

REFERENCE TITLE: hand count audit; technical correction

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

SB 1592

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)

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; disposition of
5 ballots folded together or excessive ballots;
6 designated margin; hand counts; vote count
7 verification committee

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

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

31 1. At least two percent of the precincts in that county, or two
32 precincts, whichever is greater, shall be selected at random from a pool
33 consisting of every precinct in that county. The county political party
34 chairman for each political party that is entitled to continued
35 representation on the state ballot or the chairman's designee shall
36 conduct the selection of the precincts to be hand counted. The precincts
37 shall be selected by lot without the use of a computer, and the order of
38 selection by the county political party chairmen shall also be by lot.
39 The selection of the precincts shall not begin until all ballots voted in
40 the precinct polling places have been delivered to the central counting
41 center. The unofficial vote totals from all precincts shall be made
42 public before selecting the precincts to be hand counted. Only the
43 ballots cast in the polling places and ballots from direct recording
44 electronic machines shall be included in the hand counts conducted
45 pursuant to this section. Provisional ballots, conditional provisional

1 ballots and write-in votes shall not be included in the hand counts and
2 the early ballots shall be grouped separately by the officer in charge of
3 elections for purposes of a separate manual audit pursuant to subsection F
4 of this section.

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

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

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

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

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

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

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

32 3. For the presidential preference election, select by lot two
33 percent of the polling places designated and used pursuant to section
34 16-248 and perform the hand count of those ballots.

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

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

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

44 7. The county chairman of each political party shall designate and
45 provide the number of election board members as designated by the county

1 officer in charge of elections who shall perform the hand count under the
2 supervision of the county officer in charge of elections. For each
3 precinct that is to be audited, the county chairmen shall designate at
4 least two board workers who are registered members of any or no political
5 party to assist with the audit. Any qualified elector from this state may
6 be a board worker without regard to party designation. The county
7 election officer shall provide for compensation for those board workers,
8 not to include travel, meal or lodging expenses. If there are less than
9 two persons for each audited precinct available to participate on behalf
10 of each recognized political party, the recorder or officer in charge of
11 elections, with the approval of at least two county party chairpersons in
12 the county in which the shortfall occurs, shall substitute additional
13 individual electors who are provided by any political party from anywhere
14 in the state without regard to party designation to conduct the hand
15 count. A county party chairman shall approve only those substitute
16 electors who are provided by the county chairman's political party. The
17 political parties shall provide to the recorder or officer in charge of
18 elections in writing the names of those persons intending to participate
19 in the hand count at the audited precincts not later than 5:00 p.m. on the
20 Tuesday preceding the election. If the total number of board workers
21 provided by all parties is less than four times the number of precincts to
22 be audited, the recorder or officer in charge of elections shall notify
23 the parties of the shortage by 9:00 a.m. on the Wednesday preceding the
24 election. The hand count shall not proceed unless the political parties
25 provide the recorder or officer in charge of elections, in writing, a
26 sufficient number of persons by 5:00 p.m. on the Thursday preceding the
27 election and a sufficient number of persons, pursuant to this paragraph,
28 arrive to perform the hand count. The recorder or officer in charge of
29 elections may prohibit persons from participating in the hand count if
30 they are taking actions to disrupt the count or are unable to perform the
31 duties as assigned. For the hand count to proceed, not more than
32 seventy-five percent of the persons performing the hand count shall be
33 from the same 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 of the political parties entitled to
30 continued representation on the ballot or the chairman's designee, the
31 chairmen or the chairmen's designees shall randomly select one or more
32 batches of early ballots that have been tabulated to include at least one
33 batch from each machine used for tabulating early ballots and those
34 ballots shall be securely sequestered by the county recorder or officer in
35 charge of elections along with their unofficial tally reports for a
36 postelection manual audit. The chairmen or the chairmen's designees shall
37 randomly select from those sequestered early ballots a number equal to one
38 percent of the total number of early ballots cast or five thousand early
39 ballots, whichever is less. From those randomly selected early ballots,
40 the county officer in charge of elections shall conduct a manual audit of
41 the same races that are being hand counted pursuant to subsection B of
42 this section. If the manual audit of the early ballots results in a
43 difference in any race that is equal to or greater than the designated
44 margin when compared to the electronically tabulated results for those
45 same early ballots, the manual audit shall be repeated for those same

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

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

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

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

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

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

- 1 1. At least thirty days before the 2006 primary election, the
2 secretary of state shall appoint seven persons to the committee, not more
3 than three of whom are members of the same political party.
- 4 2. Members of the committee shall have expertise in any two or more
5 of the areas of advanced mathematics, statistics, random selection
6 methods, systems operations or voting systems.
- 7 3. A person is not eligible to be a committee member if that person
8 has been affiliated with or received any income in the preceding five
9 years from any person or entity that provides election equipment or
10 services in this state.
- 11 4. The vote count verification committee shall meet and establish
12 one or more designated margins to be used in reviewing the hand counting
13 of votes as required pursuant to this section. The committee shall review
14 and consider revising the designated margins every two years for use in
15 the applicable elections. The committee shall provide the designated
16 margins to the secretary of state at least ten days before the primary
17 election and at least ten days before the general election, and the
18 secretary of state shall make that information publicly available on the
19 secretary of state's website.
- 20 5. Members of the vote count verification committee are not
21 eligible to receive compensation but are eligible for reimbursement of
22 expenses pursuant to title 38, chapter 4, article 2. The committee is a
23 public body and its meetings are subject to title 38, chapter 3, article
24 3.1 and its reports and records are subject to title 39, chapter 1.