

TO GUARANTEE THE RIGHT OF ALL ACTIVE DUTY MILITARY PERSONNEL,
MERCHANT MARINERS, AND THEIR DEPENDENTS TO VOTE IN FEDERAL,
STATE, AND LOCAL ELECTIONS

JULY 15, 1997.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. STUMP, from the Committee on Veterans'
Affairs, submitted the following

R E P O R T

[To accompany H.R. 699]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 699) to guarantee the right of all active duty military personnel, merchant mariners, and their dependents to vote in Federal, State, and local elections, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

INTRODUCTION

On February 12, 1997, the Honorable Henry Bonilla was joined by the Honorable Sam Johnson, in the introduction of H.R. 699, to amend the Soldiers' and Sailors' Civil Relief Act of 1940 and the Uniformed and Overseas Citizens Absentee Voting Act, to guarantee the right of all active duty military personnel, merchant mariners, and their dependents to vote in Federal, State, and local elections.

The full Committee met on June 4, 1997 and considered H.R. 699. The Committee received testimony from the Honorable Henry Bonilla, the Honorable Sam Johnson, Colonel Bruce A. Brown, USAF, Lieutenant General Thad A. Wolfe, USAF (Ret), Chairman, Air Force Association Veterans and Retirees Council, on behalf of the Military Coalition, Mr. John Molino, Association of the U.S. Army, Mr. Larry D. Rhea, Non Commissioned Officers Association, Mr. Bob Manhan, Veterans of Foreign Wars, Mr. Johnny H. Killian, Senior Specialist, American Constitutional Law, Congressional Research Service, and Ms. Phyllis J. Taylor, Director for Federal Voting Assistance Programs, Department of Defense.

The full Committee met on June 12, 1997, and ordered H.R. 699 reported favorably to the House by unanimous voice vote.

SUMMARY OF THE REPORTED BILL

H.R. 699 would:

1. Amend the Soldiers' and Sailors' Civil Relief Act of 1940 to extend additional voting rights protections to active duty military personnel, and guarantee that absences incurred as a result of military service do not result in the loss of residency for voting purposes.
2. Amend the Uniformed and Overseas Absentee Voting Act to make explicit the right of active duty military personnel, members of the merchant marine, and their spouses and dependents to vote in all Federal, State, and local elections.

BACKGROUND AND DISCUSSION

As a result of a legal challenge to absentee military votes cast in a November, 1996 election, the Honorable Henry Bonilla and the Honorable Sam Johnson introduced H.R. 699, the Military Voting Rights Act of 1997. H.R. 699 would amend the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 510 et seq.) by adding a new section which would extend additional voting rights protections to active duty military personnel. The bill would guarantee that, for voting purposes, absences from a State in compliance with military orders would not result in the loss of residency, or the acquisition of a residence or domicile in any other State. H.R. 699 would also amend the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-1) to make explicit the right of active duty military personnel, members of the merchant marine, and their spouses and dependents to vote in all federal, state, and local elections.

Due to the nature of military service, Congress has long recognized that legislation is necessary to assist members of the military in meeting certain personal obligations and exercising certain legal rights. During the Civil War, the United States Congress enacted an absolute moratorium on civil actions brought against Federal soldiers and sailors. During World War I, Congress passed the Soldiers' and Sailors' Civil Relief Act of 1918 which directed trial courts to take whatever action equity required when a servicemember's rights were involved in a legal dispute. The Soldiers' and Sailors' Civil Relief Act of 1940 ("the Act") is essentially a reenactment of the 1918 law updated in light of experiences during World War II and subsequent armed conflicts.

Generally, the Act provides relief with respect to various civil and personal obligations, but does not cover criminal offenses. The World War I law was enacted to help people who had taken on financial burdens without knowing they would be called upon to serve in the military. Frequent applications of the Act today include protecting people from being evicted from rental or mortgaged property, protecting against cancellation of life insurance policies, protecting servicemembers from having their property sold to pay taxes that are due, and protecting servicemembers from losing certain rights to public land. One of the rules that affects al-

most everyone called to active duty provides that interest of no more than six percent a year can be charged by a lender on a debt which a servicemember incurred before he or she went on active duty. Moreover, while the Act does not eliminate any obligations, it does, for example, temporarily suspend the right of a creditor to use a court to compel payment by a servicemember. In such a case, the court must determine that the servicemember's inability to pay the debt is a result of military service, and the servicemember is still responsible for the debt. Consequently, under certain circumstances, legal proceedings will be suspended during a servicemember's tour of duty, so that upon return to civilian life, the servicemember might have an opportunity to be heard and to take measures to protect his or her interests. The U.S. Supreme Court has said that the Act must be read with "an eye friendly to those who dropped their affairs to answer their country's call." *Le Maistre v. Leffers*, 333 U.S. 1, 6 (1948).

The right of servicemembers to vote in state and local elections is a subject with nation-wide ramifications. As was recently demonstrated in Texas, burdensome challenges may be initiated against military voters in conjunction with any election. Article I, section 2, clause 1 of the United States Constitution provides that a State may set voter requirements, but they are subject to the limitations of the 15th, 19th, 24th, and 26th amendments, and to the Equal Protection Clause of the 14th amendment of the Constitution. States can and do impose reasonable residence requirements for voting. "The privilege to vote in a State is within the jurisdiction of the State itself, to be exercised as the State may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals in violation of the Federal Constitution." *Pope v. Williams*, 193 U.S. 621, 632 (1904). The U.S. Supreme Court has also held that "A state can impose reasonable residence requirements for voting but it cannot, under the Equal Protection Clause, deny the ballot to a bona fide resident merely because he is a member of the armed forces." *Carrington v. Rash*, 380 U.S. 89, 89-97 (1965).

It is understandable that a State would only want bona fide residents to vote in its elections. In general, a "residence" in a State is any place of abode that is more than temporary. A person's "domicile" is the place where an individual has his or her permanent home or principal establishment, to where, whenever such a person is absent, he or she has the intention of returning and remaining indefinitely.

Servicemembers are often required to lead mobile lifestyles, with little or no ability to determine the duration or location of their tour of duty. Indeed, it is quite common for members of the military to serve in many locations across the country, as well as abroad, in the course of their service. Due to the nature of military service, active duty personnel and their spouses and dependents must be assured that they can vote by absentee ballot, a practice which many States began during the Civil War. The proposed section 704 of the Soldiers' and Sailors' Civil Relief Act of 1940 would address a servicemember's legal residence, for voting purposes, in a manner consistent with other provisions of the Act. For instance, section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 (50

U.S.C. App. 574) governs a servicemember's legal residence for purposes of State taxation. The Act provides that a servicemember neither loses nor acquires a residence by reason of being absent or present in any jurisdiction in compliance with military orders. This provision was added "to prevent multiple state taxation of the property and income of military personnel serving within various taxing jurisdictions through no choice of their own." H.R. Rep. No. 2198, 77th Cong. 2d Sess. 6 (1942). Consequently, under section 514 of the Act, the servicemember's residence does not change when his or her tour of duty ends and the servicemember receives military orders to report to a new station.

Residency for voting purposes presents a situation which is analogous to the multiple taxation problem. In the taxation situation, States may attempt to treat the servicemember who is physically present in the State like other residents who pay state taxes. However, in the voting situation, a problem arises when States try to treat the servicemember in a manner different from other residents who are temporarily absent from the State. In both instances, the servicemember's presence is in accordance with military orders. However, receipt of military orders to report to a new locale does not result in the servicemember obtaining a new domicile. That is, the servicemember's intent to return to and remain indefinitely in the state in which he or she has a permanent home, however that home is established, is not altered merely as a result of military orders. Thus, if this legislation is enacted, such orders would not result in a new residency for voting purposes, just as they do not result in a new residency for state taxation purposes.

A servicemember's physical move may raise the question of residence. If the servicemember, upon arrival at a new locale, takes actions which are generally considered in the determination of residency and domicile, such as registering to vote, obtaining automobile insurance and registration, opening a bank account, filing state income tax returns, or making a determination that the new locale will be his or her new permanent home, then, depending on the action taken and the state residency criteria, the residence of the servicemember for voting or other purposes may be ripe for determination. But a transfer pursuant to military orders, *ipso facto*, may not result in a change of residence for voting purposes.

Under existing section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, the residence of the servicemember is, in effect, merged with, or prevented from being distinguished from, the domicile of the servicemember. A similar result should follow if the proposed section 704 is enacted. Consequently, if a servicemember takes action to establish residency in a particular state and meets the state qualifications of a bona fide resident, then upon receipt of his or her orders to report to a new station, the servicemember would not lose his or her residency merely as a result of military service. Finally, it is foreseeable that a person on active military duty would have a legal residence in a state in which he or she has not lived for some time, but intends to return to and to remain indefinitely. In such a case, the servicemember should be able to vote in the same manner as other residents of that State.

SECTION-BY-SECTION ANALYSIS

Section 1 would provide that the short title of the Act would be the "Military Voting Rights Act of 1997."

Section 2 would amend article VII of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 510 et. seq.) by adding a new section. Section 704 would guarantee that absences incurred as a result of military service do not result in the loss of residency for voting purposes.

Section 3 would amend section 102 of the Uniformed and Overseas Absentee Voting Act (42 U.S.C. 1973ff-1) to make explicit the right of active duty military personnel, members of the merchant marine, and their spouses and dependents to vote in all Federal, State, and local elections.

OVERSIGHT FINDINGS

No oversight findings have been submitted to the Committee from the Committee on Government Reform and Oversight.

VIEWS OF THE ADMINISTRATION

At the Committee's legislative hearing on June 4, 1997, Ms. Phyllis Taylor, Director of the Federal Voting Assistance Program, Office of the Secretary of Defense, stated "The Federal Voting Assistance Program in working within state and local government statutory requirements and consulting with state and local election officials in carrying out the responsibilities of the Uniformed and Overseas Citizens Absentee Voting Act continues making progress in streamlining and bringing uniformity to the electoral process. The adoption of H.R. 699, would further facilitate the electoral process and ensure the enfranchisement of Uniformed Service citizens. Specifically, the adoption of H.R. 699 would ensure those citizens serving our Nation would have continued opportunity to participate in their democracy at all levels of government. H.R. 699 would also further support all the state and territory statutes providing a local, state and Federal office ballot to Uniformed Service voters."

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The following letter was received from the Congressional Budget Office concerning the cost of the reported bill:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 8, 1997.

Hon. BOB STUMP,
*Chairman, Committee on Veterans' Affairs,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 699, the Military Voting Rights Act of 1997.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JUNE E. O'NEILL,
Director.

Enclosure

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 699—Military Voting Rights Act of 1997

As ordered reported by the House Committee on Veterans' Affairs on June 12, 1997

When members of the armed forces are absent from their home states, current law requires that states allow them to use absentee ballots to vote in federal elections, but it has no such requirement for state and local elections. H.R. 699 would require that state governments allow such individuals to vote by absentee ballot in state and local elections, and it would establish that a servicemember cannot be deemed to have lost residence in a state solely because of an absence that is due to military or naval orders.

CBO estimates that H.R. 699 would have no significant cost to the federal government. Because it would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

Section 4 of the Unfunded Mandates Reform Act excludes from consideration under that act any bill that would enforce the constitutional rights of individuals. CBO has determined that H.R. 699 fits within that exclusion because it would affect the right of active-duty military personnel to vote in federal, state, and local elections.

The estimate was prepared by Valerie Barton, who can be reached at 226-2840. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.