

Senate Engrossed

~~recount requests; amount; bond; procedure~~
(now: recounts; requests; procedures; audits)

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

SENATE BILL 1010

AN ACT

AMENDING SECTION 16-602, ARIZONA REVISED STATUTES; AMENDING TITLE 16, CHAPTER 4, ARTICLE 12, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 16-661.01 AND 16-661.02; 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 precincts~~ THE NUMBER OF PRECINCTS AS DETERMINED BY THE VOTE COUNT
33 VERIFICATION COMMITTEE ESTABLISHED PURSUANT TO THIS SECTION THAT IS
34 REQUIRED TO ACHIEVE A STATISTICAL SIGNIFICANCE CONSISTING OF A NINETY-NINE
35 PERCENT CONFIDENCE LEVEL WITH A MARGIN OF ERROR OF ONE PERCENT BASED ON
36 THE TOTAL NUMBER OF BALLOTS CAST IN THAT COUNTY ON ELECTION DAY, whichever
37 is greater, shall be selected at random from a pool consisting of every
38 precinct in that county. THE HAND COUNT PRESCRIBED IN THIS SECTION SHALL
39 BE CONDUCTED AT THE PRECINCT LEVEL. FOR PURPOSES OF THE HAND COUNT
40 PRESCRIBED BY THIS SECTION, A VOTING CENTER IS DEEMED TO BE A
41 PRECINCT. The county political party chairman for each political party
42 that is entitled to continued representation on the state ballot or the
43 chairman's designee shall conduct the selection of the precincts to be
44 hand counted. The precincts shall be selected by lot without the use of a
45 computer, and the order of selection by the county political party

1 chairmen shall also be by lot. The selection of the precincts shall not
2 begin until all ballots voted in the precinct polling places have been
3 delivered to the central counting center. The unofficial vote totals from
4 all precincts shall be made public before selecting the precincts to be
5 hand counted. Only the ballots cast in the polling places and ballots
6 from direct recording electronic machines shall be included in the hand
7 counts conducted pursuant to this section. Provisional ballots,
8 conditional provisional ballots and write-in votes shall not be included
9 in the hand counts and the early ballots shall be grouped separately by
10 the officer in charge of elections for purposes of a separate manual audit
11 pursuant to subsection F of this section.

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

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

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

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

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

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

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

39 3. For the presidential preference election, select by lot ~~two~~ FIVE
40 percent of the polling places designated and used pursuant to section
41 16-248 OR THE NUMBER OF PRECINCTS AS DETERMINED BY THE VOTE COUNT
42 VERIFICATION COMMITTEE ESTABLISHED PURSUANT TO THIS SECTION THAT IS
43 REQUIRED TO ACHIEVE A STATISTICAL SIGNIFICANCE CONSISTING OF A NINETY-NINE
44 PERCENT CONFIDENCE LEVEL WITH A MARGIN OF ERROR OF ONE PERCENT BASED ON
45 THE TOTAL NUMBER OF BALLOTS CAST IN THAT COUNTY, WHICHEVER IS GREATER, and

1 perform the hand count of those ballots. THE HAND COUNT PRESCRIBED IN
2 THIS SECTION SHALL BE CONDUCTED AT THE PRECINCT LEVEL. FOR THE PURPOSES
3 OF THE HAND COUNT PRESCRIBED BY THIS SECTION, A VOTING CENTER IS DEEMED TO
4 BE A PRECINCT.

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

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

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

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

1 duties as assigned. For the hand count to proceed, not more than
2 seventy-five percent of the persons performing the hand count shall be
3 from the same political party.

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

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

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

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

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

1 chairmen or the chairmen's designees shall randomly select one or more
2 batches of early ballots that have been tabulated to include at least one
3 batch from each machine used for tabulating early ballots and those
4 ballots shall be securely sequestered by the county recorder or officer in
5 charge of elections along with their unofficial tally reports for a
6 postelection manual audit. FOR A COUNTY WITH A POPULATION OF EIGHT
7 HUNDRED THOUSAND PERSONS OR MORE, the chairmen or the chairmen's designees
8 shall randomly select from those sequestered early ballots ~~a number equal~~
9 ~~to one percent of the total number of early ballots cast or five~~ TEN
10 thousand early ballots, ~~whichever is less~~ OR THE NUMBER OF EARLY BALLOTS
11 AS DETERMINED BY THE VOTE COUNT VERIFICATION COMMITTEE ESTABLISHED
12 PURSUANT TO THIS SECTION THAT IS REQUIRED TO ACHIEVE A STATISTICAL
13 SIGNIFICANCE CONSISTING OF A NINETY-NINE PERCENT CONFIDENCE LEVEL WITH A
14 MARGIN OF ERROR OF TWO PERCENT BASED ON THE TOTAL NUMBER OF EARLY BALLOTS
15 CAST IN THAT COUNTY, WHICHEVER IS GREATER. FOR A COUNTY WITH A POPULATION
16 OF LESS THAN EIGHT HUNDRED THOUSAND PERSONS, THE CHAIRMEN OR THE
17 CHAIRMEN'S DESIGNEES SHALL RANDOMLY SELECT FROM THOSE SEQUESTERED EARLY
18 BALLOTS THE NUMBER OF EARLY BALLOTS AS DETERMINED BY THE VOTE COUNT
19 VERIFICATION COMMITTEE ESTABLISHED PURSUANT TO THIS SECTION THAT IS
20 REQUIRED TO ACHIEVE A STATISTICAL SIGNIFICANCE CONSISTING OF A NINETY-NINE
21 PERCENT CONFIDENCE LEVEL WITH A MARGIN OF ERROR OF THREE PERCENT BASED ON
22 THE TOTAL NUMBER OF EARLY BALLOTS CAST IN THAT COUNTY. From those
23 randomly selected early ballots, the county officer in charge of elections
24 shall conduct a manual audit of the same races that are being hand counted
25 pursuant to subsection B of this section. If the manual audit of the
26 early ballots results in a difference in any race that is equal to or
27 greater than the designated margin when compared to the electronically
28 tabulated results for those same early ballots, the manual audit shall be
29 repeated for those same early ballots. If the second manual audit results
30 in a difference in that race that is equal to or greater than the
31 designated margin when compared to the electronically tabulated results
32 for those same early ballots, the manual audit shall be expanded only for
33 that race to a number of additional early ballots equal to one percent of
34 the total early ballots cast or an additional five thousand ballots,
35 whichever is less, to be randomly selected from the batch or batches of
36 sequestered early ballots. If the expanded early ballot manual audit
37 results in a difference for that race that is equal to or greater than the
38 designated margin when compared to any of the earlier manual counts for
39 that race, the manual counts shall be repeated for that race until a
40 manual count results in a difference in that race that is less than the
41 designated margin. If at any point in the manual audit of early ballots
42 the difference between any manual count of early ballots is less than the
43 designated margin when compared to the electronic tabulation of those
44 ballots, the electronic tabulation shall be included in the canvass and no
45 further manual audit of the early ballots shall be conducted.

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

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

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

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

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

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

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

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

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

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

6 Sec. 2. Title 16, chapter 4, article 12, Arizona Revised Statutes,
7 is amended by adding sections 16-661.01 and 16-661.02, to read:

8 16-661.01. Recounts; attorney general; secretary of state;
9 legislative council; procedures; exemptions

10 A. WITHIN FIVE DAYS AFTER COMPLETION OF THE CANVASS, FOR ANY
11 ELECTION OTHER THAN AN ELECTION THAT REQUIRES AN AUTOMATIC RECOUNT AS
12 PRESCRIBED IN SECTION 16-661, THE ATTORNEY GENERAL, SECRETARY OF STATE OR
13 LEGISLATIVE COUNCIL MAY REQUEST A RECOUNT OF THE TOTAL NUMBER OF VOTES
14 CAST IN THE ELECTION OR THE TOTAL NUMBER OF VOTES CAST AT ANY PRECINCT,
15 VOTING CENTER OR DISTRICT OR OTHER JURISDICTION OR ANY COMBINATION OF
16 THOSE PORTIONS OF AN ELECTION. THE REQUEST SHALL BE SUBMITTED IN WRITING
17 TO THE APPLICABLE COUNTY RECORDER AND COUNTY BOARD OF SUPERVISORS OR OTHER
18 OFFICER IN CHARGE OF ELECTIONS FOR THE ELECTION BEING RECOUNTED. IF
19 REQUESTED BY THE LEGISLATIVE COUNCIL OR THE ATTORNEY GENERAL, THE
20 SECRETARY OF STATE SHALL RECEIVE A COPY OF THE REQUEST AND IF REQUESTED BY
21 THE SECRETARY OF STATE, THE LEGISLATIVE COUNCIL AND THE ATTORNEY GENERAL
22 SHALL RECEIVE A COPY OF THE REQUEST. THE ATTORNEY GENERAL, SECRETARY OF
23 STATE OR LEGISLATIVE COUNCIL MAY REQUEST A RECOUNT BY HAND COUNT OR A
24 RECOUNT BY VOTING EQUIPMENT.

25 B. NOTWITHSTANDING SECTION 16-666, THE EXPENSES OF THE RECOUNT
26 SHALL BE A STATE CHARGE.

27 C. A RECOUNT CONDUCTED PURSUANT TO THIS SECTION SHALL COMPLY WITH
28 THE REQUIREMENTS AND PROCEDURES FOR AN AUTOMATIC RECOUNT PRESCRIBED BY
29 THIS ARTICLE. A COUNTY RECORDER OR OTHER APPLICABLE ELECTION OFFICER WHO
30 IS CONDUCTING A RECOUNT MAY CONTINUE WITH ELECTION PREPARATION, COMPLY
31 WITH STATUTORY DEADLINES AND PERFORM OTHER DUTIES REQUIRED BY LAW WITHOUT
32 REGARD TO THE RECOUNT.

33 D. THIS SECTION DOES NOT APPLY TO ELECTIONS FOR PRECINCT
34 COMMITTEEMEN, SCHOOL DISTRICT GOVERNING BOARDS, COMMUNITY COLLEGE DISTRICT
35 GOVERNING BOARDS, FIRE DISTRICT BOARDS OR FIRE DISTRICT CHIEFS OR
36 SECRETARY-TREASURERS OR BOARDS OF OTHER SPECIAL DISTRICTS.

37 16-661.02. Recounts; bond; procedure; exemptions

38 A. WITHIN FIVE DAYS AFTER COMPLETION OF THE CANVASS A PERSON MAY
39 FILE AN ACTION FOR A RECOUNT IN ANY ELECTION OTHER THAN AN ELECTION THAT
40 REQUIRES AN AUTOMATIC RECOUNT AS PRESCRIBED BY SECTION 16-661 IF THE
41 PERSON FILES A BOND WITH THE SUPERIOR COURT IN A FORM AND IN AN AMOUNT AS
42 DETERMINED BY THE COURT TO BE SUFFICIENT TO PROVIDE FOR FULL REIMBURSEMENT
43 OF THE COSTS OF CONDUCTING THE RECOUNT. THE REQUESTED RECOUNT MAY BE FOR
44 THE TOTAL NUMBER OF VOTES CAST IN AN ELECTION OR THE TOTAL NUMBER OF VOTES
45 CAST AT ANY PRECINCT, VOTING CENTER OR DISTRICT OR OTHER JURISDICTION OR

1 ANY COMBINATION OF THOSE PORTIONS OF AN ELECTION. THE PERSON FILING THE
2 ACTION MAY REQUEST A RECOUNT BY HAND COUNT OR A RECOUNT BY USE OF VOTING
3 EQUIPMENT, AND THE AMOUNT OF THE BOND SHALL REFLECT THE TYPE OF RECOUNT
4 REQUESTED.

5 B. A RECOUNT THAT IS CONDUCTED PURSUANT TO THIS SECTION SHALL
6 COMPLY WITH THE REQUIREMENTS AND PROCEDURES FOR AN AUTOMATIC RECOUNT
7 PRESCRIBED BY THIS ARTICLE. A COUNTY RECORDER OR OTHER APPLICABLE
8 ELECTION OFFICER WHO IS CONDUCTING A RECOUNT MAY CONTINUE WITH ELECTION
9 PREPARATION, COMPLY WITH STATUTORY DEADLINES AND PERFORM OTHER DUTIES
10 REQUIRED BY LAW WITHOUT REGARD TO THE RECOUNT.

11 C. THIS SECTION DOES NOT APPLY TO ELECTIONS FOR PRECINCT
12 COMMITTEEMEN, SCHOOL DISTRICT GOVERNING BOARDS, COMMUNITY COLLEGE DISTRICT
13 GOVERNING BOARDS, FIRE DISTRICT BOARDS OR FIRE DISTRICT CHIEFS OR
14 SECRETARY-TREASURERS OR BOARDS OF OTHER SPECIAL DISTRICTS.