

AN INITIATIVE MEASURE

AMENDING SECTIONS 16-446, 16-621, 16-624, 16-661, 16-664, 16-666, ARIZONA REVISED STATUTES;  
RELATING TO VOTER CONFIDENCE IN ELECTIONS.

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

Section 1. Short Title

This Act may be cited as the "Voter Confidence in Elections Act."

Section 2. Purpose and Findings

1. The right to vote protects all other rights and is the foundation of a democracy.
2. It is extremely difficult, if not impossible, to determine which count is correct when machine counts are different.
3. Paper ballots can be securely stored and handled, and enable election observers to meaningfully witness election procedures and vote-counting.
4. It is in the public interest that public employees perform all work related to the conduct of elections without outside assistance, thus maintaining public control of elections.
5. The capability currently exists to assist Americans with disabilities in casting the same voter-verifiable paper ballot that is used by other voters.
6. Computer security is very difficult to achieve, when electronic machines are used, as exemplified by public demonstrations showing that election equipment can be hacked undetectably.
7. Problems with electronic voting systems have engendered loss of public confidence in elections and prompted lawsuits which have been costly both to candidates and to taxpayers.

Section 3. Section 16-446, Arizona Revised Statutes, is amended to read:

16-446. Specifications of electronic voting system

- A. An electronic voting system consisting of a voting or marking device in combination with vote tabulating equipment shall provide facilities for voting for candidates at both primary and general elections and for voting for propositions and measures.
- B. An electronic voting system shall:
  1. Provide for voting in secrecy when used with voting booths.
  2. Permit each elector to vote at any election for any person for any office whether or not nominated as a candidate, to vote for as many persons for an office as ~~he~~ THE ELECTOR is entitled to vote for, AND to vote for or against any question upon which ~~he~~ THE ELECTOR is entitled to vote, ~~the~~ THE vote tabulating equipment shall reject choices recorded on ~~his~~ A ballot card or paper ballot if the number of choices exceeds the number which ~~he~~ THE ELECTOR is entitled to ~~vote~~ MAKE for ~~the~~ AN officer or on ~~the~~ A measure.
  3. Prevent the elector from voting for the same person more than once for the same office.
  4. Be suitably designed for the purpose used, BE of durable construction, and ~~may~~ be used safely, efficiently and accurately USABLE in the conduct of elections and counting ballots.
  5. Be provided with means for sealing the voting or marking device against any further voting after the polls have closed and the last voter has voted.
  6. When properly operated, record correctly and count accurately every vote cast.
  7. ~~Provide a paper document or ballot that visually indicates the voter's selections.~~ PRODUCE A DURABLE PAPER BALLOT THAT IS AT ALL TIMES THE OFFICIAL RECORD OF THE VOTE. THE BALLOT SHALL BE RETAINED AND PROTECTED IN A MANNER TO ASSURE ITS USEFULNESS FOR PURPOSES OF VERIFICATION AND AUDIT DURING AND AFTER THE COUNTING PROCESS. THE BALLOT SHALL BE READABLE WITHOUT THE USE OF AN ASSISTIVE DEVICE, EXCEPT FOR THOSE PERSONS WHO WOULD OTHERWISE REQUIRE AN ASSISTIVE DEVICE.
  8. PERMIT THE ELECTOR TO VERIFY CHOICES MADE AND CORRECT ANY ERROR BEFORE THE BALLOT IS CAST.

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

16-621. Proceedings at the counting center; ELECTION VALIDATION TEST; SPECIAL ACTION FOR FAILURE TO IMPLEMENT

- 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 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~~ THE officer in charge of elections may direct that ~~they~~ THE BALLOTS be counted manually, following as far as practicable the provisions governing the counting of paper ballots.
- C. IF AN ELECTRONIC VOTING SYSTEM IS USED FOR TABULATING VOTES AND THE ELECTION INCLUDES AT LEAST ONE RACE WITH TWO OR MORE CANDIDATES FOR A SINGLE OFFICE OR AT LEAST ONE BALLOT MEASURE, THE OFFICER IN CHARGE OF ELECTIONS SHALL CONDUCT AN ELECTION VALIDATION TEST, WHICH SHALL BEGIN WITHIN TWENTY-FOUR (24) HOURS AFTER THE POLLS CLOSE AND BE COMPLETED, AND MADE PUBLIC WITHIN TEN (10) DAYS AFTER THE ELECTION, AS FOLLOWS:
  1. A NUMBER OF PRECINCTS, AS SPECIFIED IN SUBSECTION E OF THIS SECTION, SHALL BE SELECTED AND ALL BALLOTS FOR THOSE PRECINCTS SHALL BE COUNTED BY HAND.
  2. PRECINCT-CAST, EARLY, PROVISIONAL AND CONDITIONAL PROVISIONAL BALLOTS SHALL BE COUNTED SEPARATELY AND COMPARED WITH THE CORRESPONDING TOTALS OBTAINED USING ELECTRONIC TABULATING EQUIPMENT.
  3. THE HAND COUNT SHALL INCLUDE ALL RACES WHERE THERE ARE TWO OR MORE CANDIDATES FOR A SINGLE OFFICE AND ALL BALLOT MEASURES.
  - D. IF ANY OF THE HAND-COUNTED PRECINCT TALLIES FOR THE SELECTED RACES OR MEASURES DIFFER BY MORE THAN ONE-HALF OF ONE PERCENT OF THE VOTES CAST WHEN COMPARED TO THE ELECTRONIC TABULATION OF THOSE SAME BALLOTS ROUNDING ANY FRACTION TO THE NEXT VOTE, THE HAND COUNT SHALL BE EXPANDED TO INCLUDE ALL PRECINCTS IN THAT COUNTY. THE OFFICER IN CHARGE OF THE ELECTION SHALL PROVIDE WRITTEN NOTIFICATION TO THE SECRETARY OF STATE OF THE DISCREPANCY AND SHALL IDENTIFY THE SPECIFIC MACHINES USED IN THE PRECINCT BY SERIAL NUMBER. THE SECRETARY OF STATE SHALL THEN HAVE THAT EQUIPMENT REVIEWED THOROUGHLY BY A QUALIFIED REVIEW TEAM FOR POSSIBLE REVOCATION OF CERTIFICATION. THE QUALIFIED REVIEW TEAM WILL CONSIST OF THREE MEMBERS WITH COMPUTER SCIENCE EXPERTISE, NO MEMBER SHALL HAVE A CONFLICT OF INTEREST AND NO TWO MEMBERS CAN BE MEMBERS OF THE SAME POLITICAL PARTY. THE MEMBERS OF THE TEAM WILL BE SELECTED BY THE COUNTY ELECTION DIRECTOR WHERE THE DISCREPANCY OCCURRED. THE DETERMINATION ABOUT THE CERTIFICATION OF THE MACHINE SHALL BE MADE WITHIN NINETY (90) DAYS AND BEFORE THE MACHINE IS USED IN ANOTHER ELECTION.
- E. THE OFFICER IN CHARGE OF THE ELECTION SHALL SELECT PRECINCTS FOR HAND COUNTING IN A NON-COMPUTERIZED RANDOM MANNER SUCH THAT EVERY PRECINCT HAS AN EQUAL CHANCE OF BEING INCLUDED IN THE SAMPLE. THE RANDOM PRECINCT SELECTION PROCESS SHALL BE CONDUCTED IN PUBLIC ON THE DAY THE HAND COUNTING BEGINS. THE NUMBER OF PRECINCTS TO BE HAND COUNTED SHALL DEPEND ON THE NUMBER OF PRECINCTS IN THE JURISDICTION AS FOLLOWS:

TOTAL NUMBER OF PRECINCTS IN JURISDICTION

1-9  
10-49  
50-999  
1000 OR MORE

NUMBER OF SELECTED PRECINCTS

1  
2  
5 PERCENT OF THE NUMBER OF PRECINCTS, IGNORING  
ANY FRACTION  
50

F. IN ALL INSTANCES WHERE A HAND-COUNT HAS BEEN PERFORMED, THE HAND-COUNT SHALL BE THE OFFICIAL COUNT OF THE VOTE.

G. VOTES SHALL BE COUNTED WHERE THE INTENT OF THE VOTER IS CLEARLY DISCERNABLE.

H. THE LEGISLATURE MAY INCREASE THE LEVEL OF VERIFICATION REQUIRED BY SUBSECTION E, AND MAY ADOPT SUCH OTHER STATUTES OR REGULATIONS CONSISTENT WITH THE PROVISIONS OF THIS MEASURE AND APPROPRIATE FOR ITS IMPLEMENTATION AND ENFORCEMENT.

I. ANY QUALIFIED ELECTOR SHALL HAVE STANDING TO BRING A SPECIAL ACTION IN THE SUPERIOR COURT TO COMPEL ELECTION OFFICIALS TO IMPLEMENT THE REQUIREMENTS OF THIS SECTION. IF THE ELECTOR PREVAILS IN ANY SUCH ACTION, THE COURT MAY AWARD THE ELECTOR'S LEGAL COSTS, INCLUDING REASONABLE ATTORNEY FEES, AS DETERMINED BY THE COURT. THE LEGISLATURE MAY ENACT REASONABLE LIMITATIONS ON THE TIME AND MANNER OF BRINGING SUIT UNDER THIS SECTION.

Section 5. Section 16-624, Arizona Revised Statutes, is amended to read:

16-624. Disposition of official returns and ballots

A. Upon receipt of the packages and envelopes containing the returns and the voted ballots, the officer in charge of elections shall deposit the package or envelope containing the ballots in the safe of the county treasurer, who shall keep it unopened and unaltered for twenty-four months ~~for elections for a federal office or for six months for all other elections~~, at which time ~~he~~ THE OFFICER shall destroy it without opening or examining the contents.

B. ~~Irregular ballots shall be preserved for six months after the election and the packages~~ PACKAGES containing ~~them~~ THE BALLOTS may be opened and the contents examined only upon an order of court. ~~At the expiration of such time, the ballots may be disposed of in the discretion of the officer or board having charge of them.~~

C. The officer in charge of elections shall produce the other packages or envelopes before the board of supervisors when it is in session for the purposes of canvassing the returns.

D. If a recount is ordered or a contest begun within six months, the county treasurer may be ordered by the court to deliver to it the packages or envelopes containing the ballots, and thereupon they shall be in the custody and control of the court.

Section 6. Section 16-661, Arizona Revised Statutes, is amended to read:

16-661. Automatic recount; requirements; exemption

A. A recount of the vote is required when the canvass of returns in a primary or general election shows that the margin between the two candidates receiving the greatest number of votes for a particular office, or between the number of votes cast for and against initiated or referred measures or proposals to amend the Constitution of Arizona, is less than or equal to the ~~lesser~~ GREATER of the following:

1. One ~~tenth~~ HALF of one per cent of the number of votes cast for both such candidates or upon such measures or proposals.

2. Two hundred votes in the case of an office to be filled by state electors and for which the total number of votes cast is more than twenty-five thousand.

3. Fifty votes in the case of an office to be filled by state electors and for which the total number of votes cast is twenty-five thousand or less.

4. Two hundred votes in the case of an initiated or referred measure or proposal to amend the constitution.

5. Fifty votes in the case of a member of the legislature.

6. Ten votes in the case of an office to be filled by the electors of a city or town or a county or subdivision of a city, town or county.

B. Subsection A does not apply to elections for precinct committeemen, school district governing boards, community college district governing boards, fire district boards or fire district chiefs or secretary-treasurers or boards of other special districts.

Section 7. Section 16-664, Arizona Revised Statutes, is amended to read:

16-664. Recount of votes ~~by automatic tabulating system~~

A. In the event of a ~~court ordered~~ recount of votes that were cast and tabulated on electronic voting equipment for a state primary, state general or state special election, the secretary of state shall order the ballots MANUALLY recounted ~~on an automatic tabulating system to be furnished and programmed~~ under the supervision of the secretary of state AND OBSERVED IN ACCORDANCE WITH 16-621(A). In the event of a ~~court ordered~~ recount for elections other than for the office of supervisor, the secretary of state may designate the county board of supervisors to perform the duties assigned to the secretary of state.

B. If the office of secretary of state is contested, the governor shall order the ballots MANUALLY recounted ~~on an automatic tabulating system to be furnished and programmed~~ under the supervision of the governor AND OBSERVED IN ACCORDANCE WITH 16-621(A).

~~C. The programs to be used in the recount of votes pursuant to this section shall differ from the programs prescribed by section 16-445 and used in the initial tabulation of the votes.~~

C. RECOUNTS FOR ANY ELECTION SHALL BE PERFORMED MANUALLY AND OBSERVED IN ACCORDANCE WITH 16-621(A).

Section 8. Section 16-666, Arizona Revised Statutes, is amended to read:

16-666. Expenses of recount AND ELECTION VALIDATION TEST

The expenses of the recount of the votes as provided in this article AND THE ELECTION VALIDATION TEST DESCRIBED IN 16-621, ~~if for an office to be filled by state electors or if upon an initiative or referendum measure, or proposal to amend the constitution, shall be a state charge, and if for an office to be filled by the electors of a county or a subdivision of a county, or precinct, shall be a county charge. In the case of an office to be filled by the electors of a city or town, the expenses of the recount shall be a city or town charge.~~ SHALL BE:

1. A COUNTY CHARGE FOR ELECTIONS DECIDED BY ELECTORS OF THE ENTIRE STATE, INCLUDING BUT NOT LIMITED TO A PRESIDENTIAL PREFERENCE PRIMARY, A CONGRESSIONAL DISTRICT, A LEGISLATIVE DISTRICT, A COUNTY OR A SUBDIVISION OF THE STATE GREATER THAN A COUNTY.

2. A CITY OR TOWN CHARGE FOR ELECTIONS DECIDED BY ELECTORS OF THAT CITY OR TOWN.

3. A CHARGE TO THE APPROPRIATE GOVERNING BODY FOR A SCHOOL DISTRICT, SPECIAL DISTRICT OR ALL OTHER ELECTIONS.

Section 9. Funding

No provision of this measure constitutes a mandatory expenditure of State revenues, establishes any fund, or allocates State funds for any purpose.

Section 10. Severability

If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 11. Validity Study for 2006 General Election

This Act shall become law when approved by a majority of the votes cast thereon and upon proclamation of the Governor. Upon the Governor's proclamation, the county recorders shall order that an election validation test as set forth in Section 4 of this Act take place as a study of the 2006 general election. Such study shall be for educational purposes only and shall not affect the official results of the election. Within 30 days from the date of the Governor's proclamation, the results and findings of the study conducted in each county shall be made public in a report. Copies of each county's report shall be provided to the Governor, Secretary of State, Attorney General, President of the Senate, Speaker of the House and the Director of the Arizona State Library, Archives and Public Records.