

REFERENCE TITLE: hand counts; precincts; procedures manual

State of Arizona
Senate
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SB 1358

Introduced by
Senators Townsend: Livingston, Rogers; Representatives Burges, Cook,
Fillmore

AN ACT

AMENDING SECTIONS 16-452 AND 16-602, ARIZONA REVISED STATUTES; RELATING TO CONDUCT OF ELECTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 16-452, Arizona Revised Statutes, is amended to
3 read:

4 **16-452. Rules; instructions and procedures manual; approval**
5 **of manual; field check and review of systems;**
6 **violation; classification**

7 A. After consultation with each county board of supervisors or
8 other officer in charge of elections, the secretary of state shall
9 prescribe rules to achieve and maintain the maximum degree of correctness,
10 impartiality, uniformity and efficiency on the procedures for early voting
11 and voting, and of producing, distributing, collecting, counting,
12 tabulating and storing ballots. The secretary of state shall also adopt
13 rules regarding fax transmittal of unvoted ballots, ballot requests, voted
14 ballots and other election materials to and from absent uniformed and
15 overseas citizens and shall adopt rules regarding internet receipt of
16 requests for federal postcard applications prescribed by section 16-543.

17 B. The rules shall be prescribed in an official instructions and
18 procedures manual to be issued not later than December 31 of each
19 odd-numbered year immediately preceding the general election. Before its
20 issuance, the manual shall be approved by the governor and the attorney
21 general. The secretary of state shall submit the manual to the governor
22 and the attorney general not later than October 1 of the year before each
23 general election.

24 C. A person who violates any rule adopted pursuant to this section
25 is guilty of a class 2 misdemeanor.

26 **IF A PROVISION IN THE INSTRUCTIONS AND PROCEDURES MANUAL**
27 **CONFLICTS WITH STATE STATUTE, THE STATE STATUTE PREVAILS.**

28 ~~D.~~ E. The secretary of state shall provide personnel who are
29 experts in electronic voting systems and procedures and in electronic
30 voting system security to field check and review electronic voting systems
31 and recommend needed statutory and procedural changes.

32 Sec. 2. Section 16-602, Arizona Revised Statutes, is amended to
33 read:

34 **16-602. Removal of ballots from ballot boxes; disposition of**
35 **ballots folded together or excessive ballots;**
36 **designated margin; hand counts; vote count**
37 **verification committee**

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

1 B. For each countywide primary, special, general and presidential
2 preference election, the county officer in charge of the election shall
3 conduct a hand count at one or more secure facilities. The hand count
4 shall be conducted as prescribed by this section and in accordance with
5 hand count procedures established by the secretary of state in the
6 official instructions and procedures manual adopted pursuant to section
7 16-452. The hand count is not subject to the live video requirements of
8 section 16-621, subsection D, but the party representatives who are
9 observing the hand count may bring their own video cameras in order to
10 record the hand count. The recording shall not interfere with the conduct
11 of the hand count and the officer in charge of the election may prohibit
12 from recording or remove from the facility persons who are taking actions
13 to disrupt the count. The sole act of recording the hand count does not
14 constitute sufficient grounds for the officer in charge of the election to
15 prohibit observers from recording or to remove them from the facility.
16 The hand count shall be conducted in the following order:

17 1. At least two percent of the precincts in that county, or two
18 precincts, whichever is greater, shall be selected at random from a pool
19 consisting of every precinct in that county. FOR A COUNTY THAT USES
20 VOTING CENTERS, THE BALLOTS FROM EACH VOTING CENTER SHALL BE SEPARATED BY
21 PRECINCT BEFORE THE RANDOM SELECTION OCCURS AND EVERY BALLOT FROM A
22 PRECINCT SHALL BE GROUPED WITH THE OTHER BALLOTS FROM THAT PRECINCT. A
23 VOTING CENTER MAY NOT BE DEEMED A PRECINCT FOR PURPOSES OF RANDOMLY
24 SELECTING FROM A POOL OF PRECINCTS AS PRESCRIBED BY THIS SECTION. The
25 county political party chairman for each political party that is entitled
26 to continued representation on the state ballot or the chairman's designee
27 shall conduct the selection of the precincts to be hand counted. The
28 precincts shall be selected by lot without the use of a computer, and the
29 order of selection by the county political party chairmen shall also be by
30 lot. The selection of the precincts shall not begin until all ballots
31 voted in the precinct polling places have been delivered to the central
32 counting center. The unofficial vote totals from all precincts shall be
33 made public before selecting the precincts to be hand counted. Only the
34 ballots cast in the polling places and ballots from direct recording
35 electronic machines shall be included in the hand counts conducted
36 pursuant to this section. Provisional ballots, conditional provisional
37 ballots and write-in votes shall not be included in the hand counts and
38 the early ballots shall be grouped separately by the officer in charge of
39 elections for purposes of a separate manual audit pursuant to subsection F
40 of this section.

41 2. The races to be counted on the ballots from the precincts that
42 were selected pursuant to paragraph 1 of this subsection for each primary,
43 special and general election shall include up to five contested races.
44 After the county recorder or other officer in charge of elections
45 separates the primary ballots by political party, the races to be counted

1 shall be determined by selecting by lot without the use of a computer from
2 those ballots as follows:

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

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

6 (c) One contested race for federal office, either United States
7 senate or United States house of representatives. If the United States
8 house of representatives race is selected, the names of the candidates may
9 vary among the sampled precincts.

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

13 (e) If there are fewer than four contested races resulting from the
14 selections made pursuant to subdivisions (a) through (d) of this ~~section~~
15 PARAGRAPH and if there are additional contested federal, statewide or
16 legislative races or ballot measures, additional contested races shall be
17 selected by lot not using a computer until four races have been selected
18 or until no additional contested federal, statewide or legislative races
19 or ballot measures are available for selection.

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

23 3. For the presidential preference election, select by lot two
24 percent of the polling places designated and used pursuant to section
25 16-248 and perform the hand count of those ballots.

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

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

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

35 7. The county chairman of each political party shall designate and
36 provide the number of election board members as designated by the county
37 officer in charge of elections who shall perform the hand count under the
38 supervision of the county officer in charge of elections. For each
39 precinct that is to be audited, the county chairmen shall designate at
40 least two board workers who are registered members of any or no political
41 party to assist with the audit. Any qualified elector from this state may
42 be a board worker without regard to party designation. The county
43 election officer shall provide for compensation for those board workers,
44 not to include travel, meal or lodging expenses. If there are less than
45 two persons for each audited precinct available to participate on behalf

1 of each recognized political party, the recorder or officer in charge of
2 elections, with the approval of at least two county party chairpersons in
3 the county in which the shortfall occurs, shall substitute additional
4 individual electors who are provided by any political party from anywhere
5 in the state without regard to party designation to conduct the hand
6 count. A county party chairman shall approve only those substitute
7 electors who are provided by the county chairman's political party. The
8 political parties shall provide to the recorder or officer in charge of
9 elections in writing the names of those persons intending to participate
10 in the hand count at the audited precincts not later than 5:00 p.m. on the
11 Tuesday preceding the election. If the total number of board workers
12 provided by all parties is less than four times the number of precincts to
13 be audited, the recorder or officer in charge of elections shall notify
14 the parties of the shortage by 9:00 a.m. on the Wednesday preceding the
15 election. The hand count shall not proceed unless the political parties
16 provide the recorder or officer in charge of elections, in writing, a
17 sufficient number of persons by 5:00 p.m. on the Thursday preceding the
18 election and a sufficient number of persons, pursuant to this paragraph,
19 arrive to perform the hand count. The recorder or officer in charge of
20 elections may prohibit persons from participating in the hand count if
21 they are taking actions to disrupt the count or are unable to perform the
22 duties as assigned. For the hand count to proceed, not more than
23 seventy-five percent of the persons performing the hand count shall be
24 from the same political party.

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

29 C. If the randomly selected races result in a difference in any
30 race that is less than the designated margin when compared to the
31 electronic tabulation of those same ballots, the results of the electronic
32 tabulation constitute the official count for that race. If the randomly
33 selected races result in a difference in any race that is equal to or
34 greater than the designated margin when compared to the electronic
35 tabulation of those same ballots, a second hand count of those same
36 ballots and races shall be performed. If the second hand count results in
37 a difference in any race that is less than the designated margin when
38 compared to the electronic tabulation for those same ballots, the
39 electronic tabulation constitutes the official count for that race. If
40 the second hand count results in a difference in any race that is equal to
41 or greater than the designated margin when compared to the electronic
42 tabulation for those same ballots, the hand count shall be expanded to
43 include a total of twice the original number of randomly selected
44 precincts. Those additional precincts shall be selected by lot without
45 the use of a computer.

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

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

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

1 margin when compared to any of the earlier manual counts for that race,
2 the manual counts shall be repeated for that race until a manual count
3 results in a difference in that race that is less than the designated
4 margin. If at any point in the manual audit of early ballots the
5 difference between any manual count of early ballots is less than the
6 designated margin when compared to the electronic tabulation of those
7 ballots, the electronic tabulation shall be included in the canvass and no
8 further manual audit of the early ballots shall be conducted.

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

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

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

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

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

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

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

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

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

10 5. Members of the vote count verification committee are not
11 eligible to receive compensation but are eligible for reimbursement of
12 expenses pursuant to title 38, chapter 4, article 2. The committee is a
13 public body and its meetings are subject to title 38, chapter 3, article
14 3.1 and its reports and records are subject to title 39, chapter 1.