



MEMORANDUM

Date: January 9, 2009

To: The Honorable Chairman and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator

Re: Modification of the Pima County Legislative Agenda Related to Various Election Statutes

The Elections Integrity Commission was established by the Board in July of 2008 to review the election processes in Pima County and make recommendations for improvement. Many of the Commission members were active observers in the General Election in November and continue to gain incite into the inner workings of the process.

As a part of their exploration and fact finding process, the Commission has been reviewing the procedures used and results of the Primary and General Elections of 2008. Some of the discussions and discoveries have identified a lack of clarity in the underlying election legislation as well as in the Secretary of State's Procedure Manual. The Commission has initiated a series of recommended changes to existing legislation and met numerous times to refine the content. After extensive review and discussion at their meeting this morning, the Commission has come to consensus as to what they would recommend to the Board for consideration for the County's 2009 Legislative Agenda. Due to the short timing to submit legislation for the current legislative session, the Commission asked that their recommendations be considered in January.

The recommended modifications are attached.

CHH/jj

Attachment

c: Chairman and Members, Election Integrity Commission
Martin Willett, Chief Deputy County Administrator
Brad Nelson, Elections Director
Dr. John Moffatt, Office of Strategic Technology Planning

DEFINITIONS:

"OUTCOME": THE RESULTS OF AN ELECTION INCLUDING THE WINNERS AND LOSERS BUT NOT INCLUDING THE VOTE COUNTS.

"CONSISTENT OUTCOMES": HAVING THE SAME OUTCOME BUT NOT NECESSARILY THE SAME VOTE COUNTS.

"INCONSISTENT OUTCOMES": RESULTS FOR WHICH OUTCOMES ARE NOT CONSISTENT.

16-445. Filing of computer election programs with secretary of state; RETENTION OF ELECTION COMPUTER AUDIT LOGS AND DIRECTORY LISTINGS.

A. For any state, county, school district, special district, city or town election, including primary elections, utilizing vote tabulating devices as provided in this article, there shall be filed with the secretary of state at least ten days before the date of the election a copy of each computer program for each election. The secretary of state shall hold all computer program software filed pursuant to this section in escrow for three years. The secretary of state shall securely destroy the software filed pursuant to this section on the expiration of the three year period.

B. A copy of any subsequent revision of the computer program shall be filed in the same manner within forty-eight hours following the revision.

C. Any tape or disc used in the programming or operation of a vote tabulating device upon which votes are counted and any tape used in compiling vote totals shall be kept under lock and seal, and if there is a retally of votes, the officer entrusted with the tapes or discs shall submit his affidavit stating that they are the tapes or discs, or both, used in the election and have not been altered.

D. THE SECRETARY OF STATE OR OFFICER IN CHARGE OF ELECTIONS, AS APPLICABLE, SHALL PRODUCE AND RETAIN ~~AN~~ CENTRAL COUNT COMPUTER AUDIT LOGS AND DIRECTORY LISTINGS ~~FOR EQUIPMENT TESTED~~. IMMEDIATELY BEFORE OFFICIAL ELECTION BALLOT COUNTING BEGINS AND AGAIN AFTER THE LAST BALLOT IS TABULATED. EACH COUNTY ELECTION OFFICIAL SHALL SUBMIT AN ELECTRONIC COPY OF THESE RECORDS TO THE SECRETARY OF STATE FOR RETENTION AND DESTRUCTION PURSUANT TO PARAGRAPH A.

E. ~~D~~. All materials submitted to the secretary of state shall be used by the secretary of state or attorney general to preclude fraud or any unlawful act under the laws of this title and title 19 and, EXCEPT FOR THOSE MATERIALS REQUIRED BY SECTION D, shall not be disclosed or used for any other purpose.

16-449. ~~Required test of~~ TESTING OF ELECTION equipment and programs; notice; procedures manual

A. REQUIRED LOGIC AND ACCURACY TESTING BY SECRETARY OF STATE.

Within the period of time before the election day prescribed by the secretary of state in the instructions and procedures manual adopted pursuant to section 16-452, the board of supervisors or other election officer in charge, or for an election involving state or federal candidates, the secretary of state, shall have the automatic tabulating equipment and programs tested to ascertain that the equipment and programs will correctly count the votes cast for all offices and on all measures **AND SHALL VERIFY THAT ALL SOFTWARE AND FIRMWARE USED IN THE EQUIPMENT AND SYSTEM ARE VERSIONS CERTIFIED FOR USE BY THE SECRETARY OF STATE.** Public notice of the time and place of the test shall be given at least forty-eight hours prior thereto by publication once in one or more daily or weekly newspapers published in the town, city or village using such equipment, if a newspaper is published therein, otherwise in a newspaper of general circulation therein. The test shall be observed by at least two election inspectors, who shall not be of the same political party, and shall be open to representatives of the political parties, candidates, the press and the public. The test shall be conducted by processing a preaudited group of ballots so punched or marked as to record a predetermined number of valid votes for each candidate and on each measure and shall include for each office one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment and programs to reject such votes.

B. CORRECTION OF DETECTED ERRORS. If any error is detected, the cause therefore shall be ascertained and corrected and an errorless count shall be made before the automatic tabulating equipment and programs are approved. A copy of a revised program shall be filed with the secretary of state within forty-eight hours after the revision is made. If the error was created by automatic tabulating equipment malfunction, a report shall be filed with the secretary of state within forty-eight hours after the correction is made, stating the cause and the corrective action taken. The test shall be repeated immediately before the start of the official count of the ballots in the same manner as set forth above. After the completion of the count, the programs used and the ballots shall be sealed, retained and disposed of as provided for paper ballots.

C. PROCEDURES MANUAL. Electronic ballot tabulating systems shall be tested for logic and accuracy within seven days before their use for early balloting pursuant to the instructions and procedures manual for electronic voting systems that is adopted by the secretary of state as prescribed by section 16-452. The instructions and procedures manual shall include procedures for the handling of ballots, the electronic scanning of ballots and any other matters necessary to ensure the maximum degree of

correctness, impartiality and uniformity in the administration of an electronic ballot tabulating system.

D. POLITICAL PARTY LOGIC AND ACCURACY TESTING. EACH PARTY ENTITLED TO CONTINUED REPRESENTATION ON THE BALLOT IN PRIMARY, GENERAL AND PRESIDENTIAL PREFERENCE ELECTIONS MAY CONDUCT THEIR OWN TESTING USING BALLOTS MARKED BY THE PARTY REPRESENTATIVES. A POLITICAL PARTY THAT CHOOSES TO CONDUCT ITS OWN TESTING SHALL HAVE THE COUNTY PARTY CHAIRPERSON NOTIFY, IN WRITING, THE COUNTY OFFICER IN CHARGE OF ELECTIONS, NOT LATER THAN THIRTY DAYS BEFORE THE ELECTION, THE NAMES OF THE PARTY REPRESENTATIVES WHO WILL CONDUCT THE TESTING. THE COUNTY OFFICER IN CHARGE OF ELECTIONS MAY REFUSE, OR REMOVE FOR CAUSE, THE DESIGNEE OF THE PARTY CHAIR AND SHALL NOTIFY THE PARTY CHAIR OF THE REFUSAL AS SOON AS IS PRACTICABLE SO THAT THE PARTY CAN DESIGNATE AN ALTERNATE.

1. TEST DECK. EACH PARTY ENTITLED TO CONTINUED REPRESENTATION ON THE BALLOT THAT CHOOSES TO CONDUCT ITS OWN TESTING SHALL RECEIVE ONE TEST DECK OF BALLOTS. A TEST DECK SHALL, AS SELECTED AND REQUESTED BY THE PARTY REPRESENTATIVE, CONSIST OF NOT MORE THAN TWO BALLOTS FROM EVERY PRECINCT AND, IN ADDITION, UP TO TEN BALLOTS PER PRECINCT FROM UP TO TEN PER CENT OF THE PRECINCTS OR SEVENTY-FIVE PRECINCTS, WHICHEVER IS LESS, IN THAT COUNTY. AT LEAST FOUR PRECINCTS ARE SUBJECT TO TESTING IF THERE ARE LESS THAN FORTY PRECINCTS IN THE JURISDICTION. PRECINCTS TO BE TESTED SHALL BE SELECTED BY THE PARTY REPRESENTATIVES. BALLOTS THAT ARE USED AS PART OF A TEST DECK SHALL BE DISTINGUISHABLE FROM ALL OTHER TYPES OF BALLOTS BY INCLUDING THE WORD "TEST" OR A SIMILAR LABEL IN A CONSPICUOUS PLACE ON THE BALLOT.

2. ELECTION EQUIPMENT TO BE TESTED. POLITICAL PARTY REPRESENTATIVES MAY USE THEIR TEST BALLOTS TO TEST THE PAPER-FED OPTICAL SCAN MACHINES, INCLUDING THE CENTRAL COUNT SCANNERS, OR THE DIRECT RECORDING ELECTRONIC VOTING SYSTEMS, OR BOTH. THE SAME BALLOT MAY BE USED TO TEST BOTH DEVICES. FOR TESTING THE DIRECT RECORDING SYSTEMS, THE TEST BALLOT SHALL SERVE AS A TEMPLATE FOR MANUAL ENTRY OF BALLOT ~~CONTENT~~ VOTE SELECTIONS.

3. PRIMARY OR PRESIDENTIAL PREFERENCE ELECTIONS. IN THE CASE OF A PRIMARY ELECTION OR PRESIDENTIAL PREFERENCE ELECTION, A POLITICAL PARTY MAY ONLY TEST BALLOTS FROM ITS PARTY.

4. MARKING AND CUSTODY OF TEST BALLOTS. ALL BALLOTS REQUESTED BY THE PARTY REPRESENTATIVES SHALL REMAIN IN THE CUSTODY OF THE ELECTION OFFICIALS AND SHALL BE ~~TESTED~~ RETURNED TO THE OFFICER IN CHARGE OF THE ELECTION UPON COMPLETION OF THE TEST. ALL MARKING AND TESTING OF BALLOTS BY PARTY REPRESENTATIVES SHALL OCCUR AT THE ELECTION DEPARTMENT.

5. POST-ELECTION TESTING. THE ENTIRE TEST MAY BE REPEATED USING THE SAME TEST DECK AFTER THE LAST OFFICIAL BALLOT IS TABULATED, BUT BEFORE THE CANVASS IS APPROVED.

6. SCHEDULING AND COMPLETION OF TESTING. TESTING BY THE PARTY REPRESENTATIVES SHALL BE COMPLETED ON A SCHEDULE AGREED ON BY THE PARTY REPRESENTATIVES AND THE OFFICER IN CHARGE OF ELECTIONS. IF A SCHEDULE CANNOT BE AGREED ON, TESTING SHALL BE COMPLETED BEFORE THE ~~OFFICIAL~~ SECRETARY OF STATE'S LOGIC AND ACCURACY TEST. THE ELECTION SCHEDULE, INCLUDING THE LOGIC AND ACCURACY TESTING, SHALL NOT BE MODIFIED TO ACCOMMODATE PARTY TESTING.

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. For any primary 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. 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~~ A SECURE FACILITY SUBJECT TO THE VIDEO RECORDING REQUIREMENT OF SECTION 16-621C. THE HAND COUNT SHALL BE CONDUCTED in the following order:

1. SELECTION OF PRECINCTS. 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. **SELECTION OF RACES.** 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 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, **EACH PRECINCT TO BE COUNTED SHALL DETERMINE THE CONGRESSIONAL DISTRICT, THUS** 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, **EACH PRECINCT TO BE COUNTED SHALL DETERMINE THE LEGISLATIVE DISTRICT, THUS** 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 percent of the polling places designated and used pursuant to section 16-248 and perform the hand count of those ballots. THIS HAND COUNT SHALL BE CONDUCTED FOR ALL CANDIDATES REGARDLESS OF POLITICAL AFFILIATION.

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, 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, 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. ABSOLUTE DIFFERENCES BETWEEN MANUAL AND ELECTRONIC COUNTS SHALL BE COMPUTED FOR EACH SELECTED RACE. WHEN CONGRESSIONAL OR LEGISLATIVE RACES ARE HAND COUNTED, ABSOLUTE DIFFERENCES SHALL BE COMPUTED SEPARATELY FOR EACH DISTRICT. 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. THE EXPANDED HAND COUNT RESULTS SHALL INCLUDE THE BALLOTS RESULTS FROM THE ORIGINAL HAND COUNT TOGETHER WITH THE BALLOTS RESULTS FROM THE ADDITIONAL 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~~ TWO DIFFERENT HAND COUNTS OBTAIN BOTH A CONSISTENT OUTCOME AND THE SAME VOTE COUNTS TO WITHIN THE DESIGNATED MARGINS SPECIFIED BY THE VOTE COUNT VERIFICATION COMMITTEE. THE FINAL hand count constitutes the official count for that race.

G. ~~After~~ DURING the electronic tabulation of early ballots and at one or more times selected by the ~~chairman~~ CHAIRMEN of the political parties entitled to continued representation on the ballot or the ~~chairman's~~ CHAIRMEN'S designees, the chairmen or the chairmen's designees shall randomly select one or more batches of early ballots ~~that have been~~ TO BE tabulated to include at least one batch from each machine used for tabulating early ballots and those ballots shall be securely sequestered AFTER TABULATION by the county recorder or officer in charge of elections along with their unofficial tally reports for a postelection manual audit. A BATCH SHALL NOT EXCEED 400 BALLOTS. ALTERNATIVELY, THE ELECTION OFFICIAL MAY CHOOSE TO SORT THE EARLY BALLOTS BY PRECINCT AND HAND COUNT THE SAME PRECINCTS SELECTED PURSUANT TO SUBSECTION C OF THIS SECTION. IF THE BATCH METHOD IS SELECTED, THE FOLLOWING SUBSECTIONS APPLY.

1. NUMBER OF BALLOTS FOR HAND COUNT. The chairmen or the chairmen's designees shall randomly select from those sequestered early ballots a number equal to ~~one~~ AT LEAST TWO per cent of the total number of early ballots cast or ~~five~~ AT LEAST TEN thousand early ballots, whichever is less.

2. EARLY BALLOT AUDIT DISCREPANCIES. 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~~ OR GREATER THAN THE NUMBER USED IN THE FIRST HAND COUNT, to be randomly selected from the batch or batches of sequestered early ballots. THE EXPANDED AUDIT SHALL INCLUDE THE BALLOTS USED IN THE ORIGINAL HAND COUNT TOGETHER WITH THE ADDITIONAL 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~~ THE FINAL EARLY BALLOT 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.

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 counting OF BALLOTS prescribed by this section shall begin within twenty-four hours after the ~~closing of the polls~~ UNOFFICIAL EARLY AND POLLING VOTE TOTALS FROM ALL PRECINCTS HAVE BEEN MADE PUBLIC and shall be completed before the canvassing of the election for that county. THE SELECTION OF RACES AND PRECINCTS SHALL TAKE PLACE IMMEDIATELY PRIOR TO THE HAND COUNT. 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. THE REPORTED RESULTS SHALL INCLUDE THE HAND COUNTS AND ELECTRONIC COUNTS FOR BOTH POLLING AND EARLY BALLOTS FOR EACH PRECINCT OR BATCH AND FOR EACH CANDIDATE OR ISSUE.

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.

16-663. Recount of votes; method

A. The superior court to which the facts requiring a recount are certified shall forthwith make and enter an order requiring a recount of the votes cast for such office, measure or proposal. The recount shall be conducted in accordance with the laws pertaining to contests of elections.

B. When the court orders a recount of votes which were cast and tabulated on electronic voting equipment, such recount shall be pursuant to section 16-664. On completion of the recount, and for legislative, statewide and federal candidate races only, the county chairmen of the political parties entitled to continued representation on the ballot or the chairman's designee shall select at random without the use of a computer five per cent of the precincts for the recounted race for a hand count OF VOTES WHICH WERE CAST AND TABULATED ON ELECTRONIC VOTING EQUIPMENT. ~~7~~ and IN ADDITION, FIVE PER CENT OF THE EARLY BALLOTS FOR THE RECOUNTED RACE, SELECTED RANDOMLY, SHALL BE HAND COUNTED USING THE BATCH METHOD ESTABLISHED IN SECTION 16-602, SUBSECTION G. THE TOTALS FOR EARLY BALLOTS AND PRECINCT BALLOTS SHALL BE

RECORDED SEPARATELY BUT SHALL BE COMBINED WHEN CALCULATING THE FINAL DIFFERENCE BETWEEN THE ELECTRONIC TABULATION AND THE HAND COUNT. If the hand count results in a difference that is equal to or greater than the designated margin for that race, the procedure established in section 16-602, subsections D, E, F and G applies.

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 recounted on an automatic tabulating system to be furnished and programmed under the supervision of the secretary of state. 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 recounted on an automatic tabulating system to be furnished and programmed under the supervision of the governor.

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.

D. IF THE RECOUNTED RACE RESULTS IN AN INCONSISTENT OUTCOME AND THE MARGIN OF THE RECOUNT IS STILL WITHIN THE LIMITS SET FORTH BY SECTION 16-661, THEN THE OUTCOME OF THE RACE SHALL BE DETERMINED USING ONE OF THE FOLLOWING METHODS, AS SELECTED BY THE OFFICIAL IN CHARGE OF THE ELECTION AND HAVING INFORMED PARTY REPRESENTATIVES:

1. THE ELECTRONIC COUNT OF ALL BALLOTS SHALL BE REPEATED UNTIL TWO COUNTS OBTAIN CONSISTENT OUTCOMES AND THE VOTE COUNT DIFFERENCES FOR THOSE TWO COUNTS ARE WITHIN THE MARGINS SPECIFIED IN SECTION 16-661. WHEN MORE THAN ONE COUNTING DEVICE IS AVAILABLE, BALLOTS SHALL BE DISTRIBUTED AMONG THE DEVICES SO THAT THEY ARE COUNTED ON DIFFERENT DEVICES FOR EACH RECOUNT. ONCE A CONSISTENT OUTCOME IS OBTAINED, THE FINAL COUNT SHALL CONSTITUTE THE OFFICIAL COUNT FOR THAT RACE, OR

2. ALL BALLOTS SHALL BE HAND COUNTED USING A VOTER INTENT CRITERIA AS SPECIFIED IN 16-602H. THE HAND COUNT SHALL CONSTITUTE THE OFFICIAL COUNT FOR THAT RACE.