

REFERENCE TITLE: recount requests; amount; bond; procedure

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

SB 1010

Introduced by
Senator Mesnard

AN ACT

AMENDING SECTION 16-602, ARIZONA REVISED STATUTES; AMENDING TITLE 16, CHAPTER 4, ARTICLE 12, ARIZONA REVISED STATUTES, BY ADDING SECTION 16-661.01; 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 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~~ FIVE percent of the precincts in that county, or
32 ~~two~~ FIVE precincts, whichever is greater, shall be selected at random from
33 a pool consisting of every precinct in that county. FOR PURPOSES OF THE
34 HAND COUNT PRESCRIBED BY THIS SECTION, A VOTING CENTER IS DEEMED TO BE A
35 PRECINCT. THE ATTORNEY GENERAL, THE SECRETARY OF STATE OR THE LEGISLATIVE
36 COUNCIL, BY WRITTEN REQUEST, MAY REQUIRE THAT A HIGHER PERCENTAGE OR
37 GREATER NUMBER OF PRECINCTS BE HAND COUNTED FOR ANY SPECIFIED COUNTY. The
38 county political party chairman for each political party that is entitled
39 to continued representation on the state ballot or the chairman's designee
40 shall conduct the selection of the precincts to be hand counted. The
41 precincts shall be selected by lot without the use of a computer, and the
42 order of selection by the county political party chairmen shall also be by
43 lot. The selection of the precincts shall not begin until all ballots
44 voted in the precinct polling places have been delivered to the central
45 counting center. The unofficial vote totals from all precincts shall be

1 made public before selecting the precincts to be hand counted. Only the
2 ballots cast in the polling places and ballots from direct recording
3 electronic machines shall be included in the hand counts conducted
4 pursuant to this section. Provisional ballots, conditional provisional
5 ballots and write-in votes shall not be included in the hand counts and
6 the early ballots shall be grouped separately by the officer in charge of
7 elections for purposes of a separate manual audit pursuant to subsection F
8 of this section.

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

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

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

19 (c) One contested race for federal office, either United States
20 senate or United States house of representatives. If the United States
21 house of representatives race is selected, the names of the candidates may
22 vary among the sampled precincts.

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

26 (e) If there are fewer than four contested races resulting from the
27 selections made pursuant to subdivisions (a) through (d) of this ~~section~~
28 ~~PARAGRAPH~~ and if there are additional contested federal, statewide or
29 legislative races or ballot measures, additional contested races shall be
30 selected by lot not using a computer until four races have been selected
31 or until no additional contested federal, statewide or legislative races
32 or ballot measures are available for selection.

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

36 3. For the presidential preference election, select by lot ~~two~~ **FIVE**
37 percent of the polling places designated and used pursuant to section
38 16-248 and perform the hand count of those ballots.

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

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

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

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

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

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

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

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

36 F. After the electronic tabulation of early ballots and at one or
37 more times selected by the chairman of the political parties entitled to
38 continued representation on the ballot or the chairman's designee, the
39 chairmen or the chairmen's designees shall randomly select one or more
40 batches of early ballots that have been tabulated to include at least one
41 batch from each machine used for tabulating early ballots and those
42 ballots shall be securely sequestered by the county recorder or officer in
43 charge of elections along with their unofficial tally reports for a
44 postelection manual audit. The chairmen or the chairmen's designees shall
45 randomly select from those sequestered early ballots a number equal to one

1 percent of the total number of early ballots cast or five thousand early
2 ballots, whichever is less. From those randomly selected early ballots,
3 the county officer in charge of elections shall conduct a manual audit of
4 the same races that are being hand counted pursuant to subsection B of
5 this section. If the manual audit of the early ballots results in a
6 difference in any race that is equal to or greater than the designated
7 margin when compared to the electronically tabulated results for those
8 same early ballots, the manual audit shall be repeated for those same
9 early ballots. If the second manual audit results in a difference in that
10 race that is equal to or greater than the designated margin when compared
11 to the electronically tabulated results for those same early ballots, the
12 manual audit shall be expanded only for that race to a number of
13 additional early ballots equal to one percent of the total early ballots
14 cast or an additional five thousand ballots, whichever is less, to be
15 randomly selected from the batch or batches of sequestered early ballots.
16 If the expanded early ballot manual audit results in a difference for that
17 race that is equal to or greater than the designated margin when compared
18 to any of the earlier manual counts for that race, the manual counts shall
19 be repeated for that race until a manual count results in a difference in
20 that race that is less than the designated margin. If at any point in the
21 manual audit of early ballots the difference between any manual count of
22 early ballots is less than the designated margin when compared to the
23 electronic tabulation of those ballots, the electronic tabulation shall be
24 included in the canvass and no further manual audit of the early ballots
25 shall be conducted.

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

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

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

38 J. For any county in which a hand count has been expanded to all
39 precincts in the jurisdiction, the secretary of state shall make available
40 the escrowed source code for that county to the superior court. The
41 superior court shall appoint a special master to review the computer
42 software. The special master shall have expertise in software
43 engineering, shall not be affiliated with an election software vendor nor
44 with a candidate, shall sign and be bound by a nondisclosure agreement
45 regarding the source code itself and shall issue a public report to the

1 court and to the secretary of state regarding the special master's
2 findings on the reasons for the discrepancies. The secretary of state
3 shall consider the reports for purposes of reviewing the certification of
4 that equipment and software for use in this state.

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

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

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

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

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

26 5. Members of the vote count verification committee are not
27 eligible to receive compensation but are eligible for reimbursement of
28 expenses pursuant to title 38, chapter 4, article 2. The committee is a
29 public body and its meetings are subject to title 38, chapter 3, article
30 3.1 and its reports and records are subject to title 39, chapter 1.

31 Sec. 2. Title 16, chapter 4, article 12, Arizona Revised Statutes,
32 is amended by adding section 16-661.01, to read:

33 16-661.01. Recounts; bond; procedure

34 A. A PERSON MAY FILE AN ACTION FOR A RECOUNT IN ANY ELECTION THAT
35 IS NOT SUBJECT TO AN AUTOMATIC RECOUNT AS PRESCRIBED BY SECTION 16-661 IF
36 THE PERSON FILES A BOND WITH THE SUPERIOR COURT IN A FORM AND IN AN AMOUNT
37 AS DETERMINED BY THE COURT TO BE SUFFICIENT TO PROVIDE FOR FULL
38 REIMBURSEMENT OF THE COSTS OF CONDUCTING THE RECOUNT. THE PERSON FILING
39 THE ACTION MAY REQUEST A RECOUNT BY HAND COUNT OR A RECOUNT BY USE OF
40 VOTING EQUIPMENT, AND THE AMOUNT OF THE BOND SHALL REFLECT THE TYPE OF
41 RECOUNT REQUESTED.

42 B. A RECOUNT THAT IS CONDUCTED PURSUANT TO THIS SECTION SHALL
43 COMPLY WITH THE REQUIREMENTS AND PROCEDURES FOR AN AUTOMATIC RECOUNT
44 PRESCRIBED BY THIS ARTICLE.