

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
93rd General Assembly
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As Engrossed: S2/3/21 S3/18/21

A Bill

SENATE BILL 217

By: Senators C. Tucker, B. Davis

By: Representative M. Gray

For An Act To Be Entitled

AN ACT TO CLARIFY, CREATE ACCOUNTABILITY AND UNIFORMITY FOR, AND SIMPLIFY ABSENTEE BALLOT PROCESSES; TO ENCOURAGE AND ASSIST LAW ENFORCEMENT INVESTIGATION OF VOTER FRAUD; TO AMEND ELECTION LAW CONCERNING ABSENTEE BALLOTS; TO AMEND ELECTION LAW; AND FOR OTHER PURPOSES.

Subtitle

AN ACT TO CLARIFY, CREATE ACCOUNTABILITY AND UNIFORMITY FOR, AND SIMPLIFY ABSENTEE BALLOT PROCESSES; TO ENCOURAGE AND ASSIST LAW ENFORCEMENT INVESTIGATION OF VOTER FRAUD; AND TO AMEND ELECTION LAW CONCERNING ABSENTEE BALLOTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 6-14-115(a)(1)(B)(ii), concerning school district election returns, canvass, appeal, and filing, is amended to read as follows:

(ii) Declare preliminary ~~and unofficial results~~ counts of the county's election as soon as they are available; and

SECTION 2. Arkansas Code § 7-5-404(b)(2), concerning applications for absentee ballots, is amended to read as follows:

(2)~~(A)~~ For those persons voting by absentee ballot ~~who reside~~



~~outside the county in which they are registered to vote, the application shall remain in effect for one (1) year unless revoked by the voter, and the county clerk shall thereafter automatically mail no later than twenty-five (25) days before each election an absentee ballot for each election.:~~

(A) Unless otherwise provided by the applicant in subdivision (b)(2)(C) of this section, the application shall be valid for only one (1) election cycle.

(B) The election cycle shall include any one (1) election and the corresponding runoff election.

(C) The Secretary of State shall include an option, which the applicant may select, that the application shall remain in effect for one (1) year, unless later revoked by the voter.

(D) The Secretary of State shall include language in the application explaining that the application applies to one (1) election and the corresponding runoff election, unless the option provided under subdivision (b)(2)(C) is selected by the applicant, in which case the application will remain in effect for one (1) year.

(E) The county clerk shall automatically mail to the voter no later than twenty-five (25) days before each election an absentee ballot for the election and no later than ten (10) days before the corresponding runoff election, if any, for which the voter submitted an application for an absentee ballot, unless the voter selected the option provided under subdivision (b)(2)(C), in which case the county clerk shall automatically mail to the voter no later than twenty-five (25) days before each election an absentee ballot for each election held during the applicable one (1) year period.

~~(B)(i) For those persons voting by absentee ballot who reside within the county in which they are registered to vote, the application shall be valid for only one (1) election cycle.~~

~~(ii) The election cycle shall include any one (1) election and the corresponding runoff election.~~

~~(C)(i) For a voter residing in a long-term care or residential care facility licensed by the state the application shall remain in effect for one (1) calendar year unless withdrawn by the voter.~~

~~(ii) The county clerk automatically shall mail no later than twenty-five (25) days before each election an absentee ballot for~~

~~each election unless, before mailing, the administrator of the facility has presented an absentee ballot request from the voter authorizing the administrator to receive the absentee ballot on behalf of the voter for that election.~~

~~(D)(i) For a voter with a disability as defined in § 7-5-311, the application shall remain in effect for one (1) calendar year unless withdrawn by the voter.~~

~~(ii) The county clerk automatically shall mail no later than twenty five (25) days before each election an absentee ballot for each election.~~

SECTION 3. Arkansas Code § 7-5-405(a)(1) and (2), concerning the application form for absentee ballots, are amended to read as follows:

(a)(1) Applications for absentee ballots may be made on a form ~~or forms~~ prescribed by the Secretary of State and furnished by the county clerk at least sixty (60) days before the election.

(2) The form ~~or forms~~ shall contain the following information:

(A) The following statement:

“IF YOU PROVIDE FALSE INFORMATION ON THIS FORM, YOU MAY BE GUILTY OF PERJURY AND SUBJECT TO A FINE OF UP TO \$10,000 OR IMPRISONMENT FOR UP TO 10 YEARS.”;

(B) A statement in which the voter must indicate that he or she is requesting an absentee ballot because he or she will be:

(i) Unavoidably absent from the polling site on election day;

(ii) Unable to attend the polls on election day because of illness or physical disability; or

(iii) Unable to attend the polls on election day because of residence in a long-term care or residential facility licensed by the state;

(C) A statement by the voter indicating whether he or she resides outside the county;

(D) A statement indicating whether the voter is a United States citizen residing outside the territorial limits of the United States;

(E) A statement indicating whether the voter is in active service as a member of the armed services of the United States;

(F) Mailing information for the ballot or the name and

signature of a designated bearer, an administrator, or an authorized agent;

(G) The date, the voter's printed or typed name, voting residence address, date of birth, and the voter's signature attesting to the correctness of the information provided under penalty of perjury; and

(H)(i) The election in which the voter wishes to cast an absentee ballot.

(ii) The language describing the election in which the voter wishes to cast an absentee ballot:

(a) Shall be placed on the form by the Secretary of State;

(b) May use terminology which varies from the election terms adopted in the Arkansas Code;

(c) Shall include a list of election options for absentee ballot voters to choose from when requesting their absentee ballot;

(d) In providing the list of election options in subdivision (a)(2)(H)(ii)(c), the Secretary of State shall:

(1) Use plain language terms which:

(i) Sufficiently identify which ballot the voter is requesting; and

(ii) Are designated to be easily read by the typical registered voter; and

(2) Provide the date on which each such election is to be held.

SECTION 4. Arkansas Code § 7-5-409(b), concerning materials furnished to qualified voters, is amended to read as follows:

(b)(1) If the applicant is registered or is otherwise eligible to vote absentee, the county clerk, prior to mailing or delivering the ballot, shall detach the ballot stub and deposit the ballot stub into a sealed box designated as "Absentee Stub Box" and deliver to the applicant or to the applicant's designated bearer, authorized agent, or administrator for delivery to the applicant the following materials:

~~(1)~~(A) An official absentee ballot for each election named in the application;

~~(2)~~(B) Instructions for voting and returning the official

absentee ballot to the county clerk;

~~(3)~~(C) An official absentee ballot secrecy envelope on which there shall be written or printed the words "Ballot Only";

~~(4)(A)(i)(D)(i)(a)~~ A voter statement.

~~(ii)~~(b) The voter statement shall include the following heading in bold capitalized letters: "THIS VOTER STATEMENT MUST BE COMPLETED AND RETURNED IN THE MAILING ENVELOPE OR THE ABSENTEE BALLOT WILL NOT BE COUNTED."

~~(iii)~~(c) The voter statement shall include the following statement in bold capitalized letters at the bottom of the page: "THE INFORMATION I HAVE PROVIDED IS TRUE TO THE BEST OF MY KNOWLEDGE UNDER PENALTY OF PERJURY. IF I HAVE PROVIDED FALSE INFORMATION, I MAY BE SUBJECT TO A FINE OF UP TO TEN THOUSAND DOLLARS (\$10,000) OR IMPRISONMENT FOR UP TO TEN (10) YEARS, OR BOTH, UNDER FEDERAL OR STATE LAWS."

~~(iv)~~(d) The voter statement shall include a statement that the voter resides at the address on his or her application.

~~(v)~~(e) The voter statement shall include a statement for a first-time voter who registers by mail: "If I am a newly registered voter of this county and this is the first time I am voting in this county, I am enclosing a copy of a current and valid photo identification card or a current utility bill, bank statement, government check, paycheck, or other government document that shows my name and address."

~~(B)~~(ii) Blanks shall be provided for the voter to provide his or her printed name, signature, address, date of birth, printed name and address of the administrator, authorized agent, or designated bearer, signature of administrator, authorized agent, or designated bearer, and address of the administrator, authorized agent, or designated bearer;

~~(C)(i)(iii)(a)~~ The voter statement shall include a sworn statement portion that may be completed by the voter stating that the voter is registered to vote and that he or she is the person who is registered.

~~(ii)~~(b) The sworn statement portion of the voter statement is not required to be notarized, but the voter shall execute the sworn statement under penalty of perjury;

~~(5)~~(E) A sealable envelope upon which shall be printed or written the words: "Return Envelope", the address of the county clerk, the precinct of the voter, and the words: "ABSENTEE BALLOT, , , ELECTION"; and

~~(6)~~(F) An authorized agent authorization form, as follows:

"AGENT AUTHORIZATION FORM

If applicable, fill out and sign this form and place it in the Return Envelope

I hereby authorize (insert his or her name) as my authorized agent, to deliver this ballot as I am medically unable to vote on election day. An affidavit verifying my medical status as unable to deliver the application or to vote on the day of the election is attached or has been provided with my application.

Signature of voter

Printed name of voter

Address of voter

Date of birth of voter."

(2) The voter statement, instructions, and any other absentee ballot materials required under subdivision (b)(1) of this section shall be on forms:

(A) Prescribed by the State Board of Election Commissioners with the assistance of the Secretary of State; and

(B) That are designed to be easily read by the typical registered voter.

SECTION. 5. Arkansas Code § 7-5-411(a)(2) and (3), concerning methods of voting by absentee ballot, are amended to read as follows:

(2) By delivery of the ballot to the county clerk of the county of residence of the voter not later than 7:30 p.m. on election day by the voter or the designated bearer, administrator, or the authorized agent of the absentee voter who is medically unable to vote at the regular polling site,

upon proper verification of the signature of the voter by the county clerk and validation of the identity of the authorized agent; ~~or~~

~~(3) The voter may deliver the ballot to the county clerk of the county of his or her residence not later than the close of regular business hours on the day before the election.~~

SECTION 6. Arkansas Code § 7-5-416 is amended to read as follows:

7-5-416. Counting of absentee ballots.

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

(2) The absentee ballots shall be tabulated or counted no earlier than 8:30 a.m. on election day.

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

~~(3)~~(4) The county clerk shall forward the following items to the election officials designated by the county board of election commissioners to open, process, canvass, and count absentee ballots:

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

(B) The absentee ballots; and

(C) A written report containing the following information:

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

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

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

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

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

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

~~(4)~~(5) The processing and counting of absentee ballots shall be open to the public, and candidates and authorized poll watchers may be present in person or by a representative designated in writing under § 7-5-312 during the opening, processing, canvassing, and counting of the absentee ballots as provided in this subchapter.

~~(5)(A)~~(6)(A) Absentee and early votes shall be counted ~~prior to the closing of the polls on election day~~ as provided under this section.

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

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

(b)(1) ~~The opening, processing, counting, and canvassing of absentee ballots~~ ballot materials shall be ~~conducted~~ opened by two (2) election officials as follows:

(A) One (1) of the election officials shall open outer absentee ballot ~~envelopes~~ one by one and ~~verify the contents~~ locate the required voter materials;

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

~~(C)~~ If the required materials are not properly placed in the outer absentee ballot envelope, a second election official shall open the inner absentee ballot envelope to ~~verify the contents~~ to locate the required voter materials;

~~(D)~~(C) ~~If all required materials are present within one (1) or the other envelope, the~~ The election officials shall put the required voter materials in the ~~proper~~ outer absentee ballot envelope while preserving the secrecy of the voter's ballot ~~and~~ within the inner absentee ballot

envelope;

(D) The election officials shall: proceed to read

(i) Read aloud from the voter statement the name of the voter and the voting precinct in which the voter claims to be a legal voter;

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

(iii) Compare the voter materials as provided under subdivision (b)(2) of this section.

(2)(A) After the opening of the absentee ballot materials, the two (2) election officials shall canvass and compare the absentee ballot materials as follows:

(i) The election officials shall compare all absentee ballot materials returned and any additional information or documentation provided by the county clerk, except the voter's ballot which shall be maintained within the inner absentee ballot to preserve in secrecy;

(ii) The election officials shall review the absentee ballot materials to determine whether:

(a) The voter's name, mailing address, address of residence or registration, date of birth, and signature are comparable;

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

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

(b) The voter identification document, voter statement, and inner envelope containing the absentee ballot are present; and

(c) If a designated bearer, authorized agent, or administrator delivers the ballot, the name and address of the bearer, agent, or administrator are comparable;

~~(iii) If a first-time voter fails to provide the required voter identification with the absentee ballot or at the time of mailing the voter registration application, then the absentee application, absentee ballot envelope, and voter's statement shall be placed in an envelope marked "provisional" and the absentee ballot shall be considered a provisional ballot; is not included with the absentee ballot materials, the election officials shall place the absentee ballot materials including the inner envelope containing the ballot in an envelope marked "provisional", and the absentee ballot shall be considered a provisional ballot.~~

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

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

(iv) The ballot shall be designated to be counted or tabulated if:

(a) All required absentee ballot materials are present;

(b) If a designated bearer, agent, or administrator delivers the ballot of the voter, the name and address of the bearer, agent, or administrator compare; and

(c) The voter's name, mailing address, address of residence or registration, date of birth, and signature compare; and

(v) The absentee ballot materials shall be transmitted to the county board of election commissioners for additional review if:

(a) Any required absentee ballot materials are missing;

(b) The voter's name, mailing address, address of residence or registration, date of birth, and signature do not compare; or

(c) If a designated bearer, agent, or administrator delivers the ballot of the voter, the name and address of the

bearer, agent, or administrator do not compare.

(B) A member of a county board of election commissioners, acting in his or her individual capacity as an election official, may perform the duties under subdivision (b)(2)(A) of this section. However, performance of the duties under subdivision (b)(2)(A) of this section by a member of the county board of election commissioners shall not satisfy or serve as performance of the duties of the whole county board of election commissioners under subdivision (b)(3) of this section.

(3) After canvassing and comparison by the election officials, the absentee ballot materials shall be canvassed and compared by the county board of election commissioners as follows:

(A)(i) The county board of election commissioners shall review the absentee ballot materials transmitted to it under subdivision (b)(2)(A)(v) of this section;

(ii) The county board of election commissioners may:

(a) Review the absentee ballot materials that were designated to be counted or tabulated by the election officials before counting or tabulation; and

(b) Accept the designation of the election officials that the ballot is to be counted or reverse the designation of the election officials and mark the ballot as provisional;

(B)(i) A ballot shall be counted or tabulated if the:

(a) Required absentee ballot materials are present;

(b) Voter's name, mailing address, address of residence or registration, date of birth, and signatures compare; and

(c) If a designated bearer, agent, or administrator delivers the ballot of the voter, the name and address of the bearer, agent, or administrator compare.

(ii) The absentee ballot materials and the absentee ballot shall be placed in an envelope marked "provisional" and the absentee ballot shall be considered a provisional ballot if the:

(a) Required absentee ballot materials are incomplete;

(b) Voter's name, mailing address, address of residence or registration, date of birth, and signature do not compare; or

(c) If a designated bearer, agent, or administrator delivers the ballot of the voter, the name and address of the bearer, agent, or administrator do not compare;

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

(D)(i) An absentee ballot that has been designated provisional for not including the required voter identification with the absentee ballot materials under subdivision (b)(2)(A)(iii) shall be cured according to the procedure set out in Arkansas Constitution Amendment 51, § 13.

(ii) An absentee ballot that has otherwise been designated provisional under this section may be cured by the voter:

(a) By the close of business the Monday following the election;

(b) In person, by phone, or electronically with the county clerk, county board of election commissioners, or appropriately designated staff or election officials; and

(c)(1) By providing or correcting the absentee ballot materials or verification, if the reason for designation as a provisional ballot was an incomplete submission; or

(2) By verifying in writing under penalty of perjury that he or she voted the ballot received by the county clerk, if the reason for designation as a provisional ballot was that:

(a) The voter's name, mailing address, address of residence or registration, date of birth, and signature did not compare; or

(b) If a designated bearer, agent, or administrator delivers the ballot of the voter, the name and address of the bearer, agent, or administrator did not compare.

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

(4) Absentee ballot information is comparable or compares if after a review of the information available to the election official or

county board of election commissioners, the election official or county board of election commissioners believes that the ballot was voted by the person in whose name the absentee ballot was submitted.

(5)(A) Within twenty-four (24) hours after an absentee ballot is designated by any election official or by the county board of election commissioners as provisional, the county board of election commissioners shall by mail, email, or phone, notify the voter of the deadline and process for curing his or her absentee ballot.

(B) To "cure" a ballot means to remove or repair the issue causing a ballot not to be counted through the process set forth in this section, such that the ballot shall then be counted.

(C) If an absentee ballot that was previously designated as needing additional review under subdivision (b)(2)(A)(v) of this section is reviewed by the county board of election commissioners and approved to be counted or tabulated without being designated as provisional, then no more than twenty-four (24) hours after the approval, the county board of election commissioners shall by mail, email, or phone, notify the voter that he or she no longer needs to cure his or her ballot.

(6) The absentee ballots that have been designated to be counted or tabulated shall be opened and processed for tabulation as follows:

~~(K)(A)~~ (A) If no challenge is made by a qualified poll watcher, the election official shall remove the inner envelope, from the absentee ballot materials without opening the inner envelope containing the ballot, and place it in the ballot a box designated for ballots to be counted or tabulated without marking it in any way;

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

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

(C) The ballot box shall be opened and the ballots shall be removed from the inner envelopes, canvassed, and counted.

(7) After the counting and tabulation:

(A) The county board of election commissioners shall preserve all absentee ballot materials and deliver them to the county clerk, who shall file and keep them for the same length of time after the election as is required for retention of other ballots;

~~(ii)~~(B) The voter statements shall be made available for public inspection during regular business hours; and

~~(iii)~~(C) The voters' identification documents shall not be subject to public inspection except as part of a judicial proceeding to contest the election +.

(8) If after review of the absentee ballot materials, an election official or the county board of election commissioners suspects that the absentee ballot was fraudulently submitted, the county board of election commissioners shall:

(A) File complaints concerning the ballot with the State Board of Election Commissioners and the county prosecuting attorney no later than two (2) weeks after certification of the election;

(B) Provide copies of the relevant absentee ballot materials; and

(C) Fully assist all appropriate law enforcement agencies in the investigation.

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

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

~~(2)~~(9) No election preliminary results shall be printed or released prior to the closing of the polls on election day.

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

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

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

(3) The ballot of a member of the armed services or Arkansas

National Guard in active duty or state active duty executed before the date of death.

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

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

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

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

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

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

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

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

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

SECTION 7. Arkansas Code Title 7, Chapter 5, Subchapter 4, is amended to add an additional section to read as follows:

7-5-420. State Board of Election Commissioners Rules.

(a) The State Board of Election Commissioners shall adopt rules that:

(1) Set procedures for the maintenance and storage of absentee ballot materials and absentee ballots;

(2) Set uniform methods for labeling ballot storage containers which, at a minimum:

(A) Document the chain of custody concerning the opening and closing of the sealed boxes; and

(B) Document the contents of the boxes in a readily identifiable manner;

(3) Set standards for the processes, software, and methods used to list and describe the contents of the ballots including without limitation the appropriate use of spreadsheets and summaries;

(4) Proscribe forms for the lists that are required to be generated and maintained under § 7-5-416;

(5) Set the procedure for the handling of absentee ballots and voter materials; and

(6) Set the procedures for timely compliance with the Freedom of Information Act of 1967, § 25-19-101 et seq. that ensure the secrecy and integrity of the voter materials.

(b) The rules shall be promulgated under the Administrative Procedures Act, § 25-15-201, et. seq.

SECTION 8. Arkansas Code § 7-5-701(a)(3)(A) and (B), concerning the certification, delivery, and custody of returns and declaration of election results, are amended to read as follows:

(3)(A) As results are received and tabulated on election night for all state and federal elections, the county board of election commissioners shall declare preliminary ~~and unofficial results~~ counts of the election as soon as early voting, absentee, or individual precinct results are tabulated on election night and immediately shall transmit the results by precinct to the Secretary of State through the election night reporting interface provided by the Secretary of State.

(B) The county board of election commissioners may, by agreement with the county clerk, transmit the ~~results~~ counts to the county clerk who immediately shall transmit the ~~results~~ counts by precinct to the Secretary of State under subdivision (a)(3)(A) of this section.

SECTION 9. Arkansas Code § 7-5-701(a)(3)(C)(i), concerning the certification, delivery, and custody of returns and declaration of election

results, is amended to read as follows:

(i) Declare preliminary ~~and unofficial results~~ counts of the election, including a statement of the number of outstanding:

(a) Ballots of voters who requested ballots under the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. § 20301 et seq.; and

(b) Provisional ballots; and

SECTION 10. Arkansas Code § 7-5-701, concerning the certification, delivery, and custody of returns and declaration of election results, is amended to add an additional subsection to read as follows:

(e)(1) Certified results shall not be amended after the deadline for certification.

(2) Preliminary counts may be updated or amended by the county board of election commissioners before certification of the results of the election to reflect the most then-current count of the ballots.

SECTION 11. DO NOT CODIFY. Rules.

(a) When adopting the initial rules required under this act, the State Board of Election Commissioners shall file the final rules with the Secretary of State for adoption under § 25-15-204(f):

(1) On or before January 1, 2022; or

(2) If approval under § 10-3-309 has not occurred by January 1, 2022, as soon as practicable after approval under § 10-3-309.

(b) The department shall file the proposed rules with the Legislative Council under § 10-3-309(c) sufficiently in advance of January 1, 2022, so that the Legislative Council may consider the rules for approval before January 1, 2022.

/s/C. Tucker