

House Engrossed Senate Bill

~~electronic ballot adjudication; prohibition~~  
(now: logic and accuracy; testing)

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

# SENATE BILL 1288

AN ACT

REPEALING SECTION 16-449, ARIZONA REVISED STATUTES; AMENDING TITLE 16, CHAPTER 4, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 16-449; RELATING TO ELECTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Repeal

3 Section 16-449, Arizona Revised Statutes, is repealed.

4 Sec. 2. Title 16, chapter 4, article 4, Arizona Revised Statutes,  
5 is amended by adding a new section 16-449, to read:

6 16-449. Required tests; logic and accuracy; notice; accuracy  
7 board; violation; classification

8 A. ALL ELECTRONIC OR ELECTROMECHANICAL VOTING SYSTEMS SHALL BE  
9 THOROUGHLY TESTED AT THE CONCLUSION OF ALL MAINTENANCE AND  
10 PROGRAMMING. TESTS SHALL BE SUFFICIENT TO DETERMINE THAT THE VOTING  
11 SYSTEM IS PROPERLY PROGRAMMED, THE ELECTION IS CORRECTLY DEFINED ON THE  
12 VOTING SYSTEM AND ALL OF THE VOTING SYSTEM INPUT, OUTPUT AND COMMUNICATION  
13 DEVICES ARE WORKING PROPERLY.

14 B. NOT MORE THAN TWENTY-FIVE DAYS BEFORE THE COMMENCEMENT OF EARLY  
15 VOTING AS PROVIDED IN SECTION 16-542, THE COUNTY OFFICER IN CHARGE OF  
16 ELECTIONS SHALL PUBLICLY TEST THE AUTOMATIC TABULATING EQUIPMENT TO  
17 ASCERTAIN THAT THE EQUIPMENT WILL CORRECTLY COUNT THE VOTES CAST FOR ALL  
18 OFFICES AND ON ALL MEASURES. IF THE BALLOTS TO BE USED AT THE POLLING  
19 PLACE ON ELECTION DAY ARE NOT AVAILABLE AT THE TIME OF THE TESTING, THE  
20 COUNTY OFFICER IN CHARGE OF ELECTIONS MAY CONDUCT AN ADDITIONAL TEST NOT  
21 MORE THAN TEN DAYS BEFORE ELECTION DAY AND SHALL PROVIDE PUBLIC NOTICE OF  
22 THE TIME AND PLACE OF THE TEST AT LEAST FORTY-EIGHT HOURS BEFORE THE TEST  
23 BY PUBLICATION ON THE COUNTY WEBSITE, ON THE COUNTY OFFICER IN CHARGE OF  
24 ELECTIONS' WEBSITE OR ONCE IN ONE OR MORE NEWSPAPERS OF GENERAL  
25 CIRCULATION IN THE COUNTY. IF THE APPLICABLE WEBSITE BECOMES UNAVAILABLE  
26 OR IF THERE IS NO NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY, THE  
27 NOTICE MUST BE POSTED IN AT LEAST FOUR CONSPICUOUS PLACES IN THE  
28 COUNTY. AT THE TIME OF QUALIFYING, THE COUNTY OFFICER IN CHARGE OF  
29 ELECTIONS MAY GIVE WRITTEN NOTICE OF THE TIME AND LOCATION OF THE PUBLIC  
30 PREELECTION TEST TO EACH CANDIDATE WHO IS QUALIFIED AS A CANDIDATE FOR  
31 THAT ELECTION AND OBTAIN A SIGNED RECEIPT THAT THE NOTICE HAS BEEN  
32 GIVEN. THE SECRETARY OF STATE SHALL GIVE WRITTEN NOTICE TO EACH STATEWIDE  
33 CANDIDATE AT THE TIME OF QUALIFYING OR IMMEDIATELY AT THE END OF  
34 QUALIFYING THAT THE VOTING EQUIPMENT WILL BE TESTED AND ADVISE EACH  
35 CANDIDATE TO CONTACT THE COUNTY OFFICER IN CHARGE OF ELECTIONS AS TO THE  
36 TIME AND LOCATION OF THE PUBLIC PREELECTION TEST. AT LEAST THIRTY DAYS  
37 BEFORE THE COMMENCEMENT OF EARLY VOTING AS PROVIDED IN SECTION 16-542, THE  
38 COUNTY OFFICER IN CHARGE OF ELECTIONS SHALL SEND WRITTEN NOTICE BY  
39 CERTIFIED MAIL TO THE COUNTY PARTY CHAIRPERSON OF EACH POLITICAL PARTY AND  
40 TO ALL CANDIDATES FOR OTHER THAN STATEWIDE OFFICE WHOSE NAMES APPEAR ON  
41 THE BALLOT IN THE COUNTY AND WHO DID NOT RECEIVE WRITTEN NOTIFICATION FROM  
42 THE COUNTY OFFICER IN CHARGE OF ELECTIONS AT THE TIME OF QUALIFYING THAT  
43 STATES THE TIME AND LOCATION OF THE PUBLIC PREELECTION TEST OF THE  
44 AUTOMATIC TABULATING EQUIPMENT. AN ACCURACY BOARD SHALL CONVENE, AND EACH  
45 MEMBER OF THE ACCURACY BOARD SHALL CERTIFY TO THE ACCURACY OF THE

1 TEST. FOR THE TEST, THE ACCURACY BOARD MAY DESIGNATE ONE MEMBER TO  
2 REPRESENT THE BOARD. THE TEST SHALL BE OPEN TO REPRESENTATIVES OF THE  
3 POLITICAL PARTIES, THE PRESS AND THE PUBLIC. EACH POLITICAL PARTY MAY  
4 DESIGNATE ONE PERSON WITH EXPERTISE IN THE TECHNOLOGY FIELD OR ELECTION  
5 MANAGEMENT SYSTEMS OR ELECTIONS PROCEDURES WHO SHALL BE ALLOWED IN THE  
6 CENTRAL COUNTING ROOM WHEN ALL TESTS ARE BEING CONDUCTED AND WHEN THE  
7 OFFICIAL VOTES ARE BEING COUNTED. THE DESIGNEE MAY NOT INTERFERE WITH THE  
8 NORMAL OPERATION OF THE ACCURACY BOARD.

9 C. FOR ELECTRONIC OR ELECTROMECHANICAL VOTING SYSTEMS CONFIGURED TO  
10 TABULATE VOTE BY MAIL BALLOTS AT A CENTRAL OR REGIONAL SITE, THE PUBLIC  
11 TESTING SHALL BE CONDUCTED BY PROCESSING A PREAUDITED GROUP OF BALLOTS  
12 PRODUCED SO AS TO RECORD A PREDETERMINED NUMBER OF VALID VOTES FOR EACH  
13 CANDIDATE AND ON EACH MEASURE AND TO INCLUDE ONE OR MORE BALLOTS FOR EACH  
14 OFFICE THAT HAS ACTIVATED VOTING POSITIONS IN EXCESS OF THE NUMBER ALLOWED  
15 BY LAW IN ORDER TO TEST THE ABILITY OF THE AUTOMATIC TABULATING EQUIPMENT  
16 TO REJECT SUCH VOTES. THE TEST SHALL BE CONDUCTED BY USING BALLOT PAPER  
17 THAT HAS THE SAME WEIGHT AND SAME LENGTHS AS EVERY BALLOT THAT WILL BE  
18 USED ON ELECTION DAY AND BY USING THE SAME ELECTION DEFINITION THAT WILL  
19 BE USED ON ELECTION DAY. IF ANY ERROR IS DETECTED, THE CAUSE SHALL BE  
20 CORRECTED AND AN ERRORLESS COUNT SHALL BE MADE BEFORE THE AUTOMATIC  
21 TABULATING EQUIPMENT IS APPROVED. THE TEST SHALL BE REPEATED AND  
22 ERRORLESS RESULTS ACHIEVED IMMEDIATELY BEFORE THE START OF THE OFFICIAL  
23 COUNT OF THE BALLOTS AND AGAIN AFTER THE COMPLETION OF THE OFFICIAL  
24 COUNT. THE PROGRAMS AND BALLOTS USED FOR TESTING SHALL BE SEALED AND  
25 RETAINED UNDER THE CUSTODY OF THE ACCURACY BOARD.

26 D. FOR ELECTRONIC OR ELECTROMECHANICAL VOTING SYSTEMS CONFIGURED TO  
27 INCLUDE ELECTRONIC OR ELECTROMECHANICAL TABULATION DEVICES THAT ARE  
28 DISTRIBUTED TO THE PRECINCTS OR VOTE CENTERS, ALL OR A SAMPLE OF THE  
29 DEVICES TO BE USED IN THE ELECTION SHALL BE PUBLICLY TESTED. IF A SAMPLE  
30 IS TO BE TESTED, THE SAMPLE SHALL CONSIST OF A RANDOM SELECTION OF AT  
31 LEAST FIVE PERCENT OR TEN OF THE DEVICES FOR AN OPTICAL SCAN SYSTEM,  
32 WHICHEVER IS GREATER. FOR TOUCHSCREEN SYSTEMS USED FOR VOTERS HAVING A  
33 DISABILITY, A SAMPLE OF AT LEAST TWO PERCENT OF THE DEVICES MUST BE  
34 TESTED. THE TEST SHALL BE CONDUCTED BY PROCESSING A GROUP OF BALLOTS,  
35 CAUSING THE DEVICE TO GENERATE RESULTS FOR THE BALLOTS PROCESSED AND  
36 COMPARING THE RESULTS GENERATED TO THE RESULTS EXPECTED FOR THE BALLOTS  
37 THAT ARE PROCESSED. THE GROUP OF BALLOTS SHALL BE PRODUCED SO AS TO  
38 RECORD A PREDETERMINED NUMBER OF VALID VOTES FOR EACH CANDIDATE AND ON  
39 EACH MEASURE AND TO INCLUDE FOR EACH OFFICE ONE OR MORE BALLOTS THAT HAVE  
40 ACTIVATED VOTING POSITIONS IN EXCESS OF THE NUMBER ALLOWED BY LAW IN ORDER  
41 TO TEST THE ABILITY OF THE TABULATING DEVICE TO REJECT SUCH VOTES. THE  
42 TEST SHALL BE CONDUCTED BY USING BALLOT PAPER THAT HAS THE SAME WEIGHT AND  
43 SAME LENGTHS AS EVERY BALLOT THAT WILL BE USED ON ELECTION DAY AND BY  
44 USING THE SAME ELECTION DEFINITION THAT WILL BE USED ON ELECTION DAY.

1 E. IF ANY TESTED TABULATING DEVICE IS FOUND TO HAVE AN ERROR IN  
2 TABULATION, IT SHALL BE DEEMED UNSATISFACTORY. FOR EACH DEVICE DEEMED  
3 UNSATISFACTORY, THE ACCURACY BOARD SHALL TAKE STEPS TO DETERMINE THE CAUSE  
4 OF THE ERROR, SHALL ATTEMPT TO IDENTIFY AND TEST OTHER DEVICES THAT COULD  
5 REASONABLY BE EXPECTED TO HAVE THE SAME ERROR AND SHALL TEST A NUMBER OF  
6 ADDITIONAL DEVICES SUFFICIENT TO DETERMINE THAT ALL DEVICES ARE  
7 SATISFACTORY. ON DEEMING ANY DEVICE UNSATISFACTORY, THE ACCURACY BOARD  
8 MAY REQUIRE ALL DEVICES TO BE TESTED OR MAY DECLARE THAT ALL DEVICES ARE  
9 UNSATISFACTORY.

10 F. FOR PRINTERS THAT ARE INTENDED FOR USE IN PRINTING BALLOTS OR  
11 AFFIDAVITS, OR BOTH, AT EARLY VOTING LOCATIONS, VOTING CENTERS OR POLLING  
12 PLACES, ALL OR A SAMPLE OF THE PRINTERS SHALL BE TESTED BY USING BALLOT  
13 PAPER THAT HAS THE SAME WEIGHT AND SAME LENGTHS AS EVERY BALLOT THAT WILL  
14 BE USED ON ELECTION DAY AND BY USING THE SAME ELECTION DEFINITION THAT  
15 WILL BE USED ON ELECTION DAY.

16 G. FOR ELECTRONIC POLLBOOKS THAT WILL BE USED ON ELECTION DAY, A  
17 TEST SHALL BE CONDUCTED BY USING THE SAME ELECTION DEFINITION THAT WILL BE  
18 USED ON ELECTION DAY. THE COUNTY RECORDER OR COUNTY OFFICER IN CHARGE OF  
19 ELECTIONS SHALL POST ANY AUDIT LOGS FOR THE ELECTRONIC POLLBOOKS ON THEIR  
20 WEBSITE WITHIN THREE DAYS AFTER ELECTION DAY.

21 H. IF THE OPERATION OR OUTPUT OF ANY TESTED TABULATION DEVICE IS IN  
22 ERROR, SUCH AS SPELLING OR THE ORDER OF CANDIDATES ON A REPORT, THAT ERROR  
23 SHALL BE REPORTED TO THE ACCURACY BOARD. THE ACCURACY BOARD SHALL THEN  
24 DETERMINE IF THE REPORTED PROBLEM WARRANTS DEEMING THE DEVICE  
25 UNSATISFACTORY.

26 I. AFTER TESTING IS COMPLETED UNDER THIS SECTION, THE ACCURACY  
27 BOARD OR ITS REPRESENTATIVE, THE REPRESENTATIVES OF THE POLITICAL PARTIES,  
28 AND THE CANDIDATES OR THEIR REPRESENTATIVES WHO ATTENDED THE TEST SHALL  
29 WITNESS THE RESETTING OF EACH DEVICE THAT PASSED TO A PREELECTION STATE OF  
30 READINESS AND THE SEALING OF EACH DEVICE THAT PASSED SO AS TO SECURE ITS  
31 STATE OF READINESS UNTIL THE OPENING OF THE POLLS.

32 J. THE ACCURACY BOARD OR ITS REPRESENTATIVE SHALL EXECUTE A WRITTEN  
33 STATEMENT SETTING FORTH THE TABULATION DEVICES TESTED, THE RESULTS OF THE  
34 TESTING, THE PROTECTIVE COUNTER NUMBERS OF EACH TABULATION DEVICE, IF  
35 APPLICABLE, THE NUMBER OF THE SEAL SECURING EACH TABULATION DEVICE AT THE  
36 CONCLUSION OF TESTING, ANY PROBLEMS REPORTED TO THE BOARD AS A RESULT OF  
37 THE TESTING AND WHETHER EACH DEVICE TESTED IS SATISFACTORY OR  
38 UNSATISFACTORY.

39 K. ANY TABULATING DEVICE DEEMED UNSATISFACTORY SHALL BE RECODED,  
40 REPAIRED OR REPLACED AND SHALL BE MADE AVAILABLE FOR RETESTING. THAT  
41 DEVICE MUST BE DETERMINED BY THE ACCURACY BOARD OR ITS REPRESENTATIVE TO  
42 BE SATISFACTORY BEFORE IT MAY BE USED IN ANY ELECTION. THE ACCURACY BOARD  
43 OR ITS REPRESENTATIVE SHALL ANNOUNCE AT THE CLOSE OF THE FIRST TESTING THE  
44 DATE, PLACE AND TIME THAT ANY UNSATISFACTORY DEVICE WILL BE RETESTED OR,  
45 AT THE OPTION OF THE BOARD, MAY NOTIFY BY TELEPHONE EACH PERSON WHO WAS

1 PRESENT AT THE FIRST TESTING AS TO THE DATE, PLACE AND TIME THAT THE  
2 RETESTING WILL OCCUR.

3 L. THE COUNTY OFFICER IN CHARGE OF ELECTIONS SHALL KEEP RECORDS OF  
4 ALL PREELECTION TESTING OF ELECTRONIC OR ELECTROMECHANICAL TABULATION  
5 DEVICES USED IN ANY ELECTION. THESE RECORDS ARE TO BE PRESENT AND  
6 AVAILABLE FOR INSPECTION AND REFERENCE DURING PUBLIC PREELECTION TESTING  
7 BY ANY PERSON IN ATTENDANCE DURING SUCH TESTING. THE NEED OF THE ACCURACY  
8 BOARD FOR ACCESS TO SUCH RECORDS DURING THE TESTING TAKES PRECEDENCE OVER  
9 THE NEED OF OTHER ATTENDEES TO ACCESS THOSE RECORDS SO THAT THE WORK OF  
10 THE ACCURACY BOARD WILL NOT BE DELAYED OR HINDERED. RECORDS OF TESTING  
11 MUST INCLUDE FOR EACH DEVICE THE NAME OF EACH PERSON WHO TESTED THE DEVICE  
12 AND THE DATE, PLACE, TIME AND RESULTS OF EACH TEST. THE COUNTY OFFICER IN  
13 CHARGE OF ELECTIONS SHALL RETAIN THE RECORDS OF TESTING AS PART OF THE  
14 OFFICIAL RECORDS OF THE ELECTION IN WHICH ANY DEVICE WAS USED.

15 M. A PERSON WHO:

16 1. TAMPERS WITH, OPENS, BREAKS OR OTHERWISE REMOVES THE SEALS ON A  
17 DEVICE WITHOUT AUTHORIZATION AS PRESCRIBED BY THIS SECTION IS GUILTY OF A  
18 CLASS 6 FELONY.

19 2. TAMPERS WITH, OPENS, BREAKS OR OTHERWISE REMOVES THE SEALS AND  
20 REPROGRAMS A TESTED DEVICE WITHOUT AN ADDITIONAL LOGIC AND ACCURACY TEST  
21 CONDUCTED AS PRESCRIBED BY THIS SECTION IS GUILTY OF A CLASS 4 FELONY.