SB 1565

Introduced by
Senators Carroll: Bennett, Gowan, Kaiser, Mesnard, Shamp; Representatives Carbone, Carter, Diaz, Dunn, Nguyen, Payne, Smith

AN ACT
AMENDING SECTIONS 16-442, 16-552 AND 16-621, ARIZONA REVISED STATUTES; 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 16-442, Arizona Revised Statutes, is amended to read:

16-442. Committee approval; adoption of vote tabulating equipment; experimental use; emergency certification

A. The secretary of state shall appoint a committee of three persons, to consist of a member of the engineering college at one of the universities, a member of the state bar of Arizona and one person familiar with voting processes in the state, no more than two of whom shall be of the same political party, and at least one of whom shall have at least five years of experience with and shall be able to render an opinion based on knowledge of, training in or education in electronic voting systems, procedures and security. The committee shall investigate and test the various types of vote recording or tabulating machines or devices that may be used under this article. The committee shall submit its recommendations to the secretary of state who shall make final adoption of the type or types, make or makes, model or models to be certified for use in this state. The committee shall serve without compensation.

B. Machines or devices used at any election for federal, state or county offices may only be certified for use in this state and may only be used in this state if they comply with the help America vote act of 2002 and if those machines or devices have been tested and approved by a laboratory that is accredited pursuant to the help America vote act of 2002. MACHINES, DEVICES, FIRMWARE OR SOFTWARE USED IN THIS STATE MAY NOT INCLUDE ANY ARTIFICIAL INTELLIGENCE OR LEARNING HARDWARE, FIRMWARE OR SOFTWARE.

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

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

1. The person or firm installs, uses or permits ALLOWS the use of a voting system or device that is not certified for use or approved for experimental use in this state pursuant to this section.
2. The person or firm uses or includes hardware, firmware or software in a version that is not certified for use or approved for experimental use pursuant to this section in a certified voting system or device.

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

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

G. After consultation with the committee prescribed by subsection A of this section, the secretary of state may approve for emergency use an upgrade or modification to a voting system or device that is certified for use in this state if the governing body establishes in an open meeting that the election cannot be conducted without the emergency certification. Any emergency certification shall be limited to no more than six months. At the conclusion of the certification period the voting system or device shall be decertified and unavailable for future use unless certified in accordance with this section.

Sec. 2. Section 16-552, Arizona Revised Statutes, is amended to read:

16-552. Early ballots; processing; challenges
A. In a jurisdiction that uses optical scan ballots, the officer in charge of elections may use the procedure prescribed by this section or may request approval from the secretary of state for a different method for processing early ballots, EXCEPT THAT ARTIFICIAL INTELLIGENCE OR LEARNING SOFTWARE OR FIRMWARE MAY NOT BE USED IN THE PROCESSING OF EARLY BALLOTS OR BY THE ELECTION BOARD IN VERIFYING THE VOTER'S AFFIDAVIT. The request shall be made in writing at least ninety days before the election for which the procedure is intended to be used. After the election official has confirmed with the secretary of state that all election equipment passes the logic and accuracy test, the election official may begin to count early ballots. No early ballot results may be released except as prescribed by section 16-551.

B. The early election board shall check the voter's affidavit on the envelope containing the early ballot WITHOUT USING ANY ARTIFICIAL INTELLIGENCE OR LEARNING SOFTWARE OF FIRMWARE. If it is found to be sufficient, the vote shall be allowed. If the affidavit is insufficient, the vote shall not be allowed.
C. The county chairman of each political party represented on the ballot, by written appointment addressed to the early election board, may designate party representatives and alternates to act as early ballot challengers for the party. No party may have more than the number of such representatives or alternates that were mutually agreed on by each political party to be present at one time. If such agreement cannot be reached, the number of representatives shall be limited to one for each political party.

D. An early ballot may be challenged on any grounds set forth in section 16-591. All challenges shall be made in writing with a brief statement of the grounds before the early ballot is placed in the ballot box. A record of all challenges and resulting proceedings shall be kept in substantially the same manner as provided in section 16-594. If an early ballot is challenged, it shall be set aside and retained in the possession of the early election board or other officer in charge of early ballot processing until a time that the early election board sets for determination of the challenge, subject to the procedure in subsection E of this section, at which time the early election board shall hear the grounds for the challenge and shall decide what disposition shall be made of the early ballot by majority vote. If the early ballot is not allowed, it shall be handled pursuant to subsection G of this section.

E. Within twenty-four hours of receipt of a challenge, the early election board or other officer in charge of early ballot processing shall mail, by first class mail, a notice of the challenge including a copy of the written challenge, and also including the time and place at which the voter may appear to defend the challenge, to the voter at the mailing address shown on the request for an early ballot or, if none was provided, to the mailing address shown on the registration rolls. Notice shall also be mailed to the challenger at the address listed on the written challenge and provided to the county chairman of each political party represented on the ballot. The board shall meet to determine the challenge at the time specified by the notice but, in any event, not earlier than ninety-six hours after the notice is mailed, or forty-eight hours if the notifying party chooses to deliver the notice by overnight or hand delivery, and not later than 5:00 p.m. on the Monday following the election. The board shall provide the voter with an informal opportunity to make, or to submit, brief statements regarding the challenge. The board may decline to permit comments, either in person or in writing, by anyone other than the voter, the challenger and the party representatives. The burden of proof is on the challenger to show why the voter should not be permitted to vote. The fact that the voter fails to appear shall not be deemed to be an admission of the validity of the challenge. The early election board or other officer in charge of early ballot processing is not required to provide the notices described in this subsection if the written challenge fails to set forth
at least one of the grounds listed in section 16-591 as a basis for the challenge. In that event, the challenge will be summarily rejected at the meeting of the board. Except for election contests pursuant to section 16-672, the board's decision is final and may not be appealed.

F. If the vote is allowed, the board shall open the envelope containing the ballot in such a manner that the affidavit thereon is not destroyed, take out the ballot without unfolding it or permitting it to be opened or examined and show by the records of the election that the elector has voted.

G. If the vote is not allowed, the affidavit envelope containing the early ballot shall not be opened and the board shall mark across the face of such envelope the grounds for rejection. The affidavit envelope and its contents shall then be deposited with the opened affidavit envelopes and shall be preserved with official returns. If the voter does not enter an appearance, the board shall send the voter a notice stating whether the early ballot was disallowed and, if disallowed, providing the grounds for the determination. The notice shall be mailed by first class mail to the voter's mailing address as shown on the registration rolls within three days after the board's determination.

H. Party representatives and alternates may be appointed as provided in subsection C of this section to be present and to challenge the verification of questioned ballots pursuant to section 16-584 on any grounds permitted by this section. Questioned ballots that are challenged shall be presented to the early election board for decision under the provisions of this section.

Sec. 3. Section 16-621, Arizona Revised Statutes, is amended to read:

16-621. Proceedings at the counting center

A. All proceedings at the counting center shall be under the direction of the board of supervisors or other officer in charge of elections and shall be conducted in accordance with the approved instructions and procedures manual issued pursuant to section 16-452 under the observation of representatives of each political party and the public. The proceedings at the counting center may also be observed by up to three additional people representing a candidate for nonpartisan office, or representing a political committee in support of or in opposition to a ballot measure, proposition or question. A draw by lot shall determine which three groups or candidates shall have representatives participate in the observation at the counting center. Persons representing a candidate for nonpartisan office or persons or groups representing a political committee in support of or in opposition to a ballot measure, proposition or question, who are interested in participating in the observation, shall notify the officer in charge of elections of their desire to be included in the draw not later than seventeen days before the election. After the deadline to receive submissions from the interested persons or groups, but
prior to fourteen days before the election, the county officer in charge of elections shall draw by lot, from the list of those that expressed interest, three persons or groups and those selected shall be notified and allowed to observe the proceedings at the counting center. If a group is selected the group may alter who represents that group for different days of observation but on any given observation day a selected group shall not send more than one observer. A group may rotate an observer throughout the day. Only those persons who are authorized for the purpose shall touch any ballot or ballot card or return. All persons who are engaged in processing and counting of the ballots shall be qualified electors, shall be deputized in writing and shall take an oath that they will faithfully perform their assigned duties. There shall be no preferential counting of ballots for the purpose of projecting the outcome of the election. 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. 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.

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

1. The electronic vote adjudication feature shall be included in the tabulation system logic and accuracy testing prescribed by section 16-449 and may not include any artificial intelligence or learning software or firmware.

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

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

   (a) A method to track and account for the original ballot and the digital duplicate of the ballot created by the electronic vote adjudication feature that includes a serial number on the digital image that can be used to track electronic vote adjudication board actions.
(b) The creation and retention of comprehensive logs of all digital duplication and adjudication actions performed by an electronic vote adjudication board.

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

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

D. For any statewide, county or legislative election, the county recorder or other officer in charge of elections shall provide for a live video recording of the custody of all ballots while the ballots are present in a tabulation room in the counting center. The live video recording shall include date and time indicators and shall be linked to the secretary of state's website. The secretary of state shall post links to the video coverage for viewing by the public. The county recorder or other officer in charge of elections shall record the video coverage of the ballots at the counting center and shall retain those recordings as a public record for at least as long as the challenge period for the general election. If the live video feed is disrupted or disabled, the recorder or officer in charge of elections is not liable for the disruption but shall attempt to reinstate video coverage as soon as is practicable. Any disruption in video coverage shall not affect or prevent the continued tabulation of ballots. This subsection is contingent on legislative appropriation.

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