

REFERENCE TITLE: elections; counting center; electronic adjudication.

State of Arizona
House of Representatives
Fifty-fourth Legislature
Second Regular Session
2020

HB 2306

Introduced by
Representatives Townsend: Bowers, Fernandez, Petersen, Senators Bradley,
Fann, Gray

AN ACT

**AMENDING SECTIONS 16-602 AND 16-621, 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 16-602, Arizona Revised Statutes, is amended to
3 read:

4 16-602. Removal of ballots from ballot boxes; disposition of
5 ballots folded together or excessive ballots;
6 designated margin; hand counts; vote count
7 verification committee

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

15 B. For each countywide primary, special, general and presidential
16 preference election, the county officer in charge of the election shall
17 conduct a hand count at one or more secure facilities. The hand count
18 shall be conducted as prescribed by this section and in accordance with
19 hand count procedures established by the secretary of state in the
20 official instructions and procedures manual adopted pursuant to section
21 16-452. The hand count is not subject to the live video requirements of
22 section 16-621, subsection ~~C~~ D, but the party representatives who are
23 observing the hand count may bring their own video cameras in order to
24 record the hand count. The recording shall not interfere with the conduct
25 of the hand count and the officer in charge of the election may prohibit
26 from recording or remove from the facility persons who are taking actions
27 to disrupt the count. The sole act of recording the hand count does not
28 constitute sufficient grounds for the officer in charge of the election to
29 prohibit observers from recording or to remove them from the facility.
30 The hand count shall be conducted in the following order:

31 1. At least two ~~per cent~~ PERCENT of the precincts in that county,
32 or two precincts, whichever is greater, shall be selected at random from a
33 pool consisting of every precinct in that county. The county political
34 party chairman for each political party that is entitled to continued
35 representation on the state ballot or the chairman's designee shall
36 conduct the selection of the precincts to be hand counted. The precincts
37 shall be selected by lot without the use of a computer, and the order of
38 selection by the county political party chairmen shall also be by lot.
39 The selection of the precincts shall not begin until all ballots voted in
40 the precinct polling places have been delivered to the central counting
41 center. The unofficial vote totals from all precincts shall be made
42 public before selecting the precincts to be hand counted. Only the
43 ballots cast in the polling places and ballots from direct recording
44 electronic machines shall be included in the hand counts conducted
45 pursuant to this section. Provisional ballots, conditional provisional

1 ballots and write-in votes shall not be included in the hand counts and
2 the early ballots shall be grouped separately by the officer in charge of
3 elections for purposes of a separate manual audit pursuant to subsection F
4 of this section.

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

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

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

15 (c) One contested race for federal office, either United States
16 senate or United States house of representatives. If the United States
17 house of representatives race is selected, the names of the candidates may
18 vary among the sampled precincts.

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

22 (e) If there are fewer than four contested races resulting from the
23 selections made pursuant to subdivisions (a) through (d) **OF THIS SECTION**
24 and if there are additional contested federal, statewide or legislative
25 races or ballot measures, additional contested races shall be selected by
26 lot not using a computer until four races have been selected or until no
27 additional contested federal, statewide or legislative races or ballot
28 measures are available for selection.

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

32 3. For the presidential preference election, select by lot two ~~per~~
33 ~~cent~~ **PERCENT** of the polling places designated and used pursuant to section
34 16-248 and perform the hand count of those ballots.

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

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

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

1 7. The county chairman of each political party shall designate and
2 provide the number of election board members as designated by the county
3 officer in charge of elections who shall perform the hand count under the
4 supervision of the county officer in charge of elections. For each
5 precinct that is to be audited, the county chairmen shall designate at
6 least two board workers who are registered members of any or no political
7 party to assist with the audit. Any qualified elector from this state may
8 be a board worker without regard to party designation. The county
9 election officer shall provide for compensation for those board workers,
10 not to include travel, meal or lodging expenses. If there are less than
11 two persons for each audited precinct available to participate on behalf
12 of each recognized political party, the recorder or officer in charge of
13 elections, with the approval of at least two county party chairpersons in
14 the county in which the shortfall occurs, shall substitute additional
15 individual electors who are provided by any political party from anywhere
16 in the state without regard to party designation to conduct the hand
17 count. A county party chairman shall approve only those substitute
18 electors who are provided by the county chairman's political party. The
19 political parties shall provide to the recorder or officer in charge of
20 elections in writing the names of those persons intending to participate
21 in the hand count at the audited precincts not later than 5:00 p.m. on the
22 Tuesday preceding the election. If the total number of board workers
23 provided by all parties is less than four times the number of precincts to
24 be audited, the recorder or officer in charge of elections shall notify
25 the parties of the shortage by 9:00 a.m. on the Wednesday preceding the
26 election. The hand count shall not proceed unless the political parties
27 provide the recorder or officer in charge of elections, in writing, a
28 sufficient number of persons by 5:00 p.m. on the Thursday preceding the
29 election and a sufficient number of persons, pursuant to this paragraph,
30 arrive to perform the hand count. The recorder or officer in charge of
31 elections may prohibit persons from participating in the hand count if
32 they are taking actions to disrupt the count or are unable to perform the
33 duties as assigned. For the hand count to proceed, ~~no~~ NOT more than
34 seventy-five ~~per cent~~ PERCENT of the persons performing the hand count
35 shall be from the same political party.

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

40 C. If the randomly selected races result in a difference in any
41 race that is less than the designated margin when compared to the
42 electronic tabulation of those same ballots, the results of the electronic
43 tabulation constitute the official count for that race. If the randomly
44 selected races result in a difference in any race that is equal to or
45 greater than the designated margin when compared to the electronic

1 tabulation of those same ballots, a second hand count of those same
2 ballots and races shall be performed. If the second hand count results in
3 a difference in any race that is less than the designated margin when
4 compared to the electronic tabulation for those same ballots, the
5 electronic tabulation constitutes the official count for that race. If
6 the second hand count results in a difference in any race that is equal to
7 or greater than the designated margin when compared to the electronic
8 tabulation for those same ballots, the hand count shall be expanded to
9 include a total of twice the original number of randomly selected
10 precincts. Those additional precincts shall be selected by lot without
11 the use of a computer.

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

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

30 F. After the electronic tabulation of early ballots and at one or
31 more times selected by the chairman of the political parties entitled to
32 continued representation on the ballot or the chairman's designee, the
33 chairmen or the chairmen's designees shall randomly select one or more
34 batches of early ballots that have been tabulated to include at least one
35 batch from each machine used for tabulating early ballots and those
36 ballots shall be securely sequestered by the county recorder or officer in
37 charge of elections along with their unofficial tally reports for a
38 postelection manual audit. The chairmen or the chairmen's designees shall
39 randomly select from those sequestered early ballots a number equal to one
40 ~~per cent~~ PERCENT of the total number of early ballots cast or five
41 thousand early ballots, whichever is less. From those randomly selected
42 early ballots, the county officer in charge of elections shall conduct a
43 manual audit of the same races that are being hand counted pursuant to
44 subsection B of this section. If the manual audit of the early ballots
45 results in a difference in any race that is equal to or greater than the

1 designated margin when compared to the electronically tabulated results
2 for those same early ballots, the manual audit shall be repeated for those
3 same early ballots. If the second manual audit results in a difference in
4 that race that is equal to or greater than the designated margin when
5 compared to the electronically tabulated results for those same early
6 ballots, the manual audit shall be expanded only for that race to a number
7 of additional early ballots equal to one ~~per cent~~ PERCENT of the total
8 early ballots cast or an additional five thousand ballots, whichever is
9 less, to be randomly selected from the batch or batches of sequestered
10 early ballots. If the expanded early ballot manual audit results in a
11 difference for that race that is equal to or greater than the designated
12 margin when compared to any of the earlier manual counts for that race,
13 the manual counts shall be repeated for that race until a manual count
14 results in a difference in that race that is less than the designated
15 margin. If at any point in the manual audit of early ballots the
16 difference between any manual count of early ballots is less than the
17 designated margin when compared to the electronic tabulation of those
18 ballots, the electronic tabulation shall be included in the canvass and no
19 further manual audit of the early ballots shall be conducted.

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

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

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

32 J. For any county in which a hand count has been expanded to all
33 precincts in the jurisdiction, the secretary of state shall make available
34 the escrowed source code for that county to the superior court. The
35 superior court shall appoint a special master to review the computer
36 software. The special master shall have expertise in software
37 engineering, shall not be affiliated with an election software vendor nor
38 with a candidate, shall sign and be bound by a nondisclosure agreement
39 regarding the source code itself and shall issue a public report to the
40 court and to the secretary of state regarding the special master's
41 findings on the reasons for the discrepancies. The secretary of state
42 shall consider the reports for purposes of reviewing the certification of
43 that equipment and software for use in this state.

1 K. The vote count verification committee is established in the
2 office of the secretary of state and all of the following apply:

3 1. At least thirty days before the 2006 primary election, the
4 secretary of state shall appoint seven persons to the committee, ~~no~~ NOT
5 more than three of whom are members of the same political party.

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

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

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

22 5. Members of the vote count verification committee are not
23 eligible to receive compensation but are eligible for reimbursement of
24 expenses pursuant to title 38, chapter 4, article 2. The committee is a
25 public body and its meetings are subject to title 38, chapter 3, article
26 3.1 and its reports and records are subject to title 39, chapter 1.

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

29 16-621. Proceedings at the counting center

30 A. All proceedings at the counting center shall be under the
31 direction of the board of supervisors or other officer in charge of
32 elections and shall be conducted in accordance with the approved
33 instructions and procedures manual ~~provided for in~~ ISSUED PURSUANT TO
34 section 16-452 under the observation of representatives of each political
35 party and the public. The proceedings at the counting center may also be
36 observed by up to three additional people representing a candidate for
37 nonpartisan office, or representing a political committee in support of or
38 in opposition to a ballot measure, proposition or question. A draw by lot
39 shall determine which three groups or candidates shall have
40 representatives participate in the observation at the counting center.
41 Persons representing a candidate for nonpartisan office or persons or
42 groups representing a political committee in support of or in opposition
43 to a ballot measure, proposition or question, who are interested in
44 participating in the observation, shall notify the officer in charge of
45 elections of their desire to be included in the draw not later than

1 seventeen days before the election. After the deadline to receive
 2 submissions from the interested persons or groups, but prior to fourteen
 3 days before the election, the county officer in charge of elections shall
 4 draw by lot, from the list of those that expressed interest, three persons
 5 or groups and those selected shall be notified and allowed to observe the
 6 proceedings at the counting center. If a group is selected the group may
 7 alter who represents that group for different days of observation but on
 8 any given observation day a selected group shall not send more than one
 9 observer. A group may rotate an observer throughout the day. ~~NO~~ ONLY
 10 THOSE persons ~~except those~~ WHO ARE authorized for the purpose shall touch
 11 any ballot or ballot card or return. All persons who are engaged in
 12 processing and counting of the ballots shall be qualified electors, shall
 13 be deputized in writing and shall take an oath that they will faithfully
 14 perform their assigned duties. There shall be no preferential counting of
 15 ballots for the purpose of projecting the outcome of the election. If any
 16 ballot, including any ballot received from early voting, is damaged or
 17 defective so that it cannot properly be counted by the automatic
 18 tabulating equipment, a true duplicate copy shall be made of the damaged
 19 OR DEFECTIVE ballot in the presence of witnesses and substituted for the
 20 damaged OR DEFECTIVE ballot. All duplicate ballots CREATED PURSUANT TO
 21 THIS SUBSECTION shall be clearly labeled "duplicate" and shall bear a
 22 serial number that shall be recorded on the damaged or defective ballot.

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

28 1. THE ELECTRONIC VOTE ADJUDICATION FEATURE SHALL BE INCLUDED IN
 29 THE TABULATION SYSTEM LOGIC AND ACCURACY TESTING PRESCRIBED BY SECTION
 30 16-449.

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

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

42 (a) A METHOD TO TRACK AND ACCOUNT FOR THE ORIGINAL BALLOT AND THE
 43 DIGITAL DUPLICATE OF THE BALLOT CREATED BY THE ELECTRONIC VOTE
 44 ADJUDICATION FEATURE THAT INCLUDES A SERIAL NUMBER ON THE DIGITAL IMAGE
 45 THAT CAN BE USED TO TRACK ELECTRONIC VOTE ADJUDICATION BOARD ACTIONS.

1 (b) THE CREATION AND RETENTION OF COMPREHENSIVE LOGS OF ALL DIGITAL
2 DUPLICATION AND ADJUDICATION ACTIONS PERFORMED BY AN ELECTRONIC VOTE
3 ADJUDICATION BOARD.

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

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

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

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

30 Sec. 3. Emergency

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