

Senate Engrossed

~~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3 Section 16-449, Arizona Revised Statutes, is repealed.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 PROGRAMMING.
10 TESTS SHALL BE SUFFICIENT TO DETERMINE THAT THE VOTING SYSTEM IS PROPERLY
11 PROGRAMMED, THE ELECTION IS CORRECTLY DEFINED ON THE VOTING SYSTEM AND ALL
12 OF THE VOTING SYSTEM INPUT, OUTPUT AND COMMUNICATION DEVICES ARE WORKING
13 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 COUNTY.
28 AT THE TIME OF QUALIFYING, THE COUNTY OFFICER IN CHARGE OF ELECTIONS MAY
29 GIVE WRITTEN NOTICE OF THE TIME AND LOCATION OF THE PUBLIC PREELECTION
30 TEST TO EACH CANDIDATE WHO IS QUALIFIED AS A CANDIDATE FOR THAT ELECTION
31 AND OBTAIN A SIGNED RECEIPT THAT THE NOTICE HAS BEEN GIVEN. THE SECRETARY
32 OF STATE SHALL GIVE WRITTEN NOTICE TO EACH STATEWIDE CANDIDATE AT THE TIME
33 OF QUALIFYING OR IMMEDIATELY AT THE END OF QUALIFYING THAT THE VOTING
34 EQUIPMENT WILL BE TESTED AND ADVISE EACH CANDIDATE TO CONTACT THE COUNTY
35 OFFICER IN CHARGE OF ELECTIONS AS TO THE TIME AND LOCATION OF THE PUBLIC
36 PREELECTION TEST. AT LEAST THIRTY DAYS BEFORE THE COMMENCEMENT OF EARLY
37 VOTING AS PROVIDED IN SECTION 16-542, THE COUNTY OFFICER IN CHARGE OF
38 ELECTIONS SHALL SEND WRITTEN NOTICE BY CERTIFIED MAIL TO THE COUNTY PARTY
39 CHAIRPERSON OF EACH POLITICAL PARTY AND TO ALL CANDIDATES FOR OTHER THAN
40 STATEWIDE OFFICE WHOSE NAMES APPEAR ON THE BALLOT IN THE COUNTY AND WHO
41 DID NOT RECEIVE WRITTEN NOTIFICATION FROM THE COUNTY OFFICER IN CHARGE OF
42 ELECTIONS AT THE TIME OF QUALIFYING THAT STATES THE TIME AND LOCATION OF
43 THE PUBLIC PREELECTION TEST OF THE AUTOMATIC TABULATING EQUIPMENT. AN
44 ACCURACY BOARD SHALL CONVENE, AND EACH MEMBER OF THE ACCURACY BOARD SHALL
45 CERTIFY TO THE ACCURACY OF THE TEST. FOR THE TEST, THE ACCURACY BOARD MAY

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

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

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

38 E. IF ANY TESTED TABULATING DEVICE IS FOUND TO HAVE AN ERROR IN
39 TABULATION, IT SHALL BE DEEMED UNSATISFACTORY. FOR EACH DEVICE DEEMED
40 UNSATISFACTORY, THE ACCURACY BOARD SHALL TAKE STEPS TO DETERMINE THE CAUSE
41 OF THE ERROR, SHALL ATTEMPT TO IDENTIFY AND TEST OTHER DEVICES THAT COULD
42 REASONABLY BE EXPECTED TO HAVE THE SAME ERROR AND SHALL TEST A NUMBER OF
43 ADDITIONAL DEVICES SUFFICIENT TO DETERMINE THAT ALL DEVICES ARE
44 SATISFACTORY. ON DEEMING ANY DEVICE UNSATISFACTORY, THE ACCURACY BOARD

1 MAY REQUIRE ALL DEVICES TO BE TESTED OR MAY DECLARE THAT ALL DEVICES ARE
2 UNSATISFACTORY.

3 F. IF THE OPERATION OR OUTPUT OF ANY TESTED TABULATION DEVICE IS IN
4 ERROR, SUCH AS SPELLING OR THE ORDER OF CANDIDATES ON A REPORT, THAT ERROR
5 SHALL BE REPORTED TO THE ACCURACY BOARD. THE ACCURACY BOARD SHALL THEN
6 DETERMINE IF THE REPORTED PROBLEM WARRANTS DEEMING THE DEVICE
7 UNSATISFACTORY.

8 G. AFTER TESTING IS COMPLETED UNDER THIS SECTION, THE ACCURACY
9 BOARD OR ITS REPRESENTATIVE, THE REPRESENTATIVES OF THE POLITICAL PARTIES,
10 AND THE CANDIDATES OR THEIR REPRESENTATIVES WHO ATTENDED THE TEST SHALL
11 WITNESS THE RESETTING OF EACH DEVICE THAT PASSED TO A PREELECTION STATE OF
12 READINESS AND THE SEALING OF EACH DEVICE THAT PASSED SO AS TO SECURE ITS
13 STATE OF READINESS UNTIL THE OPENING OF THE POLLS.

14 H. THE ACCURACY BOARD OR ITS REPRESENTATIVE SHALL EXECUTE A WRITTEN
15 STATEMENT SETTING FORTH THE TABULATION DEVICES TESTED, THE RESULTS OF THE
16 TESTING, THE PROTECTIVE COUNTER NUMBERS OF EACH TABULATION DEVICE, IF
17 APPLICABLE, THE NUMBER OF THE SEAL SECURING EACH TABULATION DEVICE AT THE
18 CONCLUSION OF TESTING, ANY PROBLEMS REPORTED TO THE BOARD AS A RESULT OF
19 THE TESTING AND WHETHER EACH DEVICE TESTED IS SATISFACTORY OR
20 UNSATISFACTORY.

21 I. ANY TABULATING DEVICE DEEMED UNSATISFACTORY SHALL BE RECODED,
22 REPAIRED OR REPLACED AND SHALL BE MADE AVAILABLE FOR RETESTING. THAT
23 DEVICE MUST BE DETERMINED BY THE ACCURACY BOARD OR ITS REPRESENTATIVE TO
24 BE SATISFACTORY BEFORE IT MAY BE USED IN ANY ELECTION. THE ACCURACY BOARD
25 OR ITS REPRESENTATIVE SHALL ANNOUNCE AT THE CLOSE OF THE FIRST TESTING THE
26 DATE, PLACE AND TIME THAT ANY UNSATISFACTORY DEVICE WILL BE RETESTED OR,
27 AT THE OPTION OF THE BOARD, MAY NOTIFY BY TELEPHONE EACH PERSON WHO WAS
28 PRESENT AT THE FIRST TESTING AS TO THE DATE, PLACE AND TIME THAT THE
29 RETESTING WILL OCCUR.

30 J. THE COUNTY OFFICER IN CHARGE OF ELECTIONS SHALL KEEP RECORDS OF
31 ALL PREELECTION TESTING OF ELECTRONIC OR ELECTROMECHANICAL TABULATION
32 DEVICES USED IN ANY ELECTION. THESE RECORDS ARE TO BE PRESENT AND
33 AVAILABLE FOR INSPECTION AND REFERENCE DURING PUBLIC PREELECTION TESTING
34 BY ANY PERSON IN ATTENDANCE DURING SUCH TESTING. THE NEED OF THE ACCURACY
35 BOARD FOR ACCESS TO SUCH RECORDS DURING THE TESTING TAKES PRECEDENCE OVER
36 THE NEED OF OTHER ATTENDEES TO ACCESS THOSE RECORDS SO THAT THE WORK OF
37 THE ACCURACY BOARD WILL NOT BE DELAYED OR HINDERED. RECORDS OF TESTING
38 MUST INCLUDE FOR EACH DEVICE THE NAME OF EACH PERSON WHO TESTED THE DEVICE
39 AND THE DATE, PLACE, TIME AND RESULTS OF EACH TEST. THE COUNTY OFFICER IN
40 CHARGE OF ELECTIONS SHALL RETAIN THE RECORDS OF TESTING AS PART OF THE
41 OFFICIAL RECORDS OF THE ELECTION IN WHICH ANY DEVICE WAS USED.

42 K. ANY TESTS CONDUCTED PURSUANT TO THIS SECTION THAT INVOLVE
43 BALLOTS SHALL EMPLOY TEST BALLOTS CREATED BY THE COUNTY OFFICER IN CHARGE
44 OF ELECTIONS USING ACTUAL BALLOTS THAT HAVE BEEN PRINTED FOR THE ELECTION.
45 IF BALLOT-ON-DEMAND BALLOTS WILL BE USED IN THE ELECTION, THE COUNTY

1 OFFICER IN CHARGE OF ELECTIONS SHALL ALSO CREATE TEST BALLOTS USING THE
2 BALLOT-ON-DEMAND TECHNOLOGY THAT WILL BE USED TO PRODUCE BALLOTS IN THE
3 ELECTION, USING THE SAME PAPER STOCK AS WILL BE USED FOR BALLOTS IN THE
4 ELECTION.

5 L. A PERSON WHO:

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

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