

HJR 46 Study: Election Laws

Proposed Clarification on Mailing of Absentee Ballots

Background

Recent amendments to two sections of Montana law appear to have created a possible ambiguity over when absentee ballots must be mailed to voters.

Under 13-13-205, MCA, absentee ballots must be printed:

- at least 45 days before a federal general election;
- at least 30 days before other federal or state elections;
- and at least 20 days before a municipal election.

This section also says that a ballot may not be provided to an absentee voter any sooner than 30 days before the election, unless the person is an absent military or overseas voter who is living outside of the United States.

Under 13-13-214, MCA, election administrators are to mail absentee ballots "no sooner than authorized in 13-13-205."

Because the language in 13-13-214 does not specifically state *when* the ballots must be mailed, concern has arisen that ballots in some instances may be mailed too late to be returned before Election Day.

How the Laws Have Changed Over Time

The 2005 Legislature approved Senate Bill 302, which amended 13-13-205 to require that absentee ballots for a federal general election be printed and available at least 45 days before the election. Current law at the time the Legislature was meeting required that all absentee ballots be mailed as soon as they were printed (13-13-214, MCA). That provision did not change during the 2005 Legislature.

In 2007, House Bill 520 revised a number of election laws. An amendment to HB 520 offered in the House State Administration Committee changed both 13-13-205 and 13-13-214 to essentially eliminate the requirement that the ballots be available and mailed immediately upon printing. Minutes of the committee meeting indicate that the change was requested because the 45-day printing requirement originally was designed to allow early mailing to absent military or overseas voters, so the ballots could reach the voters and be returned in time.¹ However, because the language in 13-13-214 required immediate mailing for *all* absentee ballots, clerks and recorders had been required to mail large numbers of absentee ballots out 45 days before the 2006 election. These ballots went to all absentee voters, not just those who were living or stationed outside the United States.

¹Minutes, House State Administration Committee, Feb. 13, 2007 [online]; available at http://data.opi.mt.gov/legbills/2007/Minutes/House/070213STH_Hm1.pdf; accessed June 16, 2008.

Potential Committee Action

If the committee would like to clarify the mailing requirement, it could do so with an addition to LC 35, the general cleanup and clarification bill. A proposed revision that is in keeping with the intent of the 2007 amendment is printed below.

Section 1. Section 13-13-205, MCA, is amended to read:

"13-13-205. When ballots to be available. ~~(1)~~ The election administrator shall ensure that ballots are printed at least:

~~(a)~~(1) 30 days prior to an election for those elections held in compliance with 13-1-107(1);

~~(b)~~(2) 20 days prior to an election for those elections held in compliance with 13-1-104(2) and (3) and 13-1-107(2); and

~~(c)~~(3) 45 days prior to an election held in conjunction with a federal general election in compliance with 13-1-104(1).

~~_____ (2) A ballot may not be provided to an elector for absentee voting sooner than 30 days before an election, except that an absentee ballot requested pursuant to Title 13, chapter 21, may be sent to the elector as soon as the ballot is printed.~~

Section 2. Section 13-13-214, MCA, is amended to read:

"13-13-214. Mailing absentee ballot to elector -- delivery to person other than elector. (1) (a) Except as provided in 13-13-213 and in ~~subsection (1)(b)~~ subsections (1)(b) and (1)(c) of this section, as soon as the official paper absentee ballots are printed, the election administrator shall, ~~no sooner than authorized in 13-13-205~~, immediately send by mail, postage prepaid, to each legally registered elector and provisionally registered elector from whom the election administrator has received a valid absentee ballot application under 13-13-211 and 13-13-212 whatever official ballots are necessary.

(b) The election administrator may deliver a ballot in person to an individual other than the elector if:

(i) the elector has designated the individual, either by a signed letter or by making the designation on the application form in a manner prescribed by the secretary of state or pursuant to 13-1-116;

(ii) the individual taking delivery of the ballot on behalf of the elector verifies, by signature, receipt of the ballot;

(iii) the election administrator believes that the individual receiving the ballot is the designated person; and

(iv) the designated person has not previously picked up ballots for four other electors.

(c) A ballot printed 45 days in advance of an election pursuant to 13-13-205(3) may be mailed no sooner than 30 days in advance of the election unless the ballot was requested by an elector eligible to vote early under Title 13, chapter 21.