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**RE: EXECUTIVE SUMMARY MEMORANDUM**

**PROPOSED BILL NO. 1  
ABSENTEE VOTING**

Dear Sir or Madam:

Arkansas has a robust absentee balloting law. However, the law needs to be fortified. This proposed bill does that by increasing security and creating a legal process to not count absentee ballots if strict requirements are not met.

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**Ark. Code Ann. § 7-5-402**

(a)(1)(2)(3)

This section reiterates that absentee voting is not a right but a privilege. It directs those who count absentee ballots in Arkansas to not tabulate votes if all strict security measures are not met. The new language allows for no discretion. It also provides that all doubts about a ballot or voting procedure must be resolved by not counting the vote.

To provide heightened notice to the absentee voter, a mandatory warning is sent to persons requesting ballots informing them that their ballot may not be counted and the best method in which to vote is in person.

(a)(3)(B)

This language clarifies that one is only able to obtain an absentee ballot if they are unable to attend their voting place because they are out of the county. This reduces or eliminates a voter's ability to request an absentee ballot because they are available to go to the poll but do not want to do so.

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**Ark. Code Ann. § 7-5-402**

(a)(1)

This additional language requires that all absentee ballots be printed on paper with the special security requirements found in the proposed bill that modifies 7-5-601.

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**Ark. Code Ann. § 7-5-416**

(b)(1)(G)(i)

This language removes the discretion of the county board of election commissioners to count absentee ballots that fail to strictly comply with the absentee ballot voting process.

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(M)(2)(d)(i)

Clarifies that the counting of absentee ballots must begin prior to the close of the polls and continue until the count is completed while simultaneously preventing absentee ballots not present before the close of the polls from being counted.

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 REDUCE FRAUD AND FRAUDULENT VOTING  
14 CONDUCT IN ABSENTEE VOTING.  
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 402 is**  
20 **amended as follows:**

21 (a)(1) Absentee voting is not a right but a privilege.

22 (2) Absentee ballots and absentee voting are extremely susceptible to fraud and  
23 manipulation because the sanctity of the act of voting occurs outside of the protections of the  
24 polling place. To combat absentee voting fraud, absentee balloting laws shall be strictly construed,  
25 and all doubts resolved in favor of ensuring that votes cast on absentee ballots are not fraudulent.  
26 If such doubts about a ballot, the voting procedure, or the voting process are in question, then the  
27 vote shall not be counted.

28 (3) The county clerk shall include in an absentee ballot package sent to the voter who  
29 requested a ballot the following warning to alert the absentee voter that there is a higher risk of his  
30 or her ballot not being counted:

1        **ABSENTEE VOTING IS NOT A RIGHT BUT A PRIVILEGE. ABSENTEE**  
2        **BALLOTS AND ABSENTEE VOTING ARE EXTREMELY SUSCEPTIBLE**  
3        **TO FRAUD AND MANIPULATION BECAUSE THE SANCTITY OF THE**  
4        **ACT OF VOTING OCCURS OUTSIDE OF THE PROTECTIONS OF THE**  
5        **POLLING PLACE. TO COMBAT ABSENTEE VOTING FRAUD,**  
6        **ABSENTEE BALLOTING LAWS SHALL BE STRICTLY CONSTRUED,**  
7        **AND ALL DOUBTS RESOLVED IN FAVOR OF ENSURING THAT**  
8        **VOTES CAST ON ABSENTEE BALLOTS ARE NOT FRAUDULENT. IF**  
9        **YOU FAIL TO COMPLY WITH THE STRICT REQUIREMENTS**  
10       **RELATED TO ABSENTEE VOTING, YOUR BALLOT WILL NOT BE**  
11       **COUNTED. YOU ARE STRONGLY URGED TO RETURN THIS BALLOT**  
12       **TO THE CLERK WHO ISSUED IT AND REQUEST TO VOTE AT THE**  
13       **POLLS DURING EARLY VOTING OR ON ELECTION DAY.**

14       (b) The following persons, if possessing the qualifications of electors, may cast an absentee  
15 ballot in any election:

16            (1) Any person who will be unavoidably absent from the county in which his or her  
17 voting place is located on the day of the election; and

18            (2) Any person who will be unable to attend the polls on election day because of illness  
19 or physical disability.

20  
21  
22            **SECTION 2. Arkansas Code Title 7, Chapter 5, Subchapter 4, Section 407 is**  
23 **amended as follows:**

24            (a)(1) The county board of election commissioners shall prepare official absentee ballots  
25 that comply with § 7-5-601 and deliver them to the county clerk for mailing to all qualified  
26 applicants as soon as practicable but not later than forty-seven (47) days before a preferential  
27 primary election, general election, school election, nonpartisan general election, nonpartisan  
28 runoff election, or special election.

29            (2) Upon the receipt of the absentee ballots, the county clerk shall begin delivering  
30 ballots to absentee voters as soon as practicable and, no later than forty-six (46) days before the

PROPOSED BILL 1

1 applicable election, shall deliver ballots to those absentee voters who made timely application  
2 under:

3 (A) Section 7-5-406; or

4 (B) The Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. § 20301  
5 et seq., as existing on January 1, 2011.

6 (b) The county board of election commissioners shall prepare official absentee ballots  
7 and deliver them to the county clerk for mailing to any qualified applicant as soon as practicable  
8 but in any event not later than ten (10) days before all other elections not included in subsection  
9 (a) of this section.

10

11 **SECTION 3. Arkansas Code Title 7, Chapter 5, Subchapter 4, Section 416 is**  
12 **amended as follows:**

13 (a)(1) The election officials for absentee ballots may meet in a place designated by the  
14 county board of election commissioners no earlier than the Tuesday before the election for the  
15 purpose of opening the outer envelope, processing, and canvassing of absentee ballot paperwork  
16 of the outer envelope and no earlier than 8:30 a.m. on election day for the purpose of opening the  
17 inner absentee ballot envelope and counting the absentee ballots.

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

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

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

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

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

31 (B) The absentee ballots; and

PROPOSED BILL 1

- 1 (C) A written report containing the following information:  
2 (i) The number of absentee ballot applications received by the county clerk;  
3 (ii) The number of absentee ballots sent by the county clerk;  
4 (iii) The number of absentee ballots returned to the county clerk;  
5 (iv) The number of absentee ballots rejected by the county clerk and the reason  
6 for the rejection;  
7 (v) The number of absentee ballots marked as received on the paper absentee  
8 ballot applications list; and  
9 (vi) If the number of absentee ballots returned to the county clerk and the number  
10 of absentee ballots marked as received on the paper absentee ballot lists are different and the reason  
11 for the difference is known, the reason for the difference.

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

16 (7)(A) Absentee and early votes shall be counted prior to the closing of the polls on  
17 election day as provided under this section.

18 (B)(i) The county board of election commissioners shall report by precinct the initial  
19 count of early votes and absentee ballot votes to the Secretary of State as provided under § 7-5-  
20 701 as soon as practical after the polls close on election day.

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

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

- 25 (i) The absentee ballots;  
26 (ii) Absentee ballot paperwork; or  
27 (iii) The inner envelope of an absentee ballot.

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

PROPOSED BILL 1

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

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

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

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

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

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

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

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

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

28 (G)(i) The election officials shall compare the name and address of the bearer, agent,  
29 or administrator written on the absentee ballot return envelope with the information on the voter  
30 statement. If the information does not match, then the outer envelope, absentee application, secrecy

PROPOSED BILL 1

1 envelope containing the ballot, and the voter's statement shall not be counted. ~~placed in an envelope~~  
2 ~~marked "provisional" and the absentee ballot shall be considered a provisional ballot.~~

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

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

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

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

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

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

20 (L)(i) After all of the outer envelopes have been opened, the election officials of the  
21 absentee box shall preserve all the statements of voters and the voters' identification documents  
22 and deliver them to the county clerk, who shall file and keep them for the same length of time after  
23 the election as is required for retention of other ballots.

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

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

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



PROPOSED BILL 1

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

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

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

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

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

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

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

14 (i) In the event that a large number of absentee ballots were cast in an election such  
15 that is impossible to count all the absentee ballots before the close of the polls, then all ballots  
16 which were in the canvassing and counting process prior to the close of the polls shall immediately  
17 continue to be counted before any early voting or election day votes are tabulated. However, no  
18 newly received or additional ballots shall be added to the number of ballots being canvassed or  
19 tabulated. If any absentee ballots are not present, in the canvassing or tabulation process by the  
20 close of the polls, then those ballots shall not be counted.

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

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

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

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

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

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

PROPOSED BILL 1

1           (4) A special runoff ballot received with the preferential primary absentee ballot shall be  
2 counted in the general primary election, and a special runoff ballot received with the general  
3 election absentee ballot shall be counted in the general runoff election.

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