

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)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 16-602, Arizona Revised Statutes, is amended to read:

16-602. Removal of ballots from ballot boxes; designated margin; hand counts; vote count verification committee

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

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

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

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. **NOT LATER THAN 5:00 P.M. ON THE SECOND TUESDAY PRECEDING THE ELECTION, THE COUNTY RECORDER OR OTHER OFFICER IN CHARGE OF ELECTIONS SHALL PROVIDE TO THE COUNTY CHAIRMAN OF EACH POLITICAL PARTY AN ESTIMATE OF THE NUMBER OF PEOPLE NEEDED TO PERFORM THE HAND COUNT.** 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. **NOT LATER THAN 9:00 A.M. ON THE WEDNESDAY FOLLOWING THE ELECTION, THE COUNTY RECORDER OR OTHER OFFICER IN CHARGE OF ELECTIONS SHALL PROVIDE TO THE COUNTY CHAIRMAN OF EACH POLITICAL PARTY THE FINAL NUMBER OF PERSON NEEDED TO PERFORM THE HAND COUNT.** If the total number of board workers **PREVIOUSLY** 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 NOT LATER THAN 9:00 a.m. on the Wednesday preceding FOLLOWING** 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 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.