

Senate Engrossed

ballot processing; electronic adjudication; limitation

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

SENATE BILL 1565

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~~ of the damaged
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.