary
28 ballots by political party, the races to be counted shall be determined by
29 selecting by lot without the use of a computer from those ballots as follows:

30 (a) For a general election, one statewide ballot measure, unless there
31 are no measures on the ballot.

32 (b) One contested statewide race for statewide office.

33 (c) One contested race for federal office, either United States senate
34 or United States house of representatives. If the United States house of
35 representatives race is selected, the names of the candidates may vary among
36 the sampled precincts.

37 (d) One contested race for state legislative office, either state
38 house of representatives or state senate. In either case, the names of the
39 candidates may vary among the sampled precincts.

40 (e) If there are fewer than four contested races resulting from the
41 selections made pursuant to subdivisions (a) through (d) and if there are
42 additional contested federal, statewide or legislative races or ballot
43 measures, additional contested races shall be selected by lot not using a
44 computer until four races have been selected or until no additional contested

1 federal, statewide or legislative races or ballot measures are available for
2 selection.

3 (f) If there are no contested races as prescribed by this paragraph, a
4 hand count shall not be conducted for that precinct for that election.

5 3. For the presidential preference election, select by lot two per
6 cent of the polling places designated and used pursuant to section 16-248 and
7 perform the hand count of those ballots.

8 4. For the purposes of this section, a write-in candidacy in a race
9 does not constitute a contested race.

10 5. In elections in which there are candidates for president, the
11 presidential race shall be added to the four categories of hand counted
12 races.

13 6. Each county chairman of a political party that is entitled to
14 continued representation on the state ballot or the chairman's designee shall
15 select by lot the individual races to be hand counted pursuant to this
16 section.

17 7. The county chairman of each political party shall designate and
18 provide the number of election board members as designated by the county
19 officer in charge of elections who shall perform the hand count under the
20 supervision of the county officer in charge of elections. For each precinct
21 that is to be audited, the county chairmen shall designate at least two board
22 workers who are registered members of any or no political party to assist
23 with the audit. Any qualified elector from this state may be a board worker
24 without regard to party designation. The county election officer shall
25 provide for compensation for those board workers, not to include travel, meal
26 or lodging expenses. If there are less than two persons for each audited
27 precinct available to participate on behalf of each recognized political
28 party, the recorder or officer in charge of elections, with the approval of
29 at least two county party chairpersons in the county in which the shortfall
30 occurs, shall substitute additional individual electors who are provided by
31 any political party from anywhere in the state without regard to party
32 designation to conduct the hand count. A county party chairman shall approve
33 only those substitute electors who are provided by the county chairman's
34 political party. The political parties shall provide to the recorder or
35 officer in charge of elections in writing the names of those persons
36 intending to participate in the hand count at the audited precincts not later
37 than 5:00 p.m. on the Tuesday preceding the election. If the total number of
38 board workers provided by all parties is less than four times the number of
39 precincts to be audited, the recorder or officer in charge of elections shall
40 notify the parties of the shortage by 9:00 a.m. on the Wednesday preceding
41 the election. The hand count shall not proceed unless the political parties
42 provide the recorder or officer in charge of elections, in writing, a
43 sufficient number of persons by 5:00 p.m. on the Thursday preceding the
44 election and a sufficient number of persons, pursuant to ~~section 16-602,~~
45 ~~subsection C, paragraph 7~~ THIS PARAGRAPH, arrive to perform the hand count.

1 The recorder or officer in charge of elections may prohibit persons from
2 participating in the hand count if they are taking actions to disrupt the
3 count or are unable to perform the duties as assigned. For the hand count to
4 proceed, no more than seventy-five per cent of the persons performing the
5 hand count shall be from the same political party.

6 8. If a political party is not represented by a designated chairperson
7 within a county, ~~then~~ the state chairperson for that political party, or a
8 person designated by the state chairperson, may perform the actions required
9 by the county chairperson as specified in this section.

10 D. If the randomly selected races result in a difference in any race
11 that is less than the designated margin when compared to the electronic
12 tabulation of those same ballots, the results of the electronic tabulation
13 constitute the official count for that race. If the randomly selected races
14 result in a difference in any race that is equal to or greater than the
15 designated margin when compared to the electronic tabulation of those same
16 ballots, a second hand count of those same ballots and races shall be
17 performed. If the second hand count results in a difference in any race that
18 is less than the designated margin when compared to the electronic tabulation
19 for those same ballots, the electronic tabulation constitutes the official
20 count for that race. If the second hand count results in a difference in any
21 race that is equal to or greater than the designated margin when compared to
22 the electronic tabulation for those same ballots, the hand count shall be
23 expanded to include a total of twice the original number of randomly selected
24 precincts. Those additional precincts shall be selected by lot without the
25 use of a computer.

26 E. In any expanded count of randomly selected precincts, if the
27 randomly selected precinct hand counts result in a difference in any race
28 that is equal to or greater than the designated margin when compared to the
29 electronic tabulation of those same ballots, the final hand count shall be
30 extended to include the entire jurisdiction for that race. If the
31 jurisdictional boundary for that race would include any portion of more than
32 one county, the final hand count shall not be extended into the precincts of
33 that race that are outside of the county that is conducting the expanded hand
34 count. If the expanded hand count results in a difference in that race that
35 is less than the designated margin when compared to the electronic tabulation
36 of those same ballots, the electronic tabulation constitutes the official
37 count for that race.

38 F. If a final hand count is performed for an entire jurisdiction for a
39 race, the final hand count shall be repeated for that race until a hand count
40 for that race for the entire jurisdiction results in a count that is
41 identical to one other hand count for that race for the entire jurisdiction
42 and that hand count constitutes the official count for that race.

43 G. After the electronic tabulation of early ballots and at one or more
44 times selected by the chairman of the political parties entitled to continued
45 representation on the ballot or the chairman's designee, the chairmen or the

1 chairmen's designees shall randomly select one or more batches of early
2 ballots that have been tabulated to include at least one batch from each
3 machine used for tabulating early ballots and those ballots shall be securely
4 sequestered by the county recorder or officer in charge of elections along
5 with their unofficial tally reports for a postelection manual audit. The
6 chairmen or the chairmen's designees shall randomly select from those
7 sequestered early ballots a number equal to one per cent of the total number
8 of early ballots cast or five thousand early ballots, whichever is less.
9 From those randomly selected early ballots, the county officer in charge of
10 elections shall conduct a manual audit of the same races that are being hand
11 counted pursuant to subsection C of this section. If the manual audit of the
12 early ballots results in a difference in any race that is equal to or greater
13 than the designated margin when compared to the electronically tabulated
14 results for those same early ballots, the manual audit shall be repeated for
15 those same early ballots. If the second manual audit results in a difference
16 in that race that is equal to or greater than the designated margin when
17 compared to the electronically tabulated results for those same early
18 ballots, the manual audit shall be expanded only for that race to a number of
19 additional early ballots equal to one per cent of the total early ballots
20 cast or an additional five thousand ballots, whichever is less, to be
21 randomly selected from the batch or batches of sequestered early ballots. If
22 the expanded early ballot manual audit results in a difference for that race
23 that is equal to or greater than the designated margin when compared to any
24 of the earlier manual counts for that race, the manual counts shall be
25 repeated for that race until a manual count results in a difference in that
26 race that is less than the designated margin. If at any point in the manual
27 audit of early ballots the difference between any manual count of early
28 ballots is less than the designated margin when compared to the electronic
29 tabulation of those ballots, the electronic tabulation shall be included in
30 the canvass and no further manual audit of the early ballots shall be
31 conducted.

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

35 I. Notwithstanding any other law, the county officer in charge of
36 elections shall retain custody of the ballots for purposes of performing any
37 required hand counts and the officer shall provide for security for those
38 ballots.

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

1 K. For any county in which a hand count has been expanded to all
2 precincts in the jurisdiction, the secretary of state shall make available
3 the escrowed source code for that county to the superior court. The superior
4 court shall appoint a special master to review the computer software. The
5 special master shall have expertise in software engineering and shall not be
6 affiliated with an election software vendor nor with a candidate and shall
7 sign and be bound by a nondisclosure agreement regarding the source code
8 itself, and shall issue a public report to the court and to the secretary of
9 state regarding the special master's findings on the reasons for the
10 discrepancies. The secretary of state shall consider the reports for
11 purposes of reviewing the certification of that equipment and software for
12 use in this state.

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

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

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

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

25 4. The vote count verification committee shall meet and establish one
26 or more designated margins to be used in reviewing the hand counting of votes
27 as required pursuant to this section. The committee shall review and
28 consider revising the designated margins every two years for use in the
29 applicable elections. The committee shall provide the designated margins to
30 the secretary of state at least ten days before the primary election and at
31 least ten days before the general election, and the secretary of state shall
32 make that information publicly available on the secretary of state's web
33 site.

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

39 Sec. 5. Section 16-621, Arizona Revised Statutes, as amended by Laws
40 2007, chapter 295, section 4, is amended to read:

41 16-621. Proceedings at the counting center

42 A. All proceedings at the counting center shall be under the direction
43 of the board of supervisors or other officer in charge of elections and shall
44 be conducted in accordance with the approved instructions and procedures
45 manual provided for in section 16-452 under the observation of

1 representatives of each political party and the public, but no persons except
2 those authorized for the purpose shall touch any ballot or ballot card or
3 return. All persons who are engaged in processing and counting of the
4 ballots shall be qualified electors, shall be deputized in writing and SHALL
5 take an oath that they will faithfully perform their assigned duties. There
6 shall be no preferential counting of ballots for the purpose of projecting
7 the outcome of the election. If any ballot, INCLUDING ANY BALLOT RECEIVED
8 FROM EARLY VOTING, is damaged or defective so that it cannot properly be
9 counted by the automatic tabulating equipment, a true duplicate copy shall be
10 made of the damaged ballot in the presence of witnesses and substituted for
11 the damaged ballot. All duplicate ballots shall be clearly labeled
12 "duplicate" and shall bear a serial number which shall be recorded on the
13 damaged or defective ballot.

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

18 C. For any statewide, county or legislative election, the county
19 recorder or officer in charge of elections shall provide for a live video
20 recording of the custody of all ballots while the ballots are present in a
21 tabulation room in the counting center. The live video recording shall
22 include date and time indicators and shall be linked to the secretary of
23 state's website. The secretary of state shall post links to the video
24 coverage for viewing by the public. The county recorder or officer in charge
25 of elections shall record the video coverage of the ballots at the counting
26 center and shall retain those recordings as a public record for at least as
27 long as the challenge period for the general election. If the live video
28 feed is disrupted or disabled, the recorder or officer in charge of elections
29 is not liable for the disruption but shall attempt to reinstate video
30 coverage as soon as is practicable. Any disruption in video coverage shall
31 not affect or prevent the continued tabulation of ballots. This paragraph
32 SUBSECTION is contingent on legislative appropriation.

33 D. THE COUNTY RECORDER OR OTHER OFFICER IN CHARGE OF ELECTIONS SHALL
34 MAINTAIN RECORDS THAT RECORD THE CHAIN OF CUSTODY FOR ALL ELECTION EQUIPMENT
35 AND BALLOTS DURING EARLY VOTING THROUGH THE COMPLETION OF PROVISIONAL VOTING
36 TABULATION.

37 Sec. 6. Repeal

38 Section 16-621, Arizona Revised Statutes, as amended by Laws 2007,
39 chapter 259, section 1, is repealed.