

REFERENCE TITLE: recounts; requests; procedures; audits

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

SB 1259

Introduced by
Senator Mesnard

AN ACT

AMENDING SECTION 16-602, ARIZONA REVISED STATUTES; AMENDING TITLE 16, CHAPTER 4, ARTICLE 12, ARIZONA REVISED STATUTES, BY ADDING 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; designated
5 margin; hand counts; vote count verification
6 committee

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

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

30 1. At least ~~two~~ FIVE percent of the precincts in that county, or
31 ~~two precincts~~ THE NUMBER OF PRECINCTS THAT IS REQUIRED TO ACHIEVE A
32 STATISTICAL SIGNIFICANCE CONSISTING OF A NINETY-NINE PERCENT CONFIDENCE
33 LEVEL WITH A MARGIN OF ERROR OF ONE PERCENT BASED ON THE TOTAL NUMBER OF
34 BALLOTS CAST IN THAT COUNTY ON ELECTION DAY, whichever is greater, shall
35 be selected at random from a pool consisting of every precinct in that
36 county. THE HAND COUNT PRESCRIBED IN THIS SECTION SHALL BE CONDUCTED AT
37 THE PRECINCT LEVEL. FOR PURPOSES OF THE HAND COUNT PRESCRIBED BY THIS
38 SECTION, A VOTING CENTER IS DEEMED TO BE A PRECINCT. The county political
39 party chairman for each political party that is entitled to continued
40 representation on the state ballot or the chairman's designee shall
41 conduct the selection of the precincts to be hand counted. The precincts
42 shall be selected by lot without the use of a computer, and the order of
43 selection by the county political party chairmen shall also be by
44 lot. The selection of the precincts shall not begin until all ballots
45 voted in the precinct polling places have been delivered to the central

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

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

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

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

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

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

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

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

37 3. For the presidential preference election, select by lot ~~two~~ FIVE
38 percent of the polling places designated and used pursuant to section
39 16-248 OR THE NUMBER OF PRECINCTS THAT IS REQUIRED TO ACHIEVE A
40 STATISTICAL SIGNIFICANCE CONSISTING OF A NINETY-NINE PERCENT CONFIDENCE
41 LEVEL WITH A MARGIN OF ERROR OF ONE PERCENT BASED ON THE TOTAL NUMBER OF
42 BALLOTS CAST IN THAT COUNTY, WHICHEVER IS GREATER, and perform the hand
43 count of those ballots. THE HAND COUNT PRESCRIBED IN THIS SECTION SHALL
44 BE CONDUCTED AT THE PRECINCT LEVEL. FOR THE PURPOSES OF THE HAND COUNT
45 PREScribed BY THIS SECTION, A VOTING CENTER IS DEEMED TO BE A PRECINCT.

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

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

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

10 7. The county chairman of each political party shall designate and
11 provide the number of election board members as designated by the county
12 officer in charge of elections who shall perform the hand count under the
13 supervision of the county officer in charge of elections. For each
14 precinct that is to be audited, the county chairmen shall designate at
15 least two board workers who are registered members of any or no political
16 party to assist with the audit. Any qualified elector from this state may
17 be a board worker without regard to party designation. The county
18 election officer shall provide for compensation for those board workers,
19 not to include travel, meal or lodging expenses. If there are less than
20 two persons for each audited precinct available to participate on behalf
21 of each recognized political party, the recorder or officer in charge of
22 elections, with the approval of at least two county party chairpersons in
23 the county in which the shortfall occurs, shall substitute additional
24 individual electors who are provided by any political party from anywhere
25 in the state without regard to party designation to conduct the hand
26 count. A county party chairman shall approve only those substitute
27 electors who are provided by the county chairman's political party. **NOT**
28 **LATER THAN 5:00 P.M. ON THE SECOND TUESDAY PRECEDING THE ELECTION, THE**
29 **COUNTY RECORDER OR OTHER OFFICER IN CHARGE OF ELECTIONS SHALL PROVIDE TO**
30 **THE COUNTY CHAIRMAN OF EACH POLITICAL PARTY AN ESTIMATE OF THE NUMBER OF**
31 **PEOPLE NEEDED TO PERFORM THE HAND COUNT.** The political parties shall
32 provide to the recorder or officer in charge of elections in writing the
33 names of those persons intending to participate in the hand count at the
34 audited precincts not later than 5:00 p.m. on the Tuesday preceding the
35 election. **NOT LATER THAN 9:00 A.M. ON THE WEDNESDAY FOLLOWING THE**
36 **ELECTION, THE COUNTY RECORDER OR OTHER OFFICER IN CHARGE OF ELECTIONS**
37 **SHALL PROVIDE TO THE COUNTY CHAIRMAN OF EACH POLITICAL PARTY THE FINAL**
38 **NUMBER OF PERSON NEEDED TO PERFORM THE HAND COUNT.** If the total number of
39 board workers **PREVIOUSLY** provided by all parties is less than four times
40 the number of precincts to be audited, the recorder or officer in charge
41 of elections shall notify the parties of the shortage **by NOT LATER THAN**
42 9:00 a.m. on the Wednesday **preceding FOLLOWING** the election. The hand
43 count shall not proceed unless the political parties provide the recorder
44 or officer in charge of elections, in writing, a sufficient number of
45 persons **by NOT LATER THAN** 5:00 p.m. on the Thursday **preceding FOLLOWING**

1 the election and a sufficient number of persons, pursuant to this
2 paragraph, arrive to perform the hand count. The recorder or officer in
3 charge of elections may prohibit persons from participating in the hand
4 count if they are taking actions to disrupt the count or are unable to
5 perform the duties as assigned. For the hand count to proceed, not more
6 than seventy-five percent of the persons performing the hand count shall
7 be from the same political party.

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

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

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

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

1 jurisdiction and that hand count constitutes the official count for that
2 race.

3 F. After the electronic tabulation of early ballots and at one or
4 more times selected by the chairman of the political parties entitled to
5 continued representation on the ballot or the chairman's designee, the
6 chairmen or the chairmen's designees shall randomly select one or more
7 batches of early ballots that have been tabulated to include at least one
8 batch from each machine used for tabulating early ballots and those
9 ballots shall be securely sequestered by the county recorder or officer in
10 charge of elections along with their unofficial tally reports for a
11 postelection manual audit. FOR A COUNTY WITH A POPULATION OF EIGHT
12 HUNDRED THOUSAND PERSONS OR MORE, the chairmen or the chairmen's designees
13 shall randomly select from those sequestered early ballots ~~a number equal~~
14 ~~to one percent of the total number of early ballots cast or five~~ TEN
15 thousand early ballots, ~~whichever is less~~ OR THE NUMBER OF EARLY BALLOTS
16 THAT IS REQUIRED TO ACHIEVE A STATISTICAL SIGNIFICANCE CONSISTING OF A
17 NINETY-NINE PERCENT CONFIDENCE LEVEL WITH A MARGIN OF ERROR OF TWO PERCENT
18 BASED ON THE TOTAL NUMBER OF EARLY BALLOTS CAST IN THAT COUNTY, WHICHEVER
19 IS GREATER. FOR A COUNTY WITH A POPULATION OF LESS THAN EIGHT HUNDRED
20 THOUSAND PERSONS, THE CHAIRMEN OR THE CHAIRMEN'S DESIGNEES SHALL RANDOMLY
21 SELECT FROM THOSE SEQUESTERED EARLY BALLOTS THE NUMBER OF EARLY BALLOTS
22 THAT IS REQUIRED TO ACHIEVE A STATISTICAL SIGNIFICANCE CONSISTING OF A
23 NINETY-NINE PERCENT CONFIDENCE LEVEL WITH A MARGIN OF ERROR OF THREE
24 PERCENT BASED ON THE TOTAL NUMBER OF EARLY BALLOTS CAST IN THAT COUNTY.
25 From those randomly selected early ballots, the county officer in charge
26 of elections shall conduct a manual audit of the same races that are being
27 hand counted pursuant to subsection B of this section. If the manual
28 audit of the early ballots results in a difference in any race that is
29 equal to or greater than the designated margin when compared to the
30 electronically tabulated results for those same early ballots, the manual
31 audit shall be repeated for those same early ballots. If the second
32 manual audit results in a difference in that race that is equal to or
33 greater than the designated margin when compared to the electronically
34 tabulated results for those same early ballots, the manual audit shall be
35 expanded only for that race to a number of additional early ballots equal
36 to one percent of the total early ballots cast or an additional five
37 thousand ballots, whichever is less, to be randomly selected from the
38 batch or batches of sequestered early ballots. If the expanded early
39 ballot manual audit results in a difference for that race that is equal to
40 or greater than the designated margin when compared to any of the earlier
41 manual counts for that race, the manual counts shall be repeated for that
42 race until a manual count results in a difference in that race that is
43 less than the designated margin. If at any point in the manual audit of
44 early ballots the difference between any manual count of early ballots is
45 less than the designated margin when compared to the electronic tabulation

1 of those ballots, the electronic tabulation shall be included in the
2 canvass and no further manual audit of the early ballots shall be
3 conducted.

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

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

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

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

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

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

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

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

41 4. The vote count verification committee shall meet and establish
42 one or more designated margins to be used in reviewing the hand counting
43 of votes as required pursuant to this section. The committee shall review
44 and consider revising the designated margins every two years for use in
45 the applicable elections. The committee shall provide the designated

1 margins to the secretary of state at least ten days before the primary
2 election and at least ten days before the general election, and the
3 secretary of state shall make that information publicly available on the
4 secretary of state's website.

5 5. Members of the vote count verification committee are not
6 eligible to receive compensation but are eligible for reimbursement of
7 expenses pursuant to title 38, chapter 4, article 2. The committee is a
8 public body and its meetings are subject to title 38, chapter 3, article
9 3.1 and its reports and records are subject to title 39, chapter 1.

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

12 16-661.01. Recounts; attorney general; secretary of state;
13 legislative council; procedures; exemptions

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

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

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

37 D. THIS SECTION DOES NOT APPLY TO ELECTIONS FOR PRECINCT
38 COMMITTEEMEN, SCHOOL DISTRICT GOVERNING BOARDS, COMMUNITY COLLEGE DISTRICT
39 GOVERNING BOARDS, FIRE DISTRICT BOARDS OR FIRE DISTRICT CHIEFS OR
40 SECRETARY-TREASURERS AND BOARDS OF OTHER SPECIAL DISTRICTS.

41 16-661.02. Recounts; bond; procedure; exemptions

42 A. WITHIN FIVE DAYS AFTER COMPLETION OF THE CANVASS A PERSON MAY
43 FILE AN ACTION FOR A RECOUNT IN ANY GENERAL ELECTION OTHER THAN A GENERAL
44 ELECTION THAT REQUIRES AN AUTOMATIC RECOUNT AS PRESCRIBED BY SECTION
45 16-661 IF THE PERSON FILES A BOND WITH THE SUPERIOR COURT IN A FORM AND IN

1 AN AMOUNT AS DETERMINED BY THE COURT TO BE SUFFICIENT TO PROVIDE FOR FULL
2 REIMBURSEMENT OF THE COSTS OF CONDUCTING THE RECOUNT. THE REQUESTED
3 RECOUNT MAY BE FOR THE TOTAL NUMBER OF VOTES CAST IN AN ELECTION OR THE
4 TOTAL NUMBER OF VOTES CAST AT ANY PRECINCT, VOTING CENTER OR DISTRICT OR
5 OTHER JURISDICTION OR ANY COMBINATION OF THOSE PORTIONS OF AN ELECTION.
6 THE PERSON FILING THE ACTION MAY REQUEST A RECOUNT BY HAND COUNT OR A
7 RECOUNT BY USE OF VOTING EQUIPMENT, AND THE AMOUNT OF THE BOND SHALL
8 REFLECT THE TYPE OF RECOUNT REQUESTED.

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

15 C. THIS SECTION DOES NOT APPLY TO ELECTIONS FOR PRECINCT
16 COMMITTEEMEN, SCHOOL DISTRICT GOVERNING BOARDS, COMMUNITY COLLEGE DISTRICT
17 GOVERNING BOARDS, FIRE DISTRICT BOARDS OR FIRE DISTRICT CHIEFS OR
18 SECRETARY-TREASURERS AND BOARDS OF OTHER SPECIAL DISTRICTS.