

REFERENCE TITLE: hand count; political parties; employees

State of Arizona  
Senate  
Fifty-fifth Legislature  
Second Regular Session  
2022

## **SB 1573**

Introduced by  
Senator Townsend

AN ACT

AMENDING SECTION 16-602, ARIZONA REVISED STATUTES; RELATING TO THE 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 16-602, Arizona Revised Statutes, is amended to  
3 read:

4 16-602. Removal of ballots from ballot boxes; designated  
5 margin; hand counts; vote count verification  
6 committee

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

14 B. For each countywide primary, special, general and presidential  
15 preference election, the county officer in charge of the election shall  
16 conduct a hand count at one or more secure facilities. The hand count  
17 shall be conducted as prescribed by this section and in accordance with  
18 hand count procedures established by the secretary of state in the  
19 official instructions and procedures manual adopted pursuant to section  
20 16-452. The hand count is not subject to the live video requirements of  
21 section 16-621, subsection D, but the party representatives who are  
22 observing the hand count may bring their own video cameras in order to  
23 record the hand count. The recording shall not interfere with the conduct  
24 of the hand count and the officer in charge of the election may prohibit  
25 from recording or remove from the facility persons who are taking actions  
26 to disrupt the count. The sole act of recording the hand count does not  
27 constitute sufficient grounds for the officer in charge of the election to  
28 prohibit observers from recording or to remove them from the facility.  
29 The hand count shall be conducted in the following order:

30 1. At least ~~two~~ FIVE percent of the precincts in that county, or  
31 ~~two~~ FIVE precincts, whichever is greater, shall be selected at random from  
32 a pool consisting of every precinct in that county. The county political  
33 party chairman for each political party that is entitled to continued  
34 representation on the state ballot or the chairman's designee shall  
35 conduct the selection of the precincts to be hand counted. IF ONE OR MORE  
36 OF THE POLITICAL PARTIES DO NOT PROVIDE MEMBERS TO SELECT THE PRECINCTS,  
37 THE COUNTY RECORDER OR THE COUNTY RECORDER'S DESIGNEE SHALL SELECT A  
38 COUNTY EMPLOYEE WHO IS A MEMBER OF THE DESIGNATED POLITICAL PARTY TO  
39 PARTICIPATE IN SELECTING THE PRECINCTS. The precincts shall be selected  
40 by lot without the use of a computer, and the order of selection by the  
41 county political party chairmen shall also be by lot. The selection of  
42 the precincts shall not begin until all ballots voted in the precinct  
43 polling places have been delivered to the central counting center. The  
44 unofficial vote totals from all precincts shall be made public before  
45 selecting the precincts to be hand counted. Only the ballots cast in the

1 polling places and ballots from direct recording electronic machines shall  
2 be included in the hand counts conducted pursuant to this  
3 section. Provisional ballots, conditional provisional ballots and write-  
4 in votes shall not be included in the hand counts and the early ballots  
5 shall be grouped separately by the officer in charge of elections for  
6 purposes of a separate manual audit pursuant to subsection F of this  
7 section.

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

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

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

18 (c) One contested race for federal office, either United States  
19 senate or United States house of representatives. If the United States  
20 house of representatives race is selected, the names of the candidates may  
21 vary among the sampled precincts.

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

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

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

35 3. For the presidential preference election, select by lot two  
36 percent of the polling places designated and used pursuant to section  
37 16-248 and perform the hand count of those ballots.

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

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

1           6. Each county chairman of a political party that is entitled to  
2 continued representation on the state ballot or the chairman's designee  
3 shall select by lot the individual races to be hand counted pursuant to  
4 this section.

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

40           8. If a political party is not represented by a designated  
41 chairperson within a county, the state chairperson for that political  
42 party, or a person designated by the state chairperson, may perform the  
43 actions required by the county chairperson as specified in this section.

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

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

30 E. If a final hand count is performed for an entire jurisdiction  
31 for a race, the final hand count shall be repeated for that race until a  
32 hand count for that race for the entire jurisdiction results in a count  
33 that is identical to one other hand count for that race for the entire  
34 jurisdiction and that hand count constitutes the official count for that  
35 race.

36 F. After the electronic tabulation of early ballots and at one or  
37 more times selected by the chairman of the political parties entitled to  
38 continued representation on the ballot or the chairman's designee, the  
39 chairmen or the chairmen's designees shall randomly select one or more  
40 batches of early ballots that have been tabulated to include at least one  
41 batch from each machine used for tabulating early ballots and those  
42 ballots shall be securely sequestered by the county recorder or officer in  
43 charge of elections along with their unofficial tally reports for a  
44 postelection manual audit. The chairmen or the chairmen's designees shall  
45 randomly select from those sequestered early ballots a number equal to one

1 percent of the total number of early ballots cast or five thousand early  
2 ballots, whichever is less. From those randomly selected early ballots,  
3 the county officer in charge of elections shall conduct a manual audit of  
4 the same races that are being hand counted pursuant to subsection B of  
5 this section. If the manual audit of the early ballots results in a  
6 difference in any race that is equal to or greater than the designated  
7 margin when compared to the electronically tabulated results for those  
8 same early ballots, the manual audit shall be repeated for those same  
9 early ballots. If the second manual audit results in a difference in that  
10 race that is equal to or greater than the designated margin when compared  
11 to the electronically tabulated results for those same early ballots, the  
12 manual audit shall be expanded only for that race to a number of  
13 additional early ballots equal to one percent of the total early ballots  
14 cast or an additional five thousand ballots, whichever is less, to be  
15 randomly selected from the batch or batches of sequestered early  
16 ballots. If the expanded early ballot manual audit results in a  
17 difference for that race that is equal to or greater than the designated  
18 margin when compared to any of the earlier manual counts for that race,  
19 the manual counts shall be repeated for that race until a manual count  
20 results in a difference in that race that is less than the designated  
21 margin. If at any point in the manual audit of early ballots the  
22 difference between any manual count of early ballots is less than the  
23 designated margin when compared to the electronic tabulation of those  
24 ballots, the electronic tabulation shall be included in the canvass and no  
25 further manual audit of the early ballots shall be conducted.

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

29 H. Notwithstanding any other law, the county officer in charge of  
30 elections shall retain custody of the ballots for purposes of performing  
31 any required hand counts and the officer shall provide for security for  
32 those ballots.

33 I. The hand counts prescribed by this section shall begin within  
34 twenty-four hours after the closing of the polls and shall be completed  
35 before the canvassing of the election for that county. The results of  
36 those hand counts shall be provided to the secretary of state, who shall  
37 make those results publicly available on the secretary of state's website.  
38 THE CANVASS OF THE ELECTION CANNOT BE COMPLETED UNLESS THE HAND COUNT IS  
39 CONDUCTED AS PRESCRIBED IN THIS SECTION AND THE RESULTS ARE CONSPICUOUSLY  
40 POSTED ON THE COUNTY RECORDER'S WEBSITE.

41 J. For any county in which a hand count has been expanded to all  
42 precincts in the jurisdiction, the secretary of state shall make available  
43 the escrowed source code for that county to the superior court. The  
44 superior court shall appoint a special master to review the computer  
45 software. The special master shall have expertise in software

1 engineering, shall not be affiliated with an election software vendor nor  
2 with a candidate, shall sign and be bound by a nondisclosure agreement  
3 regarding the source code itself and shall issue a public report to the  
4 court and to the secretary of state regarding the special master's  
5 findings on the reasons for the discrepancies. The secretary of state  
6 shall consider the reports for purposes of reviewing the certification of  
7 that equipment and software for use in this state.

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

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

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

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

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

29 5. Members of the vote count verification committee are not  
30 eligible to receive compensation but are eligible for reimbursement of  
31 expenses pursuant to title 38, chapter 4, article 2. The committee is a  
32 public body and its meetings are subject to title 38, chapter 3, article  
33 3.1 and its reports and records are subject to title 39, chapter 1.