

House Engrossed

~~elections; hand counts; five percent~~
(now: elections; five percent; hand counts)

**State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021**

HOUSE BILL 2039

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; disposition of ballots folded together or excessive ballots; 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~~ **FIVE** percent of the precincts in that county, or ~~two~~ **THE NUMBER OF precincts AS DETERMINED BY THE VOTE COUNT VERIFICATION COMMITTEE ESTABLISHED PURSUANT TO THIS SECTION THAT IS REQUIRED TO ACHIEVE A STATISTICAL SIGNIFICANCE CONSISTING OF A NINETY-NINE PERCENT CONFIDENCE LEVEL WITH A MARGIN OF ERROR OF ONE PERCENT BASED ON THE TOTAL NUMBER OF BALLOTS CAST IN THAT COUNTY ON ELECTION DAY**, whichever is greater, shall be selected at random from a pool consisting of every precinct in that county. **THE HAND COUNT PRESCRIBED IN THIS SECTION SHALL BE CONDUCTED AT THE PRECINCT LEVEL. ♦ FOR THE PURPOSES OF THE HAND COUNT PRESCRIBED BY THIS SECTION, A VOTING CENTER IS DEEMED TO BE A PRECINCT.** The county political party chairman for each political party that is entitled to continued representation on the state ballot or the chairman'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 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 in the hand counts and the early ballots shall be grouped separately by the officer in charge of elections for purposes of a separate manual audit pursuant to subsection F of this section.

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

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

(b) One contested statewide race for statewide office.

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

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

(e) If there are fewer than four contested races resulting from the selections made pursuant to subdivisions (a) through (d) of this ~~section~~ **PARAGRAPH** and if there are additional contested

federal, statewide or legislative races or ballot measures, additional contested races shall be selected by lot not using a computer until four races have been selected or until no additional contested federal, statewide or legislative races or ballot measures are available for selection.

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

3. For the presidential preference election, select by lot ~~two~~ **FIVE** percent of the polling places designated and used pursuant to section 16-248 ~~and perform the hand count of those ballots OR THE NUMBER OF PRECINCTS AS DETERMINED BY THE VOTE COUNT VERIFICATION COMMITTEE ESTABLISHED PURSUANT TO THIS SECTION THAT IS REQUIRED TO ACHIEVE A STATISTICAL SIGNIFICANCE CONSISTING OF A NINETY-NINE PERCENT CONFIDENCE LEVEL WITH A MARGIN OF ERROR OF ONE PERCENT BASED ON THE TOTAL NUMBER OF BALLOTS CAST IN THAT COUNTY, WHICHEVER IS GREATER AND PERFORM THE HAND COUNT OF THOSE BALLOTS. THE HAND COUNT PRESCRIBED IN THIS SECTION SHALL BE CONDUCTED AT THE PRECINCT LEVEL. FOR THE PURPOSES OF THE HAND COUNT PRESCRIBED BY THIS SECTION, A VOTING CENTER IS DEEMED TO BE A PRECINCT.~~

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

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

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

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

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

9. COUNTY POLITICAL PARTY CHAIRMEN SHALL PARTICIPATE IN THE HAND COUNT PRESCRIBED BY THIS SECTION AND SHALL PROVIDE A SUFFICIENT NUMBER OF QUALIFIED ELECTORS TO ACT AS ELECTION BOARD MEMBERS FOR THAT HAND COUNT.

C. If the randomly selected races result in a difference in any race that is less than the designated margin when compared to the electronic tabulation of those same ballots, the results of the electronic tabulation constitute the official count for that race. If the randomly selected races result in a difference in any race that is equal to or greater than the designated margin when compared to

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

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

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

F. After the electronic tabulation of early ballots and at one or more times selected by the chairman of the political parties entitled to continued representation on the ballot or the chairman's designee, the chairmen or the chairmen's designees shall randomly select one or more batches of early ballots that have been tabulated to include at least one batch from each machine used for tabulating early ballots and those ballots shall be securely sequestered by the county recorder or officer in charge of elections along with their unofficial tally reports for a postelection manual audit. **FOR A COUNTY WITH A POPULATION OF EIGHT HUNDRED THOUSAND PERSONS OR MORE, the chairmen or the chairmen's designees shall randomly select from those sequestered early ballots a number equal to one percent of the total number of early ballots cast or five thousand early ballots, whichever is less** **TEN THOUSAND EARLY BALLOTS OR THE NUMBER OF EARLY BALLOTS AS DETERMINED BY THE VOTE COUNT VERIFICATION COMMITTEE ESTABLISHED PURSUANT TO THIS SECTION THAT IS REQUIRED TO ACHIEVE A STATISTICAL SIGNIFICANCE CONSISTING OF A NINETY-NINE PERCENT CONFIDENCE LEVEL WITH A MARGIN OF ERROR OF TWO PERCENT BASED ON THE TOTAL NUMBER OF EARLY BALLOTS CAST IN THAT COUNTY, WHICHEVER IS GREATER. FOR A COUNTY WITH A POPULATION OF LESS THAN EIGHT HUNDRED THOUSAND PERSONS, THE CHAIRMAN OR THE CHAIRMAN'S DESIGNEES SHALL RANDOMLY SELECT FROM THOSE SEQUESTERED EARLY BALLOTS THE NUMBER OF EARLY BALLOTS AS DETERMINED BY THE VOTE COUNT VERIFICATION COMMITTEE ESTABLISHED PURSUANT TO THIS SECTION THAT IS REQUIRED TO ACHIEVE A STATISTICAL SIGNIFICANCE CONSISTING OF A NINETY-NINE PERCENT CONFIDENCE LEVEL WITH A MARGIN OF ERROR OF THREE PERCENT, BASED ON THE TOTAL NUMBER OF EARLY BALLOTS CAST IN THAT COUNTY.** From those randomly selected early ballots, the county officer in charge of elections shall conduct a manual audit of the same races that are being hand counted pursuant to subsection B of this section. If the manual audit of the early ballots results in a difference in any race that is equal to or greater than the designated margin when compared to the electronically tabulated results for those same early ballots, the manual audit shall be repeated for those same early ballots. If the second manual audit results in a difference in that race that is equal to or greater than the designated margin when compared to the electronically tabulated results for those same early ballots, the manual audit shall be expanded only for that race to a number of additional early ballots equal to one percent of the total early ballots cast or an additional five thousand ballots, whichever is less, to be randomly selected from the batch or batches of sequestered early ballots. If the expanded early ballot manual audit results in a difference for that race that is equal to or greater than the designated margin when compared to any of the earlier manual counts for that race, the manual counts shall be repeated for that race until a manual count results in a difference in that race that is less than the designated margin. If at any point in the manual audit of early ballots the difference between any manual count of early ballots is less than the designated margin when compared to the electronic tabulation of those

ballots, the electronic tabulation shall be included in the canvass and no further manual audit of the early ballots shall be conducted.

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

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

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

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

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

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

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

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

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

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