

REFERENCE TITLE: ballot processing; electronic adjudication; limitation

State of Arizona  
Senate  
Fifty-sixth Legislature  
First Regular Session  
2023

## **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)

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

2 Section 1. Section 16-442, Arizona Revised Statutes, is amended to  
3 read:

4 16-442. Committee approval; adoption of vote tabulating  
5 equipment; experimental use; emergency  
6 certification

7 A. The secretary of state shall appoint a committee of three  
8 persons, to consist of a member of the engineering college at one of the  
9 universities, a member of the state bar of Arizona and one person familiar  
10 with voting processes in the state, ~~no~~ NOT more than two of whom shall be  
11 of the same political party, and at least one of whom shall have at least  
12 five years of experience with and shall be able to render an opinion based  
13 on knowledge of, training in or education in electronic voting systems,  
14 procedures and security. The committee shall investigate and test the  
15 various types of vote recording or tabulating machines or devices that may  
16 be used under this article. The committee shall submit its  
17 recommendations to the secretary of state who shall make final adoption of  
18 the type or types, make or makes, model or models to be certified for use  
19 in this state. The committee shall serve without compensation.

20 B. Machines or devices used at any election for federal, state or  
21 county offices may only be certified for use in this state and may only be  
22 used in this state if they comply with the help America vote act of 2002  
23 and if those machines or devices have been tested and approved by a  
24 laboratory that is accredited pursuant to the help America vote act of  
25 2002. ~~MACHINES, DEVICES, FIRMWARE OR SOFTWARE USED IN THIS STATE MAY NOT~~  
26 ~~INCLUDE ANY ARTIFICIAL INTELLIGENCE OR LEARNING HARDWARE, FIRMWARE OR~~  
27 ~~SOFTWARE.~~

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

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

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

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

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

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

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

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

26           16-552. Early ballots; processing; challenges

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

39           B. The early election board shall check the voter's affidavit on  
40 the envelope containing the early ballot WITHOUT USING ANY ARTIFICIAL  
41 INTELLIGENCE OR LEARNING SOFTWARE OF FIRMWARE. If it is found to be  
42 sufficient, the vote shall be allowed. If the affidavit is insufficient,  
43 the vote shall not be allowed.

1 C. The county chairman of each political party represented on the  
2 ballot, by written appointment addressed to the early election board, may  
3 designate party representatives and alternates to act as early ballot  
4 challengers for the party. No party may have more than the number of such  
5 representatives or alternates that were mutually agreed on by each  
6 political party to be present at one time. If such agreement cannot be  
7 reached, the number of representatives shall be limited to one for each  
8 political party.

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

22 E. Within twenty-four hours ~~of receipt of~~ AFTER RECEIVING a  
23 challenge, the early election board or other officer in charge of early  
24 ballot processing shall mail, by first class mail, a notice of the  
25 challenge including a copy of the written challenge, and also including  
26 the time and place at which the voter may appear to defend the challenge,  
27 to the voter at the mailing address shown on the request for an early  
28 ballot or, if none was provided, to the mailing address shown on the  
29 registration rolls. Notice shall also be mailed to the challenger at the  
30 address listed on the written challenge and provided to the county  
31 chairman of each political party represented on the ballot. The board  
32 shall meet to determine the challenge at the time specified by the notice  
33 but, in any event, not earlier than ninety-six hours after the notice is  
34 mailed, or forty-eight hours if the notifying party chooses to deliver the  
35 notice by overnight or hand delivery, and not later than 5:00 p.m. on the  
36 Monday following the election. The board shall provide the voter with an  
37 informal opportunity to make, or to submit, brief statements regarding the  
38 challenge. The board may decline to ~~permit~~ ALLOW comments, either in  
39 person or in writing, by anyone other than the voter, the challenger and  
40 the party representatives. The burden of proof is on the challenger to  
41 show why the voter should not be ~~permitted~~ ALLOWED to vote. The fact that  
42 the voter fails to appear shall not be deemed to be an admission of the  
43 validity of the challenge. The early election board or other officer in  
44 charge of early ballot processing is not required to provide the notices  
45 described in this subsection if the written challenge fails to set forth

1 at least one of the grounds listed in section 16-591 as a basis for the  
2 challenge. In that event, the challenge will be summarily rejected at the  
3 meeting of the board. Except for election contests pursuant to section  
4 16-672, the board's decision is final and may not be appealed.

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

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

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

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

28 16-621. Proceedings at the counting center

29 A. All proceedings at the counting center shall be under the  
30 direction of the board of supervisors or other officer in charge of  
31 elections and shall be conducted in accordance with the approved  
32 instructions and procedures manual issued pursuant to section 16-452 under  
33 the observation of representatives of each political party and the public.  
34 The proceedings at the counting center may also be observed by up to three  
35 additional people representing a candidate for nonpartisan office, or  
36 representing a political committee in support of or in opposition to a  
37 ballot measure, proposition or question. A draw by lot shall determine  
38 which three groups or candidates shall have representatives participate in  
39 the observation at the counting center. Persons representing a candidate  
40 for nonpartisan office or persons or groups representing a political  
41 committee in support of or in opposition to a ballot measure, proposition  
42 or question, who are interested in participating in the observation, shall  
43 notify the officer in charge of elections of their desire to be included  
44 in the draw not later than seventeen days before the election. After the  
45 deadline to receive submissions from the interested persons or groups, but

1 prior to fourteen days before the election, the county officer in charge  
 2 of elections shall draw by lot, from the list of those that expressed  
 3 interest, three persons or groups and those selected shall be notified and  
 4 allowed to observe the proceedings at the counting center. If a group is  
 5 selected the group may alter who represents that group for different days  
 6 of observation but on any given observation day a selected group shall not  
 7 send more than one observer. A group may rotate an observer throughout  
 8 the day. Only those persons who are authorized for the purpose shall  
 9 touch any ballot or ballot card or return. All persons who are engaged in  
 10 processing and counting of the ballots shall be qualified electors, shall  
 11 be deputized in writing and shall take an oath that they will faithfully  
 12 perform their assigned duties. There shall be no preferential counting of  
 13 ballots for the purpose of projecting the outcome of the election. If any  
 14 ballot, including any ballot received from early voting, is damaged or  
 15 defective so that it cannot properly be counted by the automatic  
 16 tabulating equipment, a true duplicate copy ~~shall be made~~  
 17 or defective ballot **SHALL BE MADE** in the presence of witnesses and  
 18 substituted for the damaged or defective ballot. All duplicate ballots  
 19 created pursuant to this subsection shall be clearly labeled "duplicate"  
 20 and shall bear a serial number that shall be recorded on the damaged or  
 21 defective ballot.

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

27 1. The electronic vote adjudication feature shall be included in  
 28 the tabulation system logic and accuracy testing prescribed by section  
 29 16-449 **AND MAY NOT INCLUDE ANY ARTIFICIAL INTELLIGENCE OR LEARNING**  
 30 **SOFTWARE OR FIRMWARE.**

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

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

42 (a) A method to track and account for the original ballot and the  
 43 digital duplicate of the ballot created by the electronic vote  
 44 adjudication feature that includes a serial number on the digital image  
 45 that can be used to track electronic vote adjudication board actions.

1 (b) The creation and retention of comprehensive logs of all digital  
2 duplication and adjudication actions performed by an electronic vote  
3 adjudication board.

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

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

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

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