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**RE: EXECUTIVE SUMMARY MEMORANDUM**

**PROPOSED BILL NO. 13  
MODIFYING THE TIME TO COUNT EARLY AND ABSENTEE VOTES**

Dear Sir or Madam:

This bill changes when election officials can begin hand counting early and absentee votes.

**Ark. Code Ann. § 7-5-416**

(a)(7)(A)(i)

Permits election officials to begin counting early and absentee ballots at noon on election day.

(a)(7)(A)(ii)

Requires video recording but exempts video livestreaming of early and absentee votes until after the polls close on election day.

(g)

Requires the count of early and absentee votes to remain undisclosed until after the polls have closed and creates criminal penalties for premature disclosure.

Sincerely,



**/S/ CLINTON W. LANCASTER**  
Attorney at Law

# A Bill

1 State of Arkansas  
2 94th General Assembly  
3 Regular Session, 2023

SENATE BILL \_\_\_\_\_

4  
5 By: Representative  
6 By Senator

## For An Act to Be Entitled

7  
8 AN ACT TO AMEND THE LAW CONCERNING ELECTIONS  
9 AND TO RESTORE ELECTION INTEGRITY IN ARKANSAS  
10 AND AMENDED ELECTION PROCEDURES  
11

### Subtitle

12  
13 TO CHANGE THE TIME PERIOD IN WHICH EARLY AND  
14 ABSENTEE BALLOTS CAN BE TABULATED  
15

16  
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
18

19 **SECTION 1. Arkansas Code Title 7, Chapter 5, Subchapter 4, Section 416 is**  
20 **amended as follows:**

21 (a)(1) The election officials for absentee ballots may meet in a place designated by the  
22 county board of election commissioners no earlier than the Tuesday before the election for the  
23 purpose of opening the outer envelope, processing, and canvassing of absentee ballot paper work  
24 of the outer envelope and no earlier than 8:30 a.m. on election day for the purpose of opening the  
25 inner absentee ballot envelope and counting the absentee ballots.

26 (2) The county board of election commissioners shall give public notice of the time and  
27 location of the opening, processing, canvassing, and counting of absentee ballots and early voting  
28 ballots as provided in § 7-5-202.

29 (3) The county clerk shall provide the county board of election commissioners with a daily  
30 count of absentee applications received, to be reported weekly or upon request of the county board  
31 of election commissioners.

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1 (4) The county clerk shall provide the county board of election commissioners with a daily  
2 count of absentee ballots received, to be reported weekly or upon request of the county board of  
3 election commissioners.

4 (5) The county clerk shall forward the following items to the election officials designated  
5 by the county board of election commissioners to open, process, canvass, and count absentee  
6 ballots:

7 (A) The absentee ballot applications sorted alphabetically and by precinct;

8 (B) The absentee ballots; and

9 (C) A written report containing the following information:

10 (i) The number of absentee ballot applications received by the county clerk;

11 (ii) The number of absentee ballots sent by the county clerk;

12 (iii) The number of absentee ballots returned to the county clerk;

13 (iv) The number of absentee ballots rejected by the county clerk and the reason for  
14 the rejection;

15 (v) The number of absentee ballots marked as received on the paper absentee ballot  
16 applications list; and

17 (vi) If the number of absentee ballots returned to the county clerk and the number of  
18 absentee ballots marked as received on the paper absentee ballot lists are different and the reason  
19 for the difference is known, the reason for the difference.

20 (6) The processing and counting of absentee ballots shall be open to the public, and  
21 candidates and authorized poll watchers may be present in person or by a representative designated  
22 in writing under § 7-5-312 during the opening, processing, canvassing, and counting of the  
23 absentee ballots as provided in this subchapter.

24 (7)(A)(i) Absentee and early votes shall be counted prior to the closing of the polls on  
25 election day beginning as early as noon on election day as provided under this section.

26 (ii) All absentee and early votes counted prior to the close of the polls shall be done  
27 in front of a recorded camera in compliance with the requirements of § 7-5-603 except that the  
28 counting shall not be livestreamed until after the close of the polls on election day.

29 (B)(i) The county board of election commissioners shall report by precinct the initial  
30 count of early votes and absentee ballot votes to the Secretary of State as provided under § 7-5-  
31 701 as soon as practical after the polls close on election day.

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1 (ii) No election results of the precinct shall be printed, posted, or released until after  
2 the polls close on election day.

3 (8)(A) After the outer envelope of an absentee ballot is opened, a county clerk and deputies  
4 of the county clerk shall not have access to:

5 (i) The absentee ballots;

6 (ii) Absentee ballot paperwork; or

7 (iii) The inner envelope of an absentee ballot.

8 (B) The county board of election commissioners may grant a county clerk or deputies  
9 of the county clerk access to the absentee ballot materials in subdivision (a)(8)(A) of this section  
10 if the access is granted by an affirmative vote of the county board of election commissioners for a  
11 specific purpose and for a designated election.

12 (b)(1) The opening, processing, counting, and canvassing of absentee ballots shall be  
13 conducted as follows:

14 (A) One (1) of the election officials shall open outer absentee ballot envelopes one  
15 by one and verify the contents;

16 (B) If the required materials are properly placed in the outer absentee ballot envelope,  
17 the election official shall proceed to read aloud from the voter statement the name of the voter;

18 (C) If the required materials are not properly placed in the outer absentee ballot  
19 envelope, a second election official shall open the inner absentee ballot envelope to verify the  
20 contents no earlier than 8:30 a.m. on election day;

21 (D) If all required materials are present within one (1) or the other envelope, the  
22 election officials shall put the materials in the proper envelope while preserving the secrecy of the  
23 voter's ballot and shall proceed to read aloud from the voter statement the name of the voter and  
24 the voting precinct in which the voter claims to be a legal voter;

25 (E) As each outer envelope is opened and the name of the voter is read, the election  
26 officials for the absentee box shall list the name and voting precinct of the voter;

27 (F)(i) After the election official reads aloud from the statement, the election officials  
28 shall compare the name, address, date of birth, and signature of the voter's absentee application  
29 with the voter's statement and, for first-time voters who registered by mail, the first-time voter's  
30 identification document unless the voter previously provided identification at the time of mailing  
31 the voter registration application.

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1 (ii) If the county board of election commissioners determines that the absentee  
2 application and the voter's statement do not compare as to name, residential voting address, date  
3 of birth, and signature, the absentee ballot shall not be counted.

4 (iii) If a first-time voter fails to provide the required identification with the  
5 absentee ballot or at the time of mailing the voter registration application, then the absentee  
6 application, absentee ballot envelope, and voter's statement shall be placed in an envelope marked  
7 "provisional" and the absentee ballot shall be considered a provisional ballot;

8 (G)(i) The election officials shall compare the name and address of the bearer, agent,  
9 or administrator written on the absentee ballot return envelope with the information on the voter  
10 statement. If the information does not match, then the outer envelope, absentee application, secrecy  
11 envelope containing the ballot, and the voter's statement shall be placed in an envelope marked  
12 "provisional" and the absentee ballot shall be considered a provisional ballot.

13 (ii) The election officials shall compare the name of the bearer written on the  
14 absentee ballot application with the information on the voter statement, and if the information does  
15 not compare, the ballot shall be a provisional ballot.

16 (iii) An absentee ballot designated as a provisional ballot for the lack of a  
17 designation of, or name of, a designated bearer shall be counted only if the county board of election  
18 commissioners does not determine that the provisional ballot is invalid and should not be counted  
19 based on other grounds;

20 (H) If the absentee voter fails to return the voter statement, the vote shall not be  
21 counted;

22 (I) Failure of the voter to submit the required absentee materials in the proper  
23 envelopes shall not be grounds for disqualifying the voter;

24 (J) If the voter statement does not authorize a bearer, agent, or administrator to receive  
25 or return his or her absentee ballot and the ballot was received or returned by a bearer, agent, or  
26 administrator, the vote shall not be counted;

27 (K) If no challenge is made by a qualified poll watcher, the election official shall  
28 remove the inner envelope, without opening the inner envelope containing the ballot, and place it  
29 in the ballot box without marking it in any way;

30 (L)(i) After all of the outer envelopes have been opened, the election officials of the  
31 absentee box shall preserve all the statements of voters and the voters' identification documents

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1 and deliver them to the county clerk, who shall file and keep them for the same length of time after  
2 the election as is required for retention of other ballots.

3 (ii) The voter statements shall be made available for public inspection and copying  
4 during regular business hours no earlier than 8:30 a.m. on the day following the actual delivery of  
5 the statement of the number of outstanding ballots and provisional ballots to the Secretary of State,  
6 and declaration of preliminary and unofficial results of the election under § 7-5-701(a)(3)(C).

7 (iii) The voters' identification documents shall not be subject to public inspection  
8 except as part of a judicial proceeding to contest the election;

9 (M) When all of the inner envelopes containing the ballots have been placed in the  
10 ballot box, the ballot box shall be shaken thoroughly to mix the ballots; and

11 (N) The ballot box shall be opened and the ballots canvassed and counted.

12 (2) No election results shall be printed or released prior to the closing of the polls  
13 on election day.

14 (c) If any person casting an absentee ballot dies before the polls open on election day, his  
15 or her ballot shall be accepted by the county clerk if the absentee ballot is:

16 (1) Signed, dated, postmarked, and mailed before the date of death;

17 (2) Signed, dated, and delivered to the county clerk by a designated bearer, authorized  
18 agent, or administrator before the date of death; or

19 (3) The ballot of a member of the armed services or Arkansas National Guard in active  
20 duty or state active duty executed before the date of death.

21 (d) It is the intent of this section to require the election officials for absentee ballots to meet  
22 and process, canvass, and count absentee ballots according to this section prior to the closing of  
23 the polls on election day.

24 (e)(1) Absentee votes shall be cast on paper ballots.

25 (2)(A) The ballots shall first be counted for write-in votes by the election officials.

26 (B) Then, at the discretion of the county board of election commissioners, the ballots  
27 may be either hand counted or counted on an electronic vote tabulating device.

28 (f)(1) Absentee ballots marked as "special runoff ballots" received from a qualified voter  
29 from one (1) of the categories in § 7-5-406(a) shall be opened for general primary elections and  
30 general runoff elections according to the procedures described in subsection (b) of this section.

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1           (2) However, in counting the special runoff ballot, one (1) of the election officials shall  
2 open the envelope containing the special runoff ballot and read the numbers indicated next to the  
3 names of the two (2) candidates in the general primary election or in the general runoff election.

4           (3) The candidate with the highest ranking shall receive the vote.

5           (4) A special runoff ballot received with the preferential primary absentee ballot shall  
6 be counted in the general primary election, and a special runoff ballot received with the general  
7 election absentee ballot shall be counted in the general runoff election.

8           (5) The Secretary of State shall prepare instructions for opening, counting, and  
9 canvassing special runoff ballots and provide the instructions to each county board of election  
10 commissioners.

11           (g) If early and absentee ballots are counted beginning at noon on election day in  
12 accordance with subsection (7)(A) of this section, then the count shall not be revealed prior to the  
13 close of the polls on election day to any person who is not a poll worker assisting in the count, the  
14 county clerk or his or her deputies, or members of the county board of election commissioners.  
15 Any person who intentionally or willfully discloses the count in violation of this section shall be  
16 guilty of a class A misdemeanor and prohibited from serving as a poll worker, election worker, or  
17 election commissioner in all future elections.