CHAPTER 1

SENATE BILL 1135

AN ACT

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

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 16-602, Arizona Revised Statutes, is amended to read:

16-602. Removal of ballots from ballot boxes; disposition of ballots folded together or excessive ballots; designated margin; hand counts; vote count verification committee

A. For any primary, special or general election in which the votes are cast on an electronic voting machine or tabulator, the election judge shall compare the number of votes cast as indicated on the machine or tabulator with the number of votes cast as indicated on the poll list and the number of provisional ballots cast and that information shall be noted in a written report prepared and submitted to the officer in charge of elections along with other tally reports.

B. For each countywide primary, special, general and presidential preference election, the county officer in charge of the election shall conduct a hand count at one or more secure facilities. The hand count shall be conducted as prescribed by this section and in accordance with hand count procedures established by the secretary of state in the official instructions and procedures manual adopted pursuant to section 16-452. The hand count is not subject to the live video requirements of section 16-621, subsection C D, but the party representatives who are observing the hand count may bring their own video cameras in order to record the hand count. The recording shall not interfere with the conduct of the hand count and the officer in charge of the election may prohibit from recording or remove from the facility persons who are taking actions to disrupt the count. The sole act of recording the hand count does not constitute sufficient grounds for the officer in charge of the election to prohibit observers from recording or to remove them from the facility. The hand count shall be conducted in the following order:

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

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

(a) For a general election, one statewide ballot measure, unless there are no measures on the ballot.
(b) One contested statewide race for statewide office.
(c) One contested race for federal office, either United States senate or United States house of representatives. If the United States house of representatives race is selected, the names of the candidates may vary among the sampled precincts.
(d) One contested race for state legislative office, either state house of representatives or state senate. In either case, the names of the candidates may vary among the sampled precincts.
(e) If there are fewer than four contested races resulting from the selections made pursuant to subdivisions (a) through (d) OF THIS SECTION and if there are additional contested federal, statewide or legislative races or ballot measures, additional contested races shall be selected by lot not using a computer until four races have been selected or until no additional contested federal, statewide or legislative races or ballot measures are available for selection.
(f) If there are no contested races as prescribed by this paragraph, a hand count shall not be conducted for that precinct for that election.

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

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

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

6. Each county chairman of a political party that is entitled to continued representation on the state ballot or the chairman's designee shall select by lot the individual races to be hand counted pursuant to this section.
7. The county chairman of each political party shall designate and provide the number of election board members as designated by the county officer in charge of elections who shall perform the hand count under the supervision of the county officer in charge of elections. For each precinct that is to be audited, the county chairmen shall designate at least two board workers who are registered members of any or no political party to assist with the audit. Any qualified elector from this state may be a board worker without regard to party designation. The county election officer shall provide for compensation for those board workers, not to include travel, meal or lodging expenses. If there are less than two persons for each audited precinct available to participate on behalf of each recognized political party, the recorder or officer in charge of elections, with the approval of at least two county party chairpersons in the county in which the shortfall occurs, shall substitute additional individual electors who are provided by any political party from anywhere in the state without regard to party designation to conduct the hand count. A county party chairman shall approve only those substitute electors who are provided by the county chairman's political party. The political parties shall provide to the recorder or officer in charge of elections in writing the names of those persons intending to participate in the hand count at the audited precincts not later than 5:00 p.m. on the Tuesday preceding the election. If the total number of board workers provided by all parties is less than four times the number of precincts to be audited, the recorder or officer in charge of elections shall notify the parties of the shortage by 9:00 a.m. on the Wednesday preceding the election. The hand count shall not proceed unless the political parties provide the recorder or officer in charge of elections, in writing, a sufficient number of persons by 5:00 p.m. on the Thursday preceding the election and a sufficient number of persons, pursuant to this paragraph, arrive to perform the hand count. The recorder or officer in charge of elections may prohibit persons from participating in the hand count if they are taking actions to disrupt the count or are unable to perform the duties as assigned. For the hand count to proceed, no more than seventy-five percent of the persons performing the hand count shall be from the same political party.

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

C. If the randomly selected races result in a difference in any race that is less than the designated margin when compared to the electronic tabulation of those same ballots, the results of the electronic tabulation constitute the official count for that race. If the randomly selected races result in a difference in any race that is equal to or greater than the designated margin when compared to the electronic
tabulation of those same ballots, a second hand count of those same
ballots and races shall be performed. If the second hand count results in
a difference in any race that is less than the designated margin when
compared to the electronic tabulation for those same ballots, the
electronic tabulation constitutes the official count for that race. If
the second hand count results in a difference in any race that is equal to
or greater than the designated margin when compared to the electronic
tabulation for those same ballots, the hand count shall be expanded to
include a total of twice the original number of randomly selected
precincts. Those additional precincts shall be selected by lot without
the use of a computer.

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

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

F. After the electronic tabulation of early ballots and at one or
more times selected by the chairman of the political parties entitled to
continued representation on the ballot or the chairman's designee, the
chairmen or the chairmen's designees shall randomly select one or more
batches of early ballots that have been tabulated to include at least one
batch from each machine used for tabulating early ballots and those
ballots shall be securely sequestered by the county recorder or officer in
charge of elections along with their unofficial tally reports for a
postelection manual audit. The chairmen or the chairmen's designees shall
randomly select from those sequestered early ballots a number equal to one
percent of the total number of early ballots cast or five
thousand early ballots, whichever is less. From those randomly selected
early ballots, the county officer in charge of elections shall conduct a
manual audit of the same races that are being hand counted pursuant to
subsection B of this section. If the manual audit of the early ballots
results in a difference in any race that is equal to or greater than the
designated margin when compared to the electronically tabulated results
for those same early ballots, the manual audit shall be repeated for those
same early ballots. If the second manual audit results in a difference in
that race that is equal to or greater than the designated margin when
compared to the electronically tabulated results for those same early
ballots, the manual audit shall be expanded only for that race to a number
of additional early ballots equal to one percent PERCENT of the total
early ballots cast or an additional five thousand ballots, whichever is
less, to be randomly selected from the batch or batches of sequestered
early ballots. If the expanded early ballot manual audit results in a
difference for that race that is equal to or greater than the designated
margin when compared to any of the earlier manual counts for that race,
the manual counts shall be repeated for that race until a manual count
results in a difference in that race that is less than the designated
margin. If at any point in the manual audit of early ballots the
difference between any manual count of early ballots is less than the
designated margin when compared to the electronic tabulation of those
ballots, the electronic tabulation shall be included in the canvass and no
further manual audit of the early ballots shall be conducted.

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

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

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

J. For any county in which a hand count has been expanded to all
precincts in the jurisdiction, the secretary of state shall make available
the escrowed source code for that county to the superior court. The
superior court shall appoint a special master to review the computer
software. The special master shall have expertise in software
engineering, shall not be affiliated with an election software vendor nor
with a candidate, shall sign and be bound by a nondisclosure agreement
regarding the source code itself and shall issue a public report to the
court and to the secretary of state regarding the special master's
findings on the reasons for the discrepancies. The secretary of state
shall consider the reports for purposes of reviewing the certification of
that equipment and software for use in this state.
K. The vote count verification committee is established in the office of the secretary of state and all of the following apply:

1. At least thirty days before the 2006 primary election, the secretary of state shall appoint seven persons to the committee, not more than three of whom are members of the same political party.

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

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

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

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

Sec. 2. Section 16-621, Arizona Revised Statutes, is amended to read:

16-621. Proceedings at the counting center

A. All proceedings at the counting center shall be under the direction of the board of supervisors or other officer in charge of elections and shall be conducted in accordance with the approved instructions and procedures manual provided for in ISSUED PURSUANT TO section 16-452 under the observation of representatives of each political party and the public. The proceedings at the counting center may also be observed by up to three additional people representing a candidate for nonpartisan office, or representing a political committee in support of or in opposition to a ballot measure, proposition or question. A draw by lot shall determine which three groups or candidates shall have representatives participate in the observation at the counting center. Persons representing a candidate for nonpartisan office or persons or groups representing a political committee in support of or in opposition to a ballot measure, proposition or question, who are interested in participating in the observation, shall notify the officer in charge of elections of their desire to be included in the draw not later than
seventeen days before the election. After the deadline to receive submissions from the interested persons or groups, but prior to fourteen days before the election, the county officer in charge of elections shall draw by lot, from the list of those that expressed interest, three persons or groups and those selected shall be notified and allowed to observe the proceedings at the counting center. If a group is selected the group may alter who represents that group for different days of observation but on any given observation day a selected group shall not send more than one observer. A group may rotate an observer throughout the day. No only THOSE persons except those WHO ARE authorized for the purpose shall touch any ballot or ballot card or return. All persons who are engaged in processing and counting of the ballots shall be qualified electors, shall be deputized in writing and shall take an oath that they will faithfully perform their assigned duties. There shall be no preferential counting of ballots for the purpose of projecting the outcome of the election. If any ballot, including any ballot received from early voting, is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy shall be made of the damaged OR DEFECTIVE ballot in the presence of witnesses and substituted for the damaged OR DEFECTIVE ballot. All duplicate ballots CREATED PURSUANT TO THIS SUBSECTION shall be clearly labeled "duplicate" and shall bear a serial number that shall be recorded on the damaged or defective ballot.

B. IF THE COUNTING CENTER AUTOMATIC TABULATING EQUIPMENT INCLUDES AN ELECTRONIC VOTE ADJUDICATION FEATURE THAT HAS BEEN CERTIFIED FOR USE AS PRESCRIBED BY SECTION 16-442 AND THE BOARD OF SUPERVISORS OR OFFICER IN CHARGE OF ELECTIONS AUTHORIZES THE USE OF THIS FEATURE AT THE COUNTING CENTER, ALL OF THE FOLLOWING APPLY:

1. THE ELECTRONIC VOTE ADJUDICATION FEATURE SHALL BE INCLUDED IN THE TABULATION SYSTEM LOGIC AND ACCURACY TESTING PRESCRIBED BY SECTION 16-449.

2. THE BOARD OF SUPERVISORS OR OFFICER IN CHARGE OF ELECTIONS SHALL APPOINT AN ELECTRONIC VOTE ADJUDICATION BOARD THAT CONSISTS OF TWO JUDGES WHO ARE OVERSEEN BY AN INSPECTOR, WITH THE TWO JUDGES EQUALLY DIVIDED BETWEEN THE TWO LARGEST POLITICAL PARTIES AS PRESCRIBED BY SECTION 16-531, SUBSECTION D TO ADJUDICATE AND SUBMIT FOR TABULATION A BALLOT THAT IS READ BY THE TABULATION MACHINE AS BLANK IN ORDER TO DETERMINE IF VOTER INTENT IS CLEAR ON A PORTION OR ALL OF THE BALLOT, OR ANY PORTION OF ANY BALLOT AS PRESCRIBED BY SECTION 16-610 OR 16-611, OR TO TALLY WRITE-IN CHOICES AS PRESCRIBED BY SECTION 16-612.

3. THE ELECTRONIC VOTE ADJUDICATION PROCESS USED BY THE ELECTRONIC VOTE ADJUDICATION BOARD SHALL PROVIDE FOR:

   (a) A METHOD TO TRACK AND ACCOUNT FOR THE ORIGINAL BALLOT AND THE DIGITAL DUPLICATE OF THE BALLOT CREATED BY THE ELECTRONIC VOTE ADJUDICATION FEATURE THAT INCLUDES A SERIAL NUMBER ON THE DIGITAL IMAGE THAT CAN BE USED TO TRACK ELECTRONIC VOTE ADJUDICATION BOARD ACTIONS.
(b) THE CREATION AND RETENTION OF COMPREHENSIVE LOGS OF ALL DIGITAL DUPLICATION AND ADJUDICATION ACTIONS PERFORMED BY AN ELECTRONIC VOTE ADJUDICATION BOARD.

(c) THE RETENTION OF THE ORIGINAL BALLOT AND THE DIGITAL DUPLICATE OF THE BALLOT.

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

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

D. E. The county recorder or other officer in charge of elections shall maintain records that record the chain of custody for all election equipment and ballots during early voting through the completion of provisional voting tabulation.

Sec. 3. Emergency

This act is an emergency measure that is necessary to preserve the public peace, health or safety and is operative immediately as provided by law.
