

REFERENCE TITLE: elections; hand count audit; selection

State of Arizona
Senate
Fifty-sixth Legislature
Second Regular Session
2024

SB 1651

Introduced by
Senator Bennett

AN ACT

AMENDING SECTION 16-602, 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 16-602, 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 percent of the precincts in that county, or two precincts, whichever is greater, shall be selected at random from a pool consisting of every precinct in that county. The county political party ~~chairman~~ CHAIRPERSON for each political party that is entitled to continued representation on the state ballot or the ~~chairman's~~ CHAIRPERSON'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~~ CHAIRPERSONS 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 counting center. The unofficial vote totals from all precincts shall be made public before selecting the precincts to be hand counted. Only the ballots cast in the polling places and ballots from direct recording electronic machines shall be included in the hand counts conducted pursuant to this section. Provisional ballots, conditional provisional ballots and write-in votes shall not be included

1 in the hand counts and the early ballots shall be grouped separately by
2 the officer in charge of elections for purposes of a separate manual audit
3 pursuant to subsection F of this section.

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

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

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

14 (c) One contested race for federal office, either United States
15 senate or United States house of representatives. If the United States
16 house of representatives race is selected, the names of the candidates may
17 vary among the sampled precincts.

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

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

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

31 3. For the presidential preference election, select by lot two
32 percent of the polling places designated and used pursuant to section
33 16-248 and perform the hand count of those ballots.

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

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

39 6. Each county ~~chairman~~ CHAIRPERSON of a political party that is
40 entitled to continued representation on the state ballot or the ~~chairman's~~
41 ~~CHAIRPERSON'S~~ designee shall select by lot the individual races to be hand
42 counted pursuant to this section.

43 7. The county ~~chairman~~ CHAIRPERSON of each political party shall
44 designate and provide the number of election board members as designated
45 by the county officer in charge of elections who shall perform the hand

1 count under the supervision of the county officer in charge of
2 elections. For each precinct that is to be audited, the county ~~chairmen~~
3 CHAIRPERSONS shall designate at least two board workers who are registered
4 members of any or no political party to assist with the audit. Any
5 qualified elector from this state may be a board worker without regard to
6 party designation. The county election officer shall provide for
7 compensation for those board workers, not to include travel, meal or
8 lodging expenses. If there are less than two persons for each audited
9 precinct available to participate on behalf of each recognized political
10 party, the recorder or officer in charge of elections, with the approval
11 of at least two county party chairpersons in the county in which the
12 shortfall occurs, shall substitute additional individual electors who are
13 provided by any political party from anywhere in the state without regard
14 to party designation to conduct the hand count. A county party ~~chairman~~
15 CHAIRPERSON shall approve only those substitute electors who are provided
16 by the county ~~chairman's~~ CHAIRPERSON'S political party. The political
17 parties shall provide to the recorder or officer in charge of elections in
18 writing the names of those persons intending to participate in the hand
19 count at the audited precincts not later than 5:00 p.m. on the Tuesday
20 preceding the election. If the total number of board workers provided by
21 all parties is less than four times the number of precincts to be audited,
22 the recorder or officer in charge of elections shall notify the parties of
23 the shortage by 9:00 a.m. on the Wednesday preceding the election. The
24 hand count shall not proceed unless the political parties provide the
25 recorder or officer in charge of elections, in writing, a sufficient
26 number of persons by 5:00 p.m. on the Thursday preceding the election and
27 a sufficient number of persons, pursuant to this paragraph, arrive to
28 perform the hand count. The recorder or officer in charge of elections
29 may prohibit persons from participating in the hand count if they are
30 taking actions to disrupt the count or are unable to perform the duties as
31 assigned. For the hand count to proceed, not more than seventy-five
32 percent of the persons performing the hand count shall be from the same
33 political party.

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

38 C. If the randomly selected races result in a difference in any
39 race that is less than the designated margin when compared to the
40 electronic tabulation of those same ballots, the results of the electronic
41 tabulation constitute the official count for that race. If the randomly
42 selected races result in a difference in any race that is equal to or
43 greater than the designated margin when compared to the electronic
44 tabulation of those same ballots, a second hand count of those same
45 ballots and races shall be performed. If the second hand count results in

1 a difference in any race that is less than the designated margin when
2 compared to the electronic tabulation for those same ballots, the
3 electronic tabulation constitutes the official count for that race. If
4 the second hand count results in a difference in any race that is equal to
5 or greater than the designated margin when compared to the electronic
6 tabulation for those same ballots, the hand count shall be expanded to
7 include a total of twice the original number of randomly selected
8 precincts. Those additional precincts shall be selected by lot without
9 the use of a computer.

10 D. In any expanded count of randomly selected precincts, if the
11 randomly selected precinct hand counts result in a difference in any race
12 that is equal to or greater than the designated margin when compared to
13 the electronic tabulation of those same ballots, the final hand count
14 shall be extended to include the entire jurisdiction for that race. If
15 the jurisdictional boundary for that race would include any portion of
16 more than one county, the final hand count shall not be extended into the
17 precincts of that race that are outside of the county that is conducting
18 the expanded hand count. If the expanded hand count results in a
19 difference in that race that is less than the designated margin when
20 compared to the electronic tabulation of those same ballots, the
21 electronic tabulation constitutes the official count for that race.

22 E. If a final hand count is performed for an entire jurisdiction
23 for a race, the final hand count shall be repeated for that race until a
24 hand count for that race for the entire jurisdiction results in a count
25 that is identical to one other hand count for that race for the entire
26 jurisdiction and that hand count constitutes the official count for that
27 race.

28 F. After the electronic tabulation of early ballots and at one or
29 more times selected by the ~~chairman~~ CHAIRPERSON of the political parties
30 entitled to continued representation on the ballot or the ~~chairman's~~
31 CHAIRPERSON'S designee, the ~~chairmen~~ CHAIRPERSONS or the ~~chairmen's~~
32 CHAIRPERSONS' designees shall ~~randomly~~ select BY LOT one or more batches
33 of early ballots that have been tabulated to include at least one batch
34 from each machine used for tabulating early ballots and those ballots
35 shall be securely sequestered by the county recorder or officer in charge
36 of elections along with their unofficial tally reports for a postelection
37 manual audit. The ~~chairmen~~ CHAIRPERSONS or the ~~chairmen's~~ CHAIRPERSONS'
38 designees shall ~~randomly~~ select BY LOT from those sequestered early
39 ballots a number equal to one percent of the total number of early ballots
40 cast or five thousand early ballots, whichever is less. From those
41 ~~randomly selected~~ early ballots THAT ARE SELECTED BY LOT, the county
42 officer in charge of elections shall conduct a manual audit of the same
43 races that are being hand counted pursuant to subsection B of this
44 section. If the manual audit of the early ballots results in a difference
45 in any race that is equal to or greater than the designated margin when

1 compared to the electronically tabulated results for those same early
2 ballots, the manual audit shall be repeated for those same early ballots.
3 If the second manual audit results in a difference in that race that is
4 equal to or greater than the designated margin when compared to the
5 electronically tabulated results for those same early ballots, the manual
6 audit shall be expanded only for that race to a number of additional early
7 ballots equal to one percent of the total early ballots cast or an
8 additional five thousand ballots, whichever is less, to be randomly
9 selected BY LOT from the batch or batches of sequestered early ballots.
10 If the expanded early ballot manual audit results in a difference for that
11 race that is equal to or greater than the designated margin when compared
12 to any of the earlier manual counts for that race, the manual counts shall
13 be repeated for that race until a manual count results in a difference in
14 that race that is less than the designated margin. If at any point in the
15 manual audit of early ballots the difference between any manual count of
16 early ballots is less than the designated margin when compared to the
17 electronic tabulation of those ballots, the electronic tabulation shall be
18 included in the canvass and no further manual audit of the early ballots
19 shall be conducted.

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

23 H. Notwithstanding any other law, the county officer in charge of
24 elections shall retain custody of the ballots for purposes of performing
25 any required hand counts and the officer shall provide for security for
26 those ballots.

27 I. The hand counts prescribed by this section shall begin within
28 twenty-four hours after the closing of the polls and shall be completed
29 before the canvassing of the election for that county. The results of
30 those hand counts shall be provided to the secretary of state, who shall
31 make those results publicly available on the secretary of state's website.

32 J. For any county in which a hand count has been expanded to all
33 precincts in the jurisdiction, the secretary of state shall make available
34 the escrowed source code for that county to the superior court. The
35 superior court shall appoint a special master to review the computer
36 software. The special master shall have expertise in software
37 engineering, shall not be affiliated with an election software vendor nor
38 with a candidate, shall sign and be bound by a nondisclosure agreement
39 regarding the source code itself and shall issue a public report to the
40 court and to the secretary of state regarding the special master's
41 findings on the reasons for the discrepancies. The secretary of state
42 shall consider the reports for purposes of reviewing the certification of
43 that equipment and software for use in this state.

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

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

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

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

13 4. The vote count verification committee shall meet and establish
14 one or more designated margins to be used in reviewing the hand counting
15 of votes as required pursuant to this section. The committee shall review
16 and consider revising the designated margins every two years for use in
17 the applicable elections. The committee shall provide the designated
18 margins to the secretary of state at least ten days before the primary
19 election and at least ten days before the general election, and the
20 secretary of state shall make that information publicly available on the
21 secretary of state's website.

22 5. Members of the vote count verification committee are not
23 eligible to receive compensation but are eligible for reimbursement of
24 expenses pursuant to title 38, chapter 4, article 2. The committee is a
25 public body and its meetings are subject to title 38, chapter 3, article
26 3.1 and its reports and records are subject to title 39, chapter 1.