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Bill Analysis
Legislative Service Commission

H.B. 87

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(As Introduced)

Reps. Boccieri, D. Miller, Jerse, Hartnett, Redfern, Patton, Allen, Willamowski, Ford, Britton, Cirelli, S. Smith, Otterman, Sulzer, Coates, Distel, Latell

BILL SUMMARY

- Requires a person who will be outside of the United States on the day of an election and who is voting an armed service absent voter's ballot to mail that ballot to the director of the board of elections prior to the close of the polls on election day.
- Generally requires the return envelope containing an armed service absent voter's ballot from a voter who will be outside of the United States on election day to be postmarked by the close of the polls with an Army Post Office (APO) or Fleet Post Office (FPO) postmark in order for the ballot to be valid and counted.
- Specifies that, if an armed service absent voter's ballot is received from a voter who will be outside of the United States on election day, the ballot generally must be counted if it is received within the required period, whether or not the ballot is postmarked or contains an illegible postmark.
- Requires a board of elections to pay any postage due on an armed service absent voter's ballot that it receives in a return envelope that indicates that the voter will be outside of the United States on election day.
- Requires the Secretary of State to reimburse boards of elections for the costs they incur on postage due armed service absent voter's ballots for which they seek reimbursement.

CONTENT AND OPERATION

Existing law

Existing law requires a voter who receives an armed service absent voter's ballot (1) to answer certain questions on, and to write the voter's signature in a designated place on, the face of an identification envelope into which the ballot must be deposited upon its being marked and (2) to then cause the identification envelope to be placed into the return envelope, sealed in the return envelope, and mailed to the director of the board of elections to whom it is addressed. If the voter will be *outside of the United States* on the day of the election, the voter is required to check a box on the return envelope indicating that fact. To be counted as a valid ballot, a board of elections must receive such a return envelope prior to the 21st day after a presidential primary election or prior to the 11th day after the day of any other election. (Secs. 3511.09 and 3511.11.)

There is no *explicit* statutory requirement, under existing law, that an armed service absent voter's ballot must be postmarked in order to be counted as a valid ballot. Section 3511.11 of the Revised Code, however, specifies that an armed service absent voter's ballot received from a voter who will be outside of the United States on election day that is "postmarked or signed after the close of the polls on election day" must not be counted. The Secretary of State has interpreted this to create an implied postmarking requirement, specifying, in Advisory 2000-03, issued on September 15, 2000, that "[a]bsentee ballots voted by military personnel living outside the U.S. must be postmarked by the date of the election"

Changes proposed by the bill

Postmarking requirement

In addition to the existing requirements to which a person voting an armed service absent voter's ballot from outside of the United States must adhere, the bill requires such a voter to mail the return envelope to the director of the board of elections *prior to the close of the polls on election day* (sec. 3511.09). A return envelope that indicates that the voter will be outside of the United States on election day generally must be postmarked by the close of the polls on election day with either an Army Post Office (APO) or Fleet Post Office (FPO) postmark for the ballot contained in it to be valid and counted. However, if an armed service absent voter's ballot is mailed in a return envelope that indicates that the voter will be outside of the United States on election day, the ballot generally is valid and must be counted if it is received prior to the 21st day after a presidential primary election or prior to the 11th day after any other election, *whether or not it*

is postmarked or contains an illegible postmark. But, if, as under existing law, the return envelope is postmarked, or the identification envelope in it is signed, after the close of the polls on election day, then the armed service absent voter's ballot is not valid and must not be counted. (Sec. 3511.11.)

Postage due ballots

The bill requires a board of elections, under certain circumstances, to pay any postage due on armed service absent voter's ballots that the board receives from voters who will be outside of the United States on the day of an election. The circumstances are (1) that the return envelope indicates that a voter will be outside of the United States on election day and (2) that the postage is due because the return envelope was not mailed free of cost to the sender pursuant to federal law. (Sec. 3511.11(C).)

The board is permitted to submit an invoice to the Secretary of State for reimbursement of the total cost of the postage that the board paid during an election for these ballots. Upon receipt of a postage reimbursement invoice, the Secretary of State must disburse an amount equal to the total cost of the postage paid to the board requesting reimbursement. (Sec. 3511.11(C).)

Penalty for election falsification

Background law. Existing law makes election falsification a felony of the fifth degree (sec. 3599.36--not in the bill). But, various forms in the Elections Law, and in other parts of the Revised Code, that must be signed under "penalty of election falsification" incorrectly identify the penalty for the offense as imprisonment for not more than six months, a fine of not more than \$1,000, or both; these sanctions pertain to the time when the offense was a misdemeanor of the first degree.

Technical correction. One such incorrect identification of the penalty for election falsification is contained in the Armed Service Absent Voter's Ballot Law in relation to a statement contained on the identification envelope into which such a ballot must be deposited upon being marked. The bill changes that incorrect penalty language to match existing law's "felony of the fifth degree" status of election falsification. (Sec. 3511.09.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced H0087-I.124/kl	02-13-01	p. 154

