House Engrossed Senate Bill

FILED

JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

CHAPTER 295

SENATE BILL 1623

AN ACT

AMENDING SECTIONS 16-550, 16-551, 16-602, 16-621 AND 16-1011, ARIZONA REVISED STATUTES; RELATING TO ELECTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 16-550, Arizona Revised Statutes, is amended to read:

16-550. Receipt of voter's ballot

A. Upon receipt of the envelope containing the early ballot and the completed affidavit, the county recorder or other officer in charge of elections shall compare the signatures thereon with the signature of the elector on his registration form. If satisfied that the signatures correspond, the recorder or other officer in charge of elections shall hold them unopened in accordance with the rules of the secretary of state.

B. The recorder or other officer in charge of elections shall thereafter safely keep the affidavits and early ballots in his office until delivered pursuant to section 16-551 AND TALLYING OF BALLOTS SHALL NOT BEGIN ANY EARLIER THAN SEVEN DAYS BEFORE ELECTION DAY.

C. The county recorder shall send a list of all voters who were issued early ballots to the election board of the precinct in which the voter is registered.

Sec. 2. Section 16-551, Arizona Revised Statutes, is amended to read:

16-551. Early election board; classification

A. The board of supervisors or the governing body of the political subdivision shall appoint one or more early election boards to serve at places to be designated by the board of supervisors or the governing body to canvass and tally early election ballots. Members of early election boards shall be selected in accordance with the provisions for selecting members of regular election boards as provided in section 16-531.

B. If an electronic voting system is in use for early voting, the early election board shall consist of at least one inspector and two judges who shall perform the processing requirements in accordance with the rules issued by the secretary of state. The inspector and judges shall be appointed in the same manner by party as provided in section 16-531.

C. All early ballots received by the county recorder or other officer in charge of elections before 7:00 p.m. on election day and the original affidavit of the voter shall be delivered to the early election boards for processing as provided in the rules of the secretary of state. The office of the county recorder or other officer in charge of elections shall remain open until 7:00 p.m. on election day for the purpose of receiving early ballots. In no event shall partial or complete tallies of the early election board be released or divulged before all precincts have reported or one hour after the closing of the polls on election day, whichever occurs first, AND ANY PERSON WHO UNLAWFULLY RELEASES INFORMATION REGARDING VOTE TALLIES OR WHO POSSESSES A TALLY SHEET OR SUMMARY WITHOUT AUTHORIZATION FROM THE RECORDER OR OFFICER IN CHARGE OF ELECTIONS IS GUILTY OF A CLASS 6 FELONY.

D. The necessary printed blanks for poll lists, tally lists, lists of voters, ballots, oaths and returns, together with envelopes in which to enclose the returns, shall be furnished by the board of supervisors or the

governing body of the political subdivision to the early election board for each election precinct at the expense of the county or the political subdivision.

Sec. 3. 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. The ballots cast in the election shall first be removed from the ballot box and counted without being opened, except as may be necessary to ascertain that the number of ballots cast corresponds with the number of names on the poll lists.

B. If two or more ballots are found folded together appearing as a single ballot, they shall be laid aside until the count of the ballots is completed. If it then appears by comparison of the count with the number of names on the poll lists that the ballots thus folded together were cast by one elector, they shall be destroyed. If the ballots in the box are still found to exceed in number the names on the poll lists, the ballots, except those destroyed, shall be replaced in the box, and one of the judges, without looking in the box, shall draw therefrom, one at a time, and destroy unopened, a number of ballots equal to the excess, and the election board shall record on the poll lists the number of ballots so destroyed and shall then sign the poll list.

C. For each countywide primary, general and presidential preference election, the county officer in charge of the election shall conduct a hand count at the central counting center ~~of~~ IN THE FOLLOWING ORDER:

1. At least two per cent of the precincts in that county, or two precincts, whichever is greater, SHALL BE SELECTED AT RANDOM FROM A POOL CONSISTING OF EVERY PRECINCT IN THAT COUNTY. 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 G 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 AND GENERAL ELECTION shall include ~~at least four~~ UP TO FIVE contested races. ~~, and~~ AFTER THE COUNTY RECORDER OR OTHER OFFICER IN CHARGE OF ELECTIONS SEPARATES THE PRIMARY BALLOTS BY POLITICAL PARTY, THE RACES TO BE COUNTED shall ~~include one federal race, one statewide candidate race, one ballot measure and one legislative race on those ballots.~~ 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) 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 PER CENT OF THE POLLING PLACES DESIGNATED AND USED PURSUANT TO SECTION 16-248 AND PERFORM THE HAND COUNT OF THOSE BALLOTS.

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 ~~three~~ TWO board workers who are registered members of any or no political party~~, and~~ 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 the board workers selected by the county chairmen fail to appear and perform the hand count pursuant to this subsection, no hand count will be conducted and the electronic tabulation is deemed the official count.~~ 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 SHALL, WITH THE APPROVAL OF AT LEAST TWO COUNTY PARTY CHAIRPERSONS IN THE COUNTY IN WHICH THE SHORTFALL OCCURS, 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 SECTION 16-602, SUBSECTION C, PARAGRAPH 7, 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, NO MORE THAN SEVENTY-FIVE PER CENT 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, THEN 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.

D. 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.

E. 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.

F. 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.

G. 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 ~~county officer in charge of elections~~ 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 ~~shall securely sequester~~ 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. The ~~county officer in charge of elections~~ CHAIRMEN OR THE CHAIRMEN'S DESIGNEES shall randomly select from those sequestered early ballots a number equal to one per cent of the total number of early ballots cast or five thousand early ballots, whichever is less. 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 C 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 per cent 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.

H. 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.

I. 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.

J. 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 web site.

K. 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 and shall not be affiliated with an election software vendor nor with a candidate and 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.

L. 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, no 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 web site.

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.

Sec. 4. Section 16-621, Arizona Revised Statutes, is amended to read:

16-621. Proceedings at the counting center

A. All proceedings at the counting center shall be under the direction of the board of supervisors or other officer in charge of elections and shall be conducted in accordance with the approved instructions and procedures manual provided for in section 16-452 under the observation of representatives of each political party and the public, but no persons except those authorized for the purpose shall touch any ballot or ballot card or return. All persons who are engaged in processing and counting of the ballots SHALL BE QUALIFIED ELECTORS, shall be deputized in writing and take an oath that they will faithfully perform their assigned duties. There shall be no preferential counting of ballots for the purpose of projecting the outcome of the election. If any ballot is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy shall be made of the damaged ballot in the presence of witnesses and substituted for the damaged ballot. All duplicate ballots shall be clearly labeled "duplicate" and shall bear a serial number which shall be recorded on the damaged or defective ballot.

B. If for any reason it becomes impracticable to count all or a part of the ballots with tabulating equipment, the officer in charge of elections may direct that they be counted manually, following as far as practicable the provisions governing the counting of paper ballots.

C. FOR ANY STATEWIDE, COUNTY OR LEGISLATIVE ELECTION, THE COUNTY RECORDER OR OFFICER IN CHARGE OF ELECTIONS SHALL PROVIDE FOR A LIVE VIDEO RECORDING OF THE CUSTODY OF ALL BALLOTS WHILE THE BALLOTS ARE PRESENT IN A TABULATION ROOM IN THE COUNTING CENTER. THE LIVE VIDEO RECORDING SHALL INCLUDE DATE AND TIME INDICATORS AND SHALL BE LINKED TO THE SECRETARY OF

STATE'S WEBSITE. THE SECRETARY OF STATE SHALL POST LINKS TO THE VIDEO COVERAGE FOR VIEWING BY THE PUBLIC. THE COUNTY RECORDER OR OFFICER IN CHARGE OF ELECTIONS SHALL RECORD THE VIDEO COVERAGE OF THE BALLOTS AT THE COUNTING CENTER AND SHALL RETAIN THOSE RECORDINGS AS A PUBLIC RECORD FOR AT LEAST AS LONG AS THE CHALLENGE PERIOD FOR THE GENERAL ELECTION. IF THE LIVE VIDEO FEED IS DISRUPTED OR DISABLED, THE RECORDER OR OFFICER IN CHARGE OF ELECTIONS IS NOT LIABLE FOR THE DISRUPTION BUT SHALL ATTEMPT TO REINSTATE VIDEO COVERAGE AS SOON AS IS PRACTICABLE. ANY DISRUPTION IN VIDEO COVERAGE SHALL NOT AFFECT OR PREVENT THE CONTINUED TABULATION OF BALLOTS. THIS PARAGRAPH IS CONTINGENT ON LEGISLATIVE APPROPRIATION.

Sec. 5. Section 16-1011, Arizona Revised Statutes, is amended to read:

16-1011. Counterfeiting election returns; classification

A. A person who knowingly forges or counterfeits returns of an election purporting to have been held at a precinct or place where no election was in fact held, or who knowingly substitutes, forges or counterfeits returns of election instead of the true returns for a precinct or place where an election was actually held, is guilty of a class ~~4~~ 3 felony.

B. A PERSON WHO KNOWINGLY SUBSTITUTES, FORGES, COUNTERFEITS OR TAMPERS WITH BALLOT TABULATIONS OR TOTALS OR ELECTION RESULTS BY ELECTRONIC MEANS OR THROUGH THE USE OF A COMPUTER, MACHINE OR OTHER DEVICE IS GUILTY OF A CLASS 3 FELONY. THIS SUBSECTION DOES NOT APPLY TO THE CASTING OR TALLYING OF BALLOTS AS PROVIDED BY LAW OR TO THE SUBSTITUTION OR DUPLICATION OF BALLOTS AS PRESCRIBED BY SECTIONS 16-573, 16-574 AND 16-621.

C. NOTWITHSTANDING SECTIONS 13-905, 13-906 AND 13-912, A PERSON CONVICTED UNDER THIS SECTION SHALL NOT BE AUTOMATICALLY RESTORED THE RIGHT TO VOTE.

APPROVED BY THE GOVERNOR JULY 2, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 2, 2007.

Passed the House June 20, 20 07,

by the following vote: 45 Ayes,

13 Nays, 2 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate March 8, 20 07,

by the following vote: 16 Ayes,

12 Nays, 2 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR
This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

S.B. 1623

SENATE CONCURS IN HOUSE AMENDMENTS AND FINAL PASSAGE

Passed the Senate June 20, 2007

by the following vote: 22 Ayes,

0 Nays, 8 Not Voting

Timothy S. Bee
President of the Senate

Charmion Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

21st day of June, 2007

at 8:32 o'clock a. M.

Jennifer Ybarra
Secretary to the Governor

Approved this 2 day of

July

at 11:10 o'clock A M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 2 day of July, 2007

at 2:43 o'clock P. M.

Janice K. Brewer
Secretary of State

S.B. 1623