

REFERENCE TITLE: **paper ballots; hand count; precincts**

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

SB 1338

Introduced by
Senator Rogers

AN ACT

AMENDING SECTIONS 16-411, 16-442, 16-442.01, 16-443 AND 16-444, ARIZONA REVISED STATUTES; REPEALING SECTION 16-445, ARIZONA REVISED STATUTES; AMENDING SECTIONS 16-446, 16-448 AND 16-449, ARIZONA REVISED STATUTES; REPEALING SECTIONS 16-450, 16-451 AND 16-468, ARIZONA REVISED STATUTES; AMENDING SECTIONS 16-531, 16-602, 16-621 AND 16-663, ARIZONA REVISED STATUTES; REPEALING SECTION 16-664, ARIZONA REVISED STATUTES; AMENDING SECTION 16-1011, ARIZONA REVISED STATUTES; RELATING TO THE 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 16-411, Arizona Revised Statutes, is amended to
3 read:

4 **16-411. Designation of election precincts and polling places;**
5 **voting centers prohibited; electioneering; wait**
6 **times**

7 A. The board of supervisors of each county, on or before October 1
8 of each year preceding the year of a general election, by an order, shall
9 establish a convenient number of election precincts in the county and
10 define the boundaries of the precincts. The election precinct boundaries
11 shall be established so as to be included within election districts
12 prescribed by law for elected officers of the state and its political
13 subdivisions including community college district precincts, except those
14 elected officers provided for in titles 30 and 48. **THE BOARD OF**
15 **SUPERVISORS AND ANY OFFICER IN CHARGE OF ELECTIONS SHALL NOT AUTHORIZE,**
16 **ESTABLISH OR USE A VOTING CENTER AT WHICH A VOTER WHO IS A REGISTERED**
17 **VOTER AND RESIDENT ANYWHERE IN THAT COUNTY IS ALLOWED TO RECEIVE THE**
18 **APPROPRIATE BALLOT FOR THAT SPECIFIC VOTER AND MAY ONLY USE POLLING PLACES**
19 **LOCATED IN ELECTION PRECINCTS.**

20 B. At least twenty days before a general or primary election, and
21 at least ten days before a special election, the board shall designate one
22 polling place within each precinct where the election shall be held,
23 except that:

24 1. On a specific finding of the board, included in the order or
25 resolution designating polling places pursuant to this subsection, that no
26 suitable polling place is available within a precinct, a polling place for
27 that precinct may be designated within an adjacent precinct.

28 2. Adjacent precincts may be combined if boundaries so established
29 are included in election districts prescribed by law for state elected
30 officials and political subdivisions including community college districts
31 but not including elected officials prescribed by titles 30 and 48. The
32 officer in charge of elections may also split a precinct for
33 administrative purposes. The polling places shall be listed in separate
34 sections of the order or resolution.

35 3. On a specific finding of the board that the number of persons
36 who are listed as early voters pursuant to section 16-544 is likely to
37 substantially reduce the number of voters appearing at one or more
38 specific polling places at that election, adjacent precincts may be
39 consolidated by combining polling places and precinct boards for that
40 election. The board of supervisors shall ensure that a reasonable and
41 adequate number of polling places will be designated for that election.
42 Any consolidated polling places shall be listed in separate sections of
43 the order or resolution of the board.

1 4. On a specific resolution of the board, the board may authorize
2 the use of voting centers in place of or in addition to specifically
3 designated polling places. A voting center shall allow any voter in that
4 county to receive the appropriate ballot for that voter on election day
5 after presenting identification as prescribed in section 16-579 and to
6 lawfully cast the ballot. Voting centers may be established in
7 coordination and consultation with the county recorder, at other county
8 offices or at other locations in the county deemed appropriate.

9 5. On a specific resolution of the board of supervisors that is
10 limited to a specific election date and that is voted on by a recorded
11 vote, the board may authorize the county recorder or other officer in
12 charge of elections to use emergency voting centers as follows:

13 (a) The board shall specify in the resolution the location and the
14 hours of operation of the emergency voting centers.

15 (b) A qualified elector voting at an emergency voting center shall
16 provide identification as prescribed in section 16-579, except that
17 notwithstanding section 16-579, subsection A, paragraph 2, for any voting
18 at an emergency voting center, the county recorder or other officer in
19 charge of elections may allow a qualified elector to update the elector's
20 voter registration information as provided for in the secretary of state's
21 instructions and procedures manual adopted pursuant to section 16-452.

22 (c) If an emergency voting center established pursuant to this
23 section becomes unavailable and there is not sufficient time for the board
24 of supervisors to convene to approve an alternate location for that
25 emergency voting center, the county recorder or other officer in charge of
26 elections may make changes to the approved emergency voting center
27 location and shall notify the public and the board of supervisors
28 regarding that change as soon as practicable. The alternate emergency
29 voting center shall be as close in proximity to the approved emergency
30 voting center location as possible.

31 C. If the board fails to designate the place for holding the
32 election, or if it cannot be held at or about the place designated, the
33 justice of the peace in the precinct, two days before the election, by an
34 order, copies of which the justice of the peace shall immediately post in
35 three public places in the precinct, shall designate the place within the
36 precinct for holding the election. If there is no justice of the peace in
37 the precinct, or if the justice of the peace fails to do so, the election
38 board of the precinct shall designate and give notice of the place within
39 the precinct of holding the election. For any election in which there are
40 no candidates for elected office appearing on the ballot, the board may
41 consolidate polling places and precinct boards and may consolidate the
42 tabulation of results for that election if all of the following apply:

43 1. All affected voters are notified by mail of the change at least
44 thirty-three days before the election.

1 2. Notice of the change in polling places includes notice of the
2 new voting location, notice of the hours for voting on election day and
3 notice of the telephone number to call for voter assistance.

4 3. All affected voters receive information on early voting that
5 includes the application used to request an early voting ballot.

6 D. The board is not required to designate a polling place for
7 special district mail ballot elections held pursuant to article 8.1 of
8 this chapter, but the board may designate one or more sites for voters to
9 deposit marked ballots until 7:00 p.m. on the day of the election.

10 E. Except as provided in subsection F of this section, a public
11 school shall provide sufficient space for use as a polling place for any
12 city, county or state election when requested by the officer in charge of
13 elections.

14 F. The principal of the school may deny a request to provide space
15 for use as a polling place for any city, county or state election if,
16 within two weeks after a request has been made, the principal provides a
17 written statement indicating a reason the election cannot be held in the
18 school, including any of the following:

19 1. Space is not available at the school.

20 2. The safety or welfare of the children would be jeopardized.

21 G. The board shall make available to the public as a public record
22 a list of the polling places for all precincts in which the election is to
23 be held.

24 H. Except in the case of an emergency, any facility that is used as
25 a polling place on election day or that is used as an early voting ~~site~~
26 **POLLING PLACE** during the period of early voting shall allow persons to
27 electioneer and engage in other political activity outside of the
28 seventy-five foot limit prescribed by section 16-515 in public areas and
29 parking lots used by voters. This subsection does not allow the temporary
30 or permanent construction of structures in public areas and parking lots
31 or the blocking or other impairment of access to parking spaces for
32 voters. The county recorder or other officer in charge of elections shall
33 post on its website at least two weeks before election day a list of those
34 polling places in which emergency conditions prevent electioneering and
35 shall specify the reason the emergency designation was granted and the
36 number of attempts that were made to find a polling place before granting
37 an emergency designation. If the polling place is not on the website list
38 of polling places with emergency designations, electioneering and other
39 political activity shall be allowed outside of the seventy-five foot
40 limit. If an emergency arises after the county recorder or other officer
41 in charge of elections' initial website posting, the county recorder or
42 other officer in charge of elections shall update the website as soon as
43 is practicable to include any new polling places, shall highlight the
44 polling place location on the website and shall specify the reason the

1 emergency designation was granted and the number of attempts that were
2 made to find a polling place before granting an emergency designation.

3 I. For the purposes of this section, a county recorder or other
4 officer in charge of elections shall designate a polling place as an
5 emergency polling place and thus prohibit persons from electioneering and
6 engaging in other political activity outside of the seventy-five foot
7 limit prescribed by section 16-515 but inside the property of the facility
8 that is hosting the polling place if any of the following occurs:

9 1. An act of God renders a previously set polling place as
10 unusable.

11 2. A county recorder or other officer in charge of elections has
12 exhausted all options and there are no suitable facilities in a precinct
13 that are willing to be a polling place unless a facility can be given an
14 emergency designation.

15 J. The secretary of state shall provide through the instructions
16 and procedures manual adopted pursuant to section 16-452 the maximum
17 allowable wait time for any election that is subject to section 16-204 and
18 provide for a method to reduce voter wait time at the polls in the primary
19 and general elections. The method shall consider at least all of the
20 following for primary and general elections in each precinct:

21 1. The number of ballots voted in the prior primary and general
22 elections.

23 2. The number of registered voters who voted early in the prior
24 primary and general elections.

25 3. The number of registered voters and the number of registered
26 voters who cast an early ballot for the current primary or general
27 election.

28 4. The number of election board members and clerks and the number
29 of rosters that will reduce voter wait time at the polls.

30 Sec. 2. Section 16-442, Arizona Revised Statutes, is amended to
31 read:

32 16-442. Committee approval: emergency certification

33 A. The secretary of state shall appoint a committee of three
34 persons, to consist of a member of the engineering college at one of the
35 universities, a member of the state bar of Arizona and one person familiar
36 with voting processes in the state, ~~to~~ ^{NOT} more than two of whom shall be
37 of the same political party, and at least one of whom shall have at least
38 five years of experience with and shall be able to render an opinion based
39 on knowledge of, training in or education in ~~electronic~~ voting systems,
40 procedures and security. The committee shall investigate and test the
41 various types of vote recording ~~or tabulating machines or~~ devices that may
42 be used under this article. The committee shall submit its
43 recommendations to the secretary of state who shall make final adoption of
44 the type or types, make or makes, model or models to be certified for use
45 in this state. The committee shall serve without compensation.

1 B. Machines or devices used at any election for federal, state or
2 county offices may only be certified for use in this state and may only be
3 used in this state if they comply with the help America vote act of 2002,
4 ~~and~~ if those machines or devices have been tested and approved by a
5 laboratory that is accredited pursuant to the help America vote act of
6 2002 AND IF THOSE MACHINES OR DEVICES ARE TO BE USED TO COMPLY WITH THE
7 ACCESSIBILITY REQUIREMENTS PRESCRIBED BY SECTION 16-442.01. EXCEPT AS
8 REQUIRED TO COMPLY WITH SECTION 16-442.01, THE SECRETARY OF STATE MAY NOT
9 APPROVE FOR GENERAL USE ELECTRONIC VOTING MACHINES AND ELECTRONIC
10 TABULATING MACHINES.

11 C. After consultation with the committee prescribed by subsection A
12 of this section, the secretary of state shall adopt standards that specify
13 the criteria for loss of certification for equipment that was used at any
14 election for federal, state or county offices and that was previously
15 certified for use in this state. On loss of certification, machines or
16 devices used at any election may not be used for any election for federal,
17 state or county offices in this state unless recertified for use in this
18 state.

19 D. The secretary of state may revoke the certification of any
20 voting system or device for use in a federal, state or county election in
21 this state or may prohibit for up to five years the purchase, lease or use
22 of any voting system or device leased, installed or used by a person or
23 firm in connection with a federal, state or county election in this state,
24 or both, if either of the following occurs:

25 1. The person or firm installs, uses or ~~permits~~ ALLOWS the use of a
26 voting system or device that is not certified for use or approved for
27 experimental use in this state pursuant to this section.

28 2. The person or firm uses or includes hardware, firmware or
29 software in a version that is not certified for use or approved for
30 experimental use pursuant to this section in a certified voting system or
31 device.

32 E. The ~~governing body of a city or town or the~~ board of directors
33 of an agricultural improvement district may adopt for use in elections any
34 kind of electronic voting system or vote tabulating device approved by the
35 secretary of state, and thereupon the voting or marking device and vote
36 tabulating equipment may be used at any or all elections for voting,
37 recording and counting votes cast at an election.

38 F. ~~The secretary of state or the governing body may provide for the
39 experimental use of a voting system or device without a final adoption of
40 the voting system or device, and its use at the election is as valid as if
41 the machines had been permanently adopted.~~

42 G. F. After consultation with the committee prescribed by
43 subsection A of this section, the secretary of state may approve for
44 emergency use an upgrade or modification to a voting system or device that
45 is certified for use in this state if the governing body establishes in an

1 open meeting that the election cannot be conducted without the emergency
2 certification. Any emergency certification shall be limited to ~~to~~ NOT
3 more than six months. At the conclusion of the certification period the
4 voting system or device shall be decertified and unavailable for future
5 use unless certified in accordance with this section.

6 Sec. 3. Section 16-442.01, Arizona Revised Statutes, is amended to
7 read:

8 **16-442.01. Accessible voting technology; recommendations;**
9 **certification; applicability**

10 A. On completion of the certification process pursuant to this
11 section and section 16-442, the secretary of state shall require that
12 voting systems that are used by entities that are governed by section
13 16-204, but not including cities and towns with a population of less than
14 twenty thousand persons, provide persons who are blind or visually
15 impaired with access to voting that is equivalent to that provided to
16 persons who are not blind or visually impaired.

17 B. For the purposes of this section:

18 1. A voting system that provides the voter with the ability to cast
19 and verify by both visual and nonvisual methods all of the selections that
20 were made by that voter is deemed to provide equivalent access.

21 2. Nonvisual methods for casting and verifying a selection made on
22 a voting system include the use of synthesized speech, braille and other
23 output methods that do not require sight.

24 **3. ANY ELECTRONIC VOTING SYSTEMS AUTHORIZED BY THIS SECTION MAY NOT**
25 **BE APPROVED FOR OR PROVIDED FOR GENERAL USE.**

26 C. The secretary of state shall consult with and obtain
27 recommendations regarding voting systems from nonprofit organizations that
28 represent persons who are blind or visually impaired, persons with
29 expertise in accessible software, hardware and other technology, county
30 and local election officials and other persons deemed appropriate by the
31 secretary of state. After receiving recommendations, the secretary of
32 state shall submit to the committee established pursuant to section 16-442
33 one or more voting systems that provide equivalent access pursuant to this
34 section for possible certification for use in this state.

35 D. Subsection A of this section applies to voting systems that are
36 purchased or upgraded on or after January 1, 2006.

37 Sec. 4. Section 16-443, Arizona Revised Statutes, is amended to
38 read:

39 **16-443. Authorization of use at all elections**

40 At all state, county, city or town elections, agricultural
41 improvement district elections and primary **AND GENERAL** elections, ballots
42 or votes may be cast, recorded and counted by voting or marking devices
43 and vote tabulating devices as provided in this article, **EXCEPT THAT**
44 **ELECTRONIC VOTING AND ELECTRONIC OR OTHER TABULATING DEVICES MAY ONLY BE**
45 **USED TO COMPLY WITH SECTION 16-442.01. FOR ALL OTHER USES, FOR STATE,**

1 COUNTY, CITY OR TOWN ELECTIONS, ONLY PAPER BALLOTS MAY BE USED AND BALLOTS
2 SHALL BE TABULATED BY HAND.

3 Sec. 5. Section 16-444, Arizona Revised Statutes, is amended to
4 read:

5 **16-444. Definitions**

6 **A.** In this article, unless the context otherwise requires:

7 1. "Ballot" means a paper ballot on which votes are recorded.
8 2. "Computer program" includes all programs and documentation
9 adequate to process the ballots at an equivalent counting center.

10 3. "Counting center" means one or more locations selected by the
11 board of supervisors for the **automatic** counting of ballots.

12 4. "Electronic voting system" means a system in which votes are
13 recorded on a paper ballot by means of marking, and such votes are
14 subsequently counted and tabulated by vote tabulating equipment at one or
15 more counting centers.

16 5. "E-pollbook" means an electronic system in which a voter is
17 checked in and through which a voter's signature is recorded to indicate
18 that the voter has voted.

19 6. "Instructions and procedures manual" means the manual prepared
20 for use as a guide for the conduct of elections by an approved electronic
21 voting system, including, but not limited to, detailed instructions for
22 the performance of each task relating to the collection of ballots and the
23 counting of votes in a manner that will provide maximum security,
24 efficiency and accuracy.

25 7. "Vote tabulating equipment" includes apparatus necessary to
26 automatically examine and count votes as designated on ballots and
27 tabulate the results.

28 8. "Voting device" means an apparatus that the voter uses to record
29 the voter's votes by marking a paper ballot, which votes are subsequently
30 counted by **electronic tabulating equipment** **HAND**.

31 **B. The provisions of all state laws relating to elections not**
32 **inconsistent with this article apply to all elections where electronic**
33 **tabulating devices are used. Any provision of law that conflicts with**
34 **this article does not apply to the elections in which electronic**
35 **tabulating devices are used.**

36 Sec. 6. **Repeal**

37 Section 16-445, Arizona Revised Statutes, is repealed.

38 Sec. 7. Section 16-446, Arizona Revised Statutes, is amended to
39 read:

40 **16-446. Specifications of electronic voting system**

41 A. An electronic voting system consisting of a voting or marking
42 device **in combination with vote tabulating equipment THAT IS USED AS**
43 **PRESCRIBED IN SECTION 16-442.01** shall provide facilities for voting for
44 candidates at both primary and general elections.

1 B. An electronic voting system shall:

2 1. Provide for voting in secrecy when used with voting booths.

3 2. ~~Permit~~ ALLOW each elector to vote at any election for any person
4 for any office whether or not nominated as a candidate, to vote for as
5 many persons for an office as the elector is entitled to vote for and to
6 vote for or against any question on which the elector is entitled to vote,
7 and the vote tabulating equipment shall reject choices recorded on the
8 elector's ballot if the number of choices exceeds the number that the
9 elector is entitled to vote for the office or on the measure.

10 3. Prevent the elector from voting for the same person more than
11 once for the same office.

12 4. Be suitably designed for the purpose used and be of durable
13 construction, and may be used safely, efficiently and accurately in the
14 conduct of elections and counting ballots.

15 5. Be provided with means for sealing the voting or marking device
16 against any further voting after the close of the polls and the last voter
17 has voted.

18 6. When properly operated, record correctly and count accurately
19 every vote cast.

20 7. Provide a durable paper document that visually indicates the
21 voter's selections, that the voter may use to verify the voter's choices,
22 that may be spoiled by the voter if it fails to reflect the voter's
23 choices and that ~~permits~~ allows the voter to cast a new ballot. This
24 paper document shall be used in manual audits and recounts.

25 8. To the extent practicable, provide for the ballot layout to be
26 in the same order of arrangement, including rotation, as provided for
27 paper ballots, except that information may be printed in vertical or
28 horizontal rows, or in a number of separate pages or screens that are
29 placed or displayed on the voting device. The titles of offices may be
30 arranged in vertical columns or in a series of separate pages or screens
31 and shall be printed above or at the side of the names of candidates so as
32 to indicate clearly the candidates for each office and the number to be
33 elected. If there are more candidates for an office than can be printed
34 in one column or on one ballot page or screen, the ballot shall be clearly
35 marked that the list of candidates is continued on the following column,
36 page or screen, and to the extent practicable, the same number of names
37 shall be printed on each column, page or screen.

38 9. Provide for a color designation for use in the primary election
39 for each political party represented.

40 Sec. 8. Section 16-448, Arizona Revised Statutes, is amended to
41 read:

42 16-448. Write-in votes; instructions

43 ~~Whenever ballots are to be counted by electronic data processing~~
44 ~~equipment,~~ All write-in votes for candidates, to be counted, shall be
45 marked by the voter in the space provided opposite the names of the

1 write-in candidates. The instructions to voters printed on the ballots
2 shall instruct the voter that the vote will not be counted unless the
3 voter properly marks the ballot when writing in a candidate's name.

4 Sec. 9. Section 16-449, Arizona Revised Statutes, is amended to
5 read:

6 **16-449. Required test of equipment; notice; procedures manual**

7 A. Within the period of time before the election day prescribed by
8 the secretary of state in the instructions and procedures manual adopted
9 pursuant to section 16-452, the board of supervisors or other election
10 officer in charge, or for an election involving state or federal
11 candidates, the secretary of state, shall have the ~~automatic tabulating~~
12 equipment ~~and programs~~ tested to ascertain that the equipment ~~and programs~~
13 will correctly ~~count~~ MARK the votes cast for all offices and on all
14 measures. Public notice of the time and place of the test shall be given
15 at least forty-eight hours ~~prior thereto~~ BEFORE THE TEST by publication
16 once in one or more daily or weekly newspapers published in the town, city
17 or village using such equipment, if a newspaper is published therein,
18 otherwise in a newspaper of general circulation therein. The test shall
19 be observed by at least two election inspectors, who shall not be of the
20 same political party, and shall be open to representatives of the
21 political parties, candidates, the press and the public. The test shall
22 be conducted by ~~processing~~ MARKING a ~~preaudited~~ group of ballots so ~~marked~~
23 as to record a predetermined number of valid votes for each candidate and
24 on each measure ~~and shall include for each office one or more ballots that~~
25 ~~have votes in excess of the number allowed by law~~ in order to test the
26 ability of the ~~automatic tabulating~~ VOTING equipment ~~and programs~~ to
27 ~~reject~~ PROPERLY MARK such votes. If any error is detected, the cause
28 ~~therefor~~ FOR THE ERROR shall be ascertained and corrected and an errorless
29 count shall be made before the ~~automatic tabulating~~ equipment ~~and programs~~
30 are IS approved. ~~A copy of a revised program shall be filed with the~~
31 ~~secretary of state within forty eight hours after the revision is~~
32 ~~made. If the error was created by automatic tabulating equipment~~
33 ~~malfunction, a report shall be filed with the secretary of state within~~
34 ~~forty-eight hours after the correction is made, stating the cause and the~~
35 ~~corrective action taken.~~ The test shall be repeated immediately before
36 the start of the official count of the ballots in the same manner as set
37 forth above. After the completion of the count, ~~the programs used and~~ the
38 ballots shall be sealed, retained and disposed of as provided for paper
39 ballots.

40 ~~B. Electronic ballot tabulating systems shall be tested for logic~~
41 ~~and accuracy within seven days before their use for early balloting~~
42 ~~pursuant to the instructions and procedures manual for electronic voting~~
43 ~~systems that is adopted by the secretary of state as prescribed by section~~
44 ~~16-452. The instructions and procedures manual shall include procedures~~
45 ~~for the handling of ballots, the electronic scanning of ballots and any~~

1 ~~other matters necessary to ensure the maximum degree of correctness,~~
2 ~~impartiality and uniformity in the administration of an electronic ballot~~
3 ~~tabulating system.~~

4 C. B. Notwithstanding ~~subsections~~ SUBSECTION A ~~and~~ B of this
5 section, if a county uses accessible voting equipment to mark ballots ~~and~~
6 ~~that accessible voting equipment does not independently tabulate or tally~~
7 ~~votes~~, the secretary of state in cooperation with the county officer in
8 charge of elections may designate a single date to test the logic and
9 accuracy of ~~both~~ the accessible voting equipment and ~~electronic ballot~~
10 ~~tabulating systems~~ ANY OTHER EQUIPMENT OR DEVICES USED TO MARK THE
11 BALLOTS.

12 Sec. 10. Repeal

13 Sections 16-450, 16-451 and 16-468, Arizona Revised Statutes, are
14 repealed.

15 Sec. 11. Section 16-531, Arizona Revised Statutes, is amended to
16 read:

17 16-531. Appointment of election boards; qualifications

18 A. When an election is ordered, and not less than twenty days
19 before a general or primary election, the board of supervisors shall
20 appoint for each election precinct, ~~voting center or other voting location~~
21 one inspector, one marshal, two judges and as many clerks of election as
22 deemed necessary. The inspector, marshal, judges and clerks shall be
23 qualified voters of the precinct for which appointed, except if there is
24 not a sufficient number of persons available to provide the number of
25 appointments required, the inspector, marshal, judges and clerks shall be
26 qualified voters of this state. The inspector, marshal and judges shall
27 not have changed their political party affiliation or their no party
28 preference affiliation since the last preceding general election, and if
29 they are members of the two political parties that cast the highest number
30 of votes in the state at the last preceding general election, they shall
31 be divided equally between these two parties. There shall be an equal
32 number of inspectors in the various precincts in the county who are
33 members of the two largest political parties. In each precinct where the
34 inspector is a member of one of the two largest political parties, the
35 marshal in that precinct shall be a member of the other of the two largest
36 political parties. Whenever possible, any person appointed as an
37 inspector shall have had previous experience as an inspector, judge,
38 marshal or clerk of elections. If there is no qualified person in a given
39 precinct, the appointment of an inspector may be made from names provided
40 by the county party chairman. If not less than ninety days before the
41 election the chairman of the county committee of either of the parties
42 designates qualified voters of the precinct, or of another precinct if
43 there are not sufficient members of that party available in the precinct
44 to provide the necessary representation on the election board as judge,
45 such designated qualified voters shall be appointed. The judges, together

1 with the inspector, shall constitute the board of elections. Any
2 registered voter in the election precinct, or in another election precinct
3 if there are not sufficient persons available in the election precinct for
4 which the clerks are being appointed, may be appointed as clerk.

5 B. If the election precinct consists of fewer than three hundred
6 qualified electors, the board of supervisors may appoint not fewer than
7 one inspector and two judges. The board of supervisors shall give notice
8 of election precincts consisting of fewer than three hundred qualified
9 electors to the county chairmen of the two largest political parties not
10 later than thirty days before the election. The inspector and judges
11 shall be appointed in the same manner by party as provided in subsection A
12 of this section.

13 C. If a nonpartisan election is ordered, not less than twenty days
14 before the election the governing board holding the election shall
15 appoint, without consideration for political party, ~~a minimum of~~ AT LEAST
16 three election workers for each polling place. The election workers shall
17 consist of at least one inspector and two judges. Whenever possible, they
18 shall be qualified electors of the precinct located within the district,
19 without consideration for political party.

20 D. For election boards established pursuant to subsection B of this
21 section, the inspector and two judges shall be appointed to provide as
22 equal as practicable representation of members of the two largest
23 political parties on the board in the same manner as provided for the
24 election boards prescribed by subsection A of this section. Any
25 registered voter in the election precinct, or in another election precinct
26 if there are not sufficient persons available in the election precinct for
27 which the clerks are being appointed, may be appointed as clerk. No
28 United States, state, county or precinct officer, nor a candidate for
29 office at the election, other than a precinct committeeman or a candidate
30 for the office of precinct committeeman, is qualified to act as judge,
31 inspector, marshal or clerk.

32 E. If an electronic voting system is in use TO COMPLY WITH SECTION
33 16-442.01, the write-in ballots shall be tallied by a board of elections
34 consisting of one inspector and two judges who are appointed in the same
35 manner by party as provided in subsection A of this section.

36 F. Notwithstanding any other law, the board of supervisors may
37 appoint to an election board to serve as a clerk of election a person who
38 is not eligible to vote if all of the following conditions are met:

39 1. The person is a minor who will be at least sixteen years of age
40 at the time of the election for which the person is named to the election
41 board.

42 2. The person is a citizen of the United States at the time of the
43 election for which the person is named to the election board.

44 3. The person is supervised by an adult who has been trained as an
45 elections officer.

1 4. The person has received training provided by the officer in
2 charge of elections.

3 5. The parent or guardian of the person has provided written
4 permission for the person to serve.

5 G. A school district or charter school shall not be required to
6 reduce its average daily membership, as defined in section 15-901, for any
7 pupil who is absent from one or more instructional programs as a result of
8 the pupil's service on an election board pursuant to subsection F of this
9 section.

10 H. A school district or charter school shall not count any pupil's
11 absence from one or more instructional programs as a result of the pupil's
12 service on an election board pursuant to subsection F of this section
13 against any mandatory attendance requirements for the pupil.

14 I. This section does not prevent the board of supervisors or
15 governing body from refusing for cause to reappoint, or from removing for
16 cause, an election board member.

17 Sec. 12. Section 16-602, Arizona Revised Statutes, is amended to
18 read:

19 16-602. Paper ballots: report

20 A. For any primary, special or general election ~~in which the votes~~
21 ~~are cast on an electronic voting machine or tabulator~~, the election judge
22 shall compare the number of votes cast as indicated ~~on the machine or~~
23 ~~tabulator~~ ~~FROM THE PAPER BALLOTS~~ with the number of votes cast as
24 indicated on the poll list and the number of provisional ballots cast and
25 that information shall be noted in a written report prepared and submitted
26 to the officer in charge of elections along with other tally reports. **ALL**
27 **BALLOTS SHALL BE COUNTED BY HAND AS PRESCRIBED IN THE SECRETARY OF STATE'S**
28 **INSTRUCTIONS AND PROCEDURES MANUAL ADOPTED PURSUANT TO SECTION 16-452.**

29 B. ~~For each countywide primary, special, general and presidential~~
30 ~~preference election, the county officer in charge of the election shall~~
31 ~~conduct a hand count at one or more secure facilities. The hand count~~
32 ~~shall be conducted as prescribed by this section and in accordance with~~
33 ~~hand count procedures established by the secretary of state in the~~
34 ~~official instructions and procedures manual adopted pursuant to section~~
35 ~~16-452. The hand count is not subject to the live video requirements of~~
36 ~~section 16-621, subsection D, but the party representatives who are~~
37 ~~observing the hand count may bring their own video cameras in order to~~
38 ~~record the hand count. The recording shall not interfere with the conduct~~
39 ~~of the hand count and the officer in charge of the election may prohibit~~
40 ~~from recording or remove from the facility persons who are taking actions~~
41 ~~to disrupt the count. The sole act of recording the hand count does not~~
42 ~~constitute sufficient grounds for the officer in charge of the election to~~
43 ~~prohibit observers from recording or to remove them from the facility.~~
44 ~~The hand count shall be conducted in the following order:~~

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

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

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

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

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

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

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

1 elections may prohibit persons from participating in the hand count if
2 they are taking actions to disrupt the count or are unable to perform the
3 duties as assigned. For the hand count to proceed, not more than
4 seventy-five percent of the persons performing the hand count shall be
5 from the same political party.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 ~~5. Members of the vote count verification committee are not~~
40 ~~eligible to receive compensation but are eligible for reimbursement of~~
41 ~~expenses pursuant to title 38, chapter 4, article 2. The committee is a~~
42 ~~public body and its meetings are subject to title 38, chapter 3, article~~
43 ~~3.1 and its reports and records are subject to title 39, chapter 1.~~

1 Sec. 13. Section 16-621, Arizona Revised Statutes, is amended to
2 read:

3 **16-621. Proceedings at the counting center: video recording**

4 A. All proceedings at the counting center shall be under the
5 direction of the board of supervisors or other officer in charge of
6 elections and shall be conducted in accordance with the approved
7 instructions and procedures manual issued pursuant to section 16-452 under
8 the observation of representatives of each political party and the public.
9 The proceedings at the counting center may also be observed by up to three
10 additional people representing a candidate for nonpartisan office, or
11 representing a political committee in support of or in opposition to a
12 ballot measure, proposition or question. A draw by lot shall determine
13 which three groups or candidates shall have representatives participate in
14 the observation at the counting center. Persons representing a candidate
15 for nonpartisan office or persons or groups representing a political
16 committee in support of or in opposition to a ballot measure, proposition
17 or question, who are interested in participating in the observation, shall
18 notify the officer in charge of elections of their desire to be included
19 in the draw not later than seventeen days before the election. After the
20 deadline to receive submissions from the interested persons or groups, but
21 prior to fourteen days before the election, the county officer in charge
22 of elections shall draw by lot, from the list of those that expressed
23 interest, three persons or groups and those selected shall be notified and
24 allowed to observe the proceedings at the counting center. If a group is
25 selected the group may alter who represents that group for different days
26 of observation but on any given observation day a selected group shall not
27 send more than one observer. A group may rotate an observer throughout
28 the day. Only those persons who are authorized for the purpose shall
29 touch any ballot or ballot card or return. All persons who are engaged in
30 processing and counting of the ballots shall be qualified electors, shall
31 be deputized in writing and shall take an oath that they will faithfully
32 perform their assigned duties. There shall be no preferential counting of
33 ballots for the purpose of projecting the outcome of the election. **THE**
BOARD OF SUPERVISORS OR OTHER OFFICER IN CHARGE OF ELECTIONS SHALL NOT
ALLOW THE USE OF ELECTRONIC OR OTHER TABULATING EQUIPMENT AND ALL COUNTING
SHALL BE DONE BY HAND. BALLOTS SHALL BE ORGANIZED AND REMAIN SEGREGATED
BY PRECINCT, BOTH BEFORE AND AFTER COUNTING. ~~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.~~

1 ~~B. If the counting center automatic tabulating equipment includes~~
2 ~~an electronic vote adjudication feature that has been certified for use as~~
3 ~~prescribed by section 16-442 and the board of supervisors or officer in~~
4 ~~charge of elections authorizes the use of this feature at the counting~~
5 ~~center, all of the following apply:~~

6 ~~1. The electronic vote adjudication feature shall be included in~~
7 ~~the tabulation system logic and accuracy testing prescribed by section~~
8 ~~16-449.~~

9 ~~2. The board of supervisors or officer in charge of elections shall~~
10 ~~appoint an electronic vote adjudication board that consists of two judges~~
11 ~~who are overseen by an inspector, with the two judges equally divided~~
12 ~~between the two largest political parties as prescribed by section 16-531,~~
13 ~~subsection D to adjudicate and submit for tabulation a ballot that is read~~
14 ~~by the tabulation machine as blank in order to determine if voter intent~~
15 ~~is clear on a portion or all of the ballot, or any portion of any ballot~~
16 ~~as prescribed by section 16-610 or 16-611, or to tally write-in choices as~~
17 ~~prescribed by section 16-612.~~

18 ~~3. The electronic vote adjudication process used by the electronic~~
19 ~~vote adjudication board shall provide for:~~

20 ~~(a) A method to track and account for the original ballot and the~~
21 ~~digital duplicate of the ballot created by the electronic vote~~
22 ~~adjudication feature that includes a serial number on the digital image~~
23 ~~that can be used to track electronic vote adjudication board actions.~~

24 ~~(b) The creation and retention of comprehensive logs of all digital~~
25 ~~duplication and adjudication actions performed by an electronic vote~~
26 ~~adjudication board.~~

27 ~~(c) The retention of the original ballot and the digital duplicate~~
28 ~~of the ballot.~~

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

33 **D. B.** For any statewide, county or legislative election, the
34 county recorder or officer in charge of elections shall provide for a live
35 video recording of the custody of all ballots while the ballots are
36 present in a tabulation room in the counting center. The live video
37 recording shall include date and time indicators and shall be linked to
38 the secretary of state's website. The secretary of state shall post links
39 to the video coverage for viewing by the public. The county recorder or
40 officer in charge of elections shall record the video coverage of the
41 ballots at the counting center and shall retain those recordings as a
42 public record for at least as long as the challenge period for the general
43 election. If the live video feed is disrupted or disabled, the recorder
44 or officer in charge of elections is not liable for the disruption but
45 shall attempt to reinstate video coverage as soon as is practicable. Any

1 disruption in video coverage shall not affect or prevent the continued
2 tabulation of ballots. This subsection is contingent on legislative
3 appropriation.

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

8 Sec. 14. Section 16-663, Arizona Revised Statutes, is amended to
9 read:

10 16-663. Recount of votes

11 ~~A.~~ The superior court to which the facts requiring a recount are
12 certified shall ~~forthwith~~ PROMPTLY make and enter an order requiring a
13 recount of the votes cast for such office, measure or proposal. The
14 recount shall be conducted in accordance with the laws pertaining to
15 contests of elections.

16 ~~B. When the court orders a recount of votes which were cast and~~
17 ~~tabulated on electronic voting equipment, such recount shall be pursuant~~
18 ~~to section 16-664. On completion of the recount, and for legislative,~~
19 ~~statewide and federal candidate races only, the county chairmen of the~~
20 ~~political parties entitled to continued representation on the ballot or~~
21 ~~the chairman's designee shall select at random without the use of a~~
22 ~~computer five per cent of the precincts for the recounted race for a hand~~
23 ~~count, and if the results of that hand count when compared to the~~
24 ~~electronic tabulation of that same race are less than the designated~~
25 ~~margins calculated pursuant to section 16-602, the recount is complete and~~
26 ~~the electronic tabulation is the official result. If the hand count~~
27 ~~results in a difference that is equal to or greater than the designated~~
28 ~~margin for that race, the procedure established in section 16-602,~~
29 ~~subsections C, D, E and F applies.~~

30 Sec. 15. Repeal

31 Section 16-664, Arizona Revised Statutes, is repealed.

32 Sec. 16. Section 16-1011, Arizona Revised Statutes, is amended to
33 read:

34 16-1011. Counterfeiting election returns; violation;
35 classification

36 A. A person who knowingly forges or counterfeits returns of an
37 election purporting to have been held at a precinct or place where no
38 election was in fact held, or who knowingly substitutes, forges or
39 counterfeits returns of election instead of the true returns for a
40 precinct or place where an election was actually held, is guilty of a
41 class 3 felony.

1 B. A person who knowingly substitutes, forges, counterfeits or
2 tampers with ballot tabulations or totals or election results by
3 electronic means or through the use of a computer, machine or other device
4 is guilty of a class 3 felony. This subsection does not apply to the
5 casting or tallying of ballots as provided by law or to the substitution
6 or duplication of ballots as prescribed by sections 16-573, ~~— AND~~ 16-574
7 ~~and 16-621~~.

8 C. Notwithstanding sections 13-907 and 13-908, a person who is
9 convicted under this section shall not be automatically restored the right
10 to vote.