

RULES FOR VOTER INTENT

(Effective April 14, 2002; Revised ~~September 16, 2011~~)



**State Board of Election Commissioners
501 Woodlane, Suite 401N
Little Rock, AR 72201
(501) 682-1834 or (800) 411-6996
www.arkansas.gov/sbec**

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Scope of Rules

These rules and regulations set forth the procedures for determining voter intent. These rules are subject to revisions due to the use of new types of equipment and/or ballot formats, or changes in laws and are in addition to and not a substitute for the laws of the State of Arkansas.

§ 300 Definitions

- (a) Candidate area – the area(s) on a ballot where candidates' names appear.
- (b) Electronic vote tabulating device – a device, commonly referenced as an optical scanner, used to electronically scan a marked paper ballot for the purpose of tabulation.¹
- (c) Issue area – the area(s) on a ballot where measures appear.
- (d) Marking device – any approved device operated by a voter to record the voter's choices through marking or creating a paper ballot with ink or other substance that will enable the votes to be tabulated by means of an electronic vote tabulating device for marking a paper ballot with ink or other substances that will enable votes to be tabulated by means of an electronic vote tabulating device.² -Paper ballots counted by hand shall be marked using permanent ink.³ If an electronic vote tabulating device (optical scanner) is used to count paper ballots, a marking instrument recommended by the manufacturer of the optical scanner for proper marking shall be used.⁴
- (e) Measure – an amendment, act, ordinance, referendum, issue, question, plebiscite or proposal not involving the election of candidates that appears on a ballot.⁵
- (f) Over-vote – a ballot containing marks for more than the maximum allowable number of candidates in any one (1) contest⁶ or containing marks both “FOR” and “AGAINST” a single measure.
- (g) Paper ballot – a paper vote sheet that is either counted by hand or by use of an electronic vote tabulating device. The heading of each paper ballot must read: “OFFICIAL BALLOT (description) ELECTION (date), (year). Vote by placing an appropriate mark opposite the person for whom you wish to vote”.⁷ If the paper ballot contains an initiated or referred amendment, act, or other measure, the heading must also include the language: “Vote on amendments, acts, and measures by placing an appropriate mark below the amendment (or

¹ A.C.A. § 7-1-101

² A.C.A. § 7-1-101 as amended by Act 1218 of 2015

³ A.C.A. § 7-5-602(c)

⁴ A.C.A. § 7-5-211(a)(2)(H)

⁵ A.C.A. §§ 7-9-101; 7-9-125

⁶ A.C.A. § 7-5-603(2)(B)

⁷ A.C.A. § 7-5-208(b)(1)

act or measure) either “FOR” or “AGAINST”.⁸ Every paper ballot must contain printed instructions under the heading that inform the voter of the effect of casting multiple votes

⁸ A.C.A. §§ 7-5-208(b)(2), ~~as amended by Act 1020 of 2011~~; 7-5-601(d)(2), ~~as amended by Act 1020 of 2011~~

for an office or measure and how to correct the ballot before it is cast and counted.⁹ The paper ballot must contain a place for marking a vote for a candidate adjacent to and on the same line as the name of each candidate. Below each act, amendment, or other measure to be voted on, the words “FOR” and “AGAINST” shall be situated one above the other with a place for marking a vote for each act, amendment, or other measure adjacent to and on the same line of each word.¹⁰

- (h) Properly marked – a paper ballot appropriately marked in the appropriate places for marking a vote that contains no marks for more than the maximum allowable number of candidates in any one (1) contest or marks both “FOR” and “AGAINST” any single measure.
- (i) Target area – the place on the paper ballot for marking a vote for candidates and measures.
- (j) Under-vote – no vote is recorded for a contest.
- (k) Voting machine – [either](#) a direct recording electronic voting machine that records votes by means of a ballot display provided with mechanical or electro-optical components that may be actuated by the voter, processes data by means of a computer program, records voting data and ballot images in internal and external memory components, and produces a tabulation of the voting data stored in a removable memory component and in a printed copy; [or one or more electronic devices that operate independently or as a combination of a ballot marking device and an electronic vote tabulating device.](#)¹¹

⁹ A.C.A. § 7-5-601(e)

¹⁰ A.C.A. § 7-5-208(d)

¹¹ A.C.A. § 7-1-101 [as amended by Act 1218 of 2015](#)

§ 301 Paper Ballots

The following standards shall apply in determining whether a paper ballot has been properly marked and whether a vote should be counted for any contest in question:

- when paper ballots are not scanned in the presence of the voter due to malfunction of a precinct electronic vote tabulating device and the prescribed counting machine will not accept an individual paper ballot during tabulating,
- when using an electronic vote tabulating device at a central counting location and the prescribed counting machine will not accept an individual paper ballot, or
- when counting paper ballots manually by hand.

Standards

The following instructions assume a single-seat office, that is, the voter is only permitted to vote for one (1) candidate per contest.

1. Any paper ballot that is properly marked, as specified by the ballot instructions, in the target area for one (1) candidate or in the target area as either for or against a measure shall be counted as a vote for that candidate or on that measure for that contest.

Vote to be counted:

For Attorney General	
(Vote for one)	
<input type="radio"/>	Lucille Ball
<input checked="" type="radio"/>	Jack Benny
<input type="radio"/>	Desi Arnaz

2. Any paper ballot that is properly marked with any device other than the approved marking device which prevents a machine count shall be counted as a vote.

3. Any paper ballot with identical marks for more than one (1) candidate or with identical marks both for and against a measure, without additional clarifying marks, shall be deemed an over-vote, and no vote shall be counted in that contest.¹²

Votes NOT counted:

For Attorney General (Vote for one)	
<input checked="" type="radio"/>	Lucille Ball
<input checked="" type="radio"/>	Jack Benny
<input type="radio"/>	Desi Arnaz

For Attorney General (Vote for one)	
<input type="radio"/>	Lucille Ball
<input checked="" type="radio"/>	Jack Benny
<input checked="" type="radio"/>	Desi Arnaz

Proposed Constitutional Amendment No. 1 (Referred to the People by the General Assembly) (Popular Name)	
An amendment to limit the increase in the assessed value of a taxpayer's real property after a countywide reappraisal and to require a property tax credit.	
<input checked="" type="radio"/>	FOR Proposed Referred Constitutional Amendment No. 1
<input checked="" type="radio"/>	AGAINST Proposed Referred Constitutional Amendment No. 1

4. Any paper ballot with the names for all but one (1) candidate stricken shall be counted for the one (1) candidate whose name was not stricken.

Vote to be counted (for candidate not stricken):

For Attorney General (Vote for one)	
<input type="radio"/>	Lucille Ball
<input type="radio"/>	Jack Benny
<input type="radio"/>	Desi Arnaz
<input type="radio"/>	Lenny Bruce

Vote counted for Lucille Ball

¹² A.C.A. § 7-5-603(2)(B)

5. Any paper ballot with identical marks for more than one (1) candidate or with identical marks both for and against a measure in a contest, clarified by an additional mark or marks that indicate support for a single candidate or support for or against a measure, shall be counted as a vote for the candidate or on the measure with the additional clarifying marks.

Votes to be counted (for candidate with additional clarifying mark):

For Attorney General
(Vote for one)

☒ Lucille Ball

☒ Jack Benny

☒ Desi Arnaz

☒ Lenny Bruce

Vote counted for Jack Benny

For Attorney General
(Vote for one)

↓

☒ Lucille Ball

☐ Jack Benny

☐ Desi Arnaz

☐ Lenny Bruce

Vote counted for Lucille Ball

6. Any paper ballot that has any mark in the target area, candidate area or issue area for only one (1) candidate or either for or against a measure, including circling or making a mark through the target area, candidate area, or issue area, provided there is no other similar marking in the contest, shall be counted as a vote for that candidate or on that measure, unless the mark is clearly a negative comment.

a. Votes to be counted:

For Attorney General
(Vote for one)

☐ Lucille Ball

☐ Jack Benny

☒ Desi Arnaz

☐ Lenny Bruce

For Attorney General
(Vote for one)

☒ Lucille Ball

☐ Jack Benny

☐ Desi Arnaz

☐ Lenny Bruce

b. Vote NOT counted:

For Attorney General
(Vote for one)

☐ Lucille Ball

☐ Jack Benny

☐ Desi Arnaz

☐ Lenny Bruce

7. Any paper ballot that has a mark in the target area or candidate or issue area for one (1) candidate or either for or against a measure, which partially extends into one (1) or more other target areas or candidate or issue areas shall be counted as a vote for the candidate or on the measure so marked, only if it is readily apparent that most of the mark is in that candidate or issue area or target area.

Votes to be counted:

For Attorney General
(Vote for one)

☒ Lucille Ball

☐ Jack Benny

☐ Desi Arnaz

☐ Lenny Bruce

For Attorney General
(Vote for one)

☐ Lucille Ball

☐ Jack Benny

☒ Desi Arnaz

☐ Lenny Bruce

8. Any paper ballot that has a mark in the target area or candidate or issue areas for one (1) candidate or either for or against a measure and on which marks in other target areas or candidate or issue areas have been partially erased, scratched out, or otherwise removed shall be counted as a vote for the candidate or on the measure for which the mark was not erased, scratched out, or otherwise removed.

Votes to be counted:

For Attorney General
(Vote for one)

☒ Lucille Ball

☒ Jack Benny

☒ Desi Arnaz

☐ Lenny Bruce

For Attorney General
(Vote for one)

☒ Lucille Ball

☒ Jack Benny

☐ Desi Arnaz

☐ Lenny Bruce

9. Any paper ballot in which writings or remarks appear to be ranking the candidates (letters, numbers) shall be counted as a vote for the top ranked candidate.

Vote to be counted for Jack Benny in all cases:

For Attorney General
(Vote for one)

☒ Lucille Ball

☒ Jack Benny

☒ Desi Arnaz

☒ Lenny Bruce

For Attorney General
(Vote for one)

☒ Lucille Ball

☒ Jack Benny

☒ Desi Arnaz

☒ Lenny Bruce

For Attorney General
(Vote for one)

☒ Lucille Ball

☒ Jack Benny

☒ Desi Arnaz

☐ Lenny Bruce

10. Any paper ballot with positive or negative writings or remarks regarding one (1) or more candidates or for and/or against a measure, shall not be counted as a vote in that contest, unless clarified by an additional mark or marks that indicate support for a single candidate or support either for or against the measure.

Votes NOT counted:

For Attorney General
(Vote for one)

☐ Lucille Ball **GO GIRL**

☐ Jack Benny

☐ Desi Arnaz

☐ Lenny Bruce

For Attorney General
(Vote for one)

☐ Lucille Ball

☐ Jack Benny **NEVER**

☐ Desi Arnaz

☐ Lenny Bruce

Votes to be counted:

For Attorney General
(Vote for one)

☒ Lucille Ball

☐ Jack Benny **NEVER**

☐ Desi Arnaz **MY GUY**

☐ Lenny Bruce

Vote counted for Lucille Ball

For Attorney General
(Vote for one)

☐ Lucille Ball **GO GIRL**

☐ Jack Benny

☒ Desi Arnaz **MY GUY**

☐ Lenny Bruce

Vote counted for Desi Arnaz

11. Any paper ballot on which the voter casts a vote on the ballot and writes in a different, qualified candidate in the write-in area shall be considered an over-vote for that contest and neither vote shall be counted.

Vote NOT counted:

For Attorney General	
(Vote for one)	
<input type="radio"/>	Lucille Ball
<input type="radio"/>	Jack Benny
<input checked="" type="radio"/>	Desi Arnaz
<input checked="" type="radio"/>	<u>Lenny Bruce</u>

- ~~12. A write-in vote is not counted unless the name of the write-in candidate shall have been hand-written on the paper ballot.~~¹³

13. A write-in vote is not counted unless the name written on the paper ballot is the same name listed on the write-in candidate's political practices pledge. Any abbreviation, misspelling, or other minor variation in the hand-written form of the name of a qualified write-in candidate must be disregarded if the intention of the voter can be reasonably determined.¹⁴
14. If a paper ballot is left at a voting booth or anywhere else in the polling site without being inserted by the voter into the ballot box before departing the polling site, a poll worker shall write "Abandoned" on the ballot and place it into an "Abandoned Ballot" envelope with a notation on the outside of the envelope of the circumstances surrounding the abandoned ballot. The ballot shall not be counted.¹⁵
15. If a paper ballot that is fed by a voter into an electronic vote tabulating device is rejected by the device but is in the receiving part of the counter, and the voter has departed the polling site without instructing a poll worker to cancel or replace the ballot, then two (2) poll workers shall override warnings and complete the process of casting the ballot. The poll workers shall document the time they completed the process of casting the ballot, the name of the voter, the names of the poll workers completing the process, and all other circumstances surrounding the abandoned ballot.¹⁶

¹³ ~~A.C.A. § 7-5-205(4)~~

¹⁴ A.C.A. § 7-5-205(4)

¹⁵ A.C.A. § 7-5-309(g)

¹⁶ A.C.A. § 7-5-309(h)

§ 302 Direct Recording Electronic Voting Machine

Voting machines are constructed to notify a voter when more than the maximum allowable number of selections in any one (1) contest are made, thus preventing the voter from over-voting any contest on the ballot. Voting machines can be programmed to alert the voter of any under-voted contest.¹⁷

If a voter fails to complete the process of casting an electronic ballot on a voting machine and departs the polling site without notifying a poll worker of his or her desire to cancel the ballot prior to departing, two (2) poll workers shall take action to complete the process of casting the ballot. The poll workers must document the time, the name of the voter, if known, the names of the poll workers completing the process of casting the ballot, and all other circumstances surrounding the abandoned ballot.¹⁸

¹⁷ A.C.A. § 7-5-504(9)

¹⁸ A.C.A. § 7-5-522(d)

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY State Board of Election Commissioners

DIVISION _____

DIVISION DIRECTOR Justin Clay

CONTACT PERSON Justin Clay

ADDRESS 501 Woodlane, Suite 401N, Little Rock, AR 72201

PHONE NO. 501-682-1834 FAX NO. 501-682-1782 E-MAIL clay.sbec@sos.arkansas.gov

NAME OF PRESENTER AT COMMITTEE MEETING Justin Clay

PRESENTER E-MAIL clay.sbec@sos.arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

1. What is the short title of this rule? Rules for Voter Intent 108.00.03
2. What is the subject of the proposed rule? Procedures for determining voter intent in marking ballots
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes ☐ No ☒
If yes, please provide the federal rule, regulation, and/or statute citation. _____
4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes ☐ No ☒
If yes, what is the effective date of the emergency rule? N/A
- When does the emergency rule expire? N/A

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act?

Yes ☐

No ☐

5. Is this a new rule? Yes ☐ No ☒

If yes, please provide a brief summary explaining the regulation. N/A

Does this repeal an existing rule? Yes ☐ No ☒

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. N/A

Is this an amendment to an existing rule?

Yes ☒

No ☐

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. 7-4-101(f)

7. What is the purpose of this proposed rule? Why is it necessary? To provide guidance as to when an ambiguously marked paper ballot will be counted or not counted by a county election commission. Changes include amending definitions pursuant to legislative changes and removing a requirement that the name of a write-in candidate be hand written on the paper ballot to comply with Act 1218 of 2015.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). www.arkansas.gov/sbec

9. Will a public hearing be held on this proposed rule? Yes ☐ No ☒

If yes, please complete the following:

Date: N/A

Time: N/A

Place: N/A

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

August 10, 2015

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

October 4, 2015

12. Do you expect this rule to be controversial? Yes ☐ No ☒

If yes, please explain.

13. Please give the names of persons, groups, or organizations that you expect to comment on these rules?
Please provide their position (for or against) if known.
-

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT State Board of Election Commissioners

DIVISION _____

PERSON COMPLETING THIS STATEMENT Justin Clay

TELEPHONE NO. 501-682-1834 **FAX NO.** 501-682-1782 **EMAIL:** clay.sbec@sos.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Rules for Voter Intent 108.00.03

1. Does this proposed, amended, or repealed rule have a financial impact? Yes ☐ No ☒
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes ☒ No ☐
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☒ No ☐

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;
 N/A
- (b) The reason for adoption of the more costly rule;
 N/A
- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;
 N/A
- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.
 N/A

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

- (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue	<u>N/A</u>
Federal Funds	<u>N/A</u>
Cash Funds	<u>N/A</u>
Special Revenue	<u>N/A</u>
Other (Identify)	<u>N/A</u>

Next Fiscal Year

General Revenue	<u>N/A</u>
Federal Funds	<u>N/A</u>
Cash Funds	<u>N/A</u>
Special Revenue	<u>N/A</u>
Other (Identify)	<u>N/A</u>

Total 0.00

Total 0.00

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue	<u>N/A</u>
Federal Funds	<u>N/A</u>
Cash Funds	<u>N/A</u>
Special Revenue	<u>N/A</u>
Other (Identify)	<u>N/A</u>
Total	<u>0.00</u>

Next Fiscal Year

General Revenue	<u>N/A</u>
Federal Funds	<u>N/A</u>
Cash Funds	<u>N/A</u>
Special Revenue	<u>N/A</u>
Other (Identify)	<u>N/A</u>
Total	<u>0.00</u>

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ 0.00

N/A

Next Fiscal Year

\$ 0.00

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ 0.00

N/A

Next Fiscal Year

\$ 0.00

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes ☐ No ☒

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and

- (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.