

STATE OF ALABAMA OFFICE OF THE SECRETARY OF STATE ELECTIONS
DIVISION
ADMINISTRATIVE CODE

CHAPTER 820-2-1
GENERAL IMPLEMENTATION OF THE HELP AMERICA VOTE ACT

TABLE OF CONTENTS

820-2-1-.01	Help America Vote Act Administrative Rules
820-2-1-.02	Definition Of A Vote
820-2-1-.03	Help America Vote Act Reimbursement

820-2-1-.01 Help America Vote Act Administrative Rules.

This chapter consists of various administrative rules designed to implement the Help America Vote Act and is promulgated under Code of Ala. 1975, §17-1-8, unless otherwise noted. This chapter shall apply to all elections except municipal elections. The rules in this chapter are severable from one another.

Author: Adam L. Bourne

Statutory Authority: Code of Ala. 1975, §§17-1-8.

History: New Rule: Filed May 5, 2006; effective June 9, 2006.

820-2-1-.02 Definition Of A Vote.

(1) This rule serves to fulfill the requirement of defining what constitutes a vote under the Help America Vote Act ("HAVA"), Public Law 107-252; and Code of Ala. 1975, §17-25-4.

(a) This rule shall not supersede any other law.

(b) This rule shall not apply to a vote cast in a municipal election.

(c) This rule shall be construed in favor of counting a cast vote.

(2) For the purpose of this rule:

(a) "Electronic voting system" means any Direct Recording Electronic Voting System or optical scan voting system, as defined in this rule.

(b) "Direct Recording Electronic Voting System/DRE Voting System" means a voting system certified by the Electronic

Voting Committee that allows a voter to cast his or her vote using a touch-screen, a keypad, Voter With Disability device, or other input device.

(c) "Question" means any item on a ballot or paper ballot, as defined in this rule, other than a candidate.

(d) "Touch-screen" means a video screen that is part of a voting system certified by the Electronic Voting Committee that a voter can manipulate by touching or otherwise applying pressure.

(e) "Identifiable write-in selection" means a real and reasonably distinctive name of a person entered into a ballot line or touch-screen field designated for a write-in candidate.

(f) "Voter With Disability Device/VWD" means a device that is part of a voting system certified by the Electronic Voting Committee, which, when plugged into a normal DRE unit, enables a voter with a disability to vote without assistance.

(g) "Optical scan voting system" means a voting system certified by the Electronic Voting Committee that electronically accepts and reads a specially printed ballot.

(h) "Approved marking device" means a writing utensil or a marking machine used to mark a ballot designed for an optical scan voting system, that is provided by, manufactured by, recommended by, or approved by the manufacturer or provider of the optical scan voting system. This may include, but is not limited to, a Direct Recording Electronic Voting System designed to mark a ballot for an optical scan voting system.

(i) "Tabulating machine" means any central or precinct-based electronic system that is part of a voting system certified by the Electronic Voting Committee that is capable of accepting, reading, and counting a vote.

(j) "Ballot" means an official ballot provided for by Code of Ala. 1975, §17-8-1-45.

(k) "Spoiled ballot" means a ballot that is disregarded in accordance with Code of Ala. 1975, §17-8-33.

(l) "Stray mark" means an unidentifiable design on a ballot or paper ballot, as defined in this rule, that is not clearly associated with any candidate or question on the ballot or paper ballot.

(m) "Paper ballot" means a ballot which is designed to be marked and read manually.

(n) "Erasure" means any mark on a ballot or paper ballot that appears to a reasonable person to have been erased by a voter in favor of a new vote or a non-vote.

(3) A voter shall cast a countable vote on a Direct Recording Electronic ("DRE") voting system by either:

(a) Pressing the appropriate place on the DRE voting system's touch-screen to cause an "X" or similar designation to display adjacent to the name of the candidate or answer to a question for which the voter desires to vote;

(b) Typing on the DRE voting system's touch-screen the name of an identifiable write-in selection whose name is not otherwise printed on the ballot in accordance with the instructions for voting on the DRE unit;

(c) In the case of a voter using a Voter With Disability ("VWD") device attached to the DRE unit, pressing the appropriate buttons on the DRE voting system's keypad; or

(d) Using a VWD or other device designed for the DRE voting system to perform the aforementioned functions.

(4) A voter shall cast a countable vote on an optical scan voting system by either:

(a) Using an approved marking device to fill in the oval or complete the arrow adjacent to the name of the candidate or answer to a question on the ballot for which the voter desires to vote; or

(b) Using an approved marking device to fill in the oval or complete the arrow adjacent to the write-in space and writing the name of an identifiable write-in selection whose name is not otherwise printed on the ballot in the space on the ballot that is specified in the instructions for voting the ballot; and

(c) Placing the completed ballot into the optical scan voting system's receptacle in accordance with the instructions posted at the polling place or relayed by a poll worker.

(5) The following special rules govern the manual review of a vote cast on an optical scan voting system where the ballot upon which the vote is cast is rejected or otherwise not read by the tabulating machine and not spoiled:

(a) If the voter fills in the oval or completes the arrow adjacent to the name of a candidate printed on the ballot and fills in the oval or completes the arrow adjacent to the write-in space for the same office, the properly cast vote for

the candidate on the ballot shall be counted and the write-in vote shall be ignored.

(b) If it appears that there is a properly cast vote and that a stray mark has caused the tabulating machine to reject the vote for the office, the properly cast vote shall be counted and the stray mark shall be ignored.

(c) If a voter marks his or her ballot in a manner other than that specified by law and this rule, the vote shall be counted if the voter clearly and without question indicates the candidate or answer to a question for which the voter desires to vote. The following are specific but non-exclusive situations where a vote should not be or should be counted:

1. If a voter marks in the same manner more names than there are persons to be elected to an office, then no vote shall be counted for that office. If a voter marks in the same manner more answers than a particular question calls for, then no vote shall be counted for that question.

2. If a voter marks with a cross, "X," checkmark, or other similar mark within the oval or arrow adjacent to the name of the candidate or answer to a question for which the voter desires to vote, the vote shall be counted. Underlining or circling the candidate or answer to a question for which the voter desires to vote also constitutes a countable vote. An apparent erasure of an aforementioned mark shall not be counted if the voter makes another mark in accordance with this rule or other applicable law.

(6) In any event where a voter casts a vote using a paper ballot under Code of Ala. 1975, §17-9-28; the vote shall be counted in accordance with Code of Ala. 1975, §§17-8-15-21.

Author: Adam L. Bourne

Statutory Authority: Code of Ala. 1975, §§17-1-8(a); 17-25-4(f).

History: New Rule: Filed May 5, 2006; effective June 9, 2006.

820-2-1-.03

Help America Vote Act Reimbursement.

(1) This rule is promulgated under Code of Ala. 1975, §§17-1-8 and 17-25-4. This rule is intended to provide the Secretary of State with the information necessary to make a decision as to whether a county is eligible for reimbursement under Code of Ala. 1975, §17-25-4 and other applicable law. Any county that seeks reimbursement under Code of Ala. 1975, §17-25-4 must strictly comply with this rule.

(2) To be eligible for reimbursement under Code of Ala. 1975, §17-25-4, a county must respond within ten (10) days to any request for information from the Secretary of State or his/her designee(s).

Author: Adam L. Bourne

Statutory Authority: Code of Ala. 1975, §§17-1-8, 17-25-4.

History: New Rule: Filed May 5, 2006; effective June 9, 2006.