

HB461,HD1

Testimony



**STATE OF HAWAII
OFFICE OF ELECTIONS**

802 LEHUA AVENUE
PEARL CITY, HAWAII 96782
www.hawaii.gov/elections

SCOTT T. NAGO
CHIEF ELECTION OFFICER

TESTIMONY OF THE
CHIEF ELECTION OFFICER, OFFICE OF ELECTIONS
TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR
ON HOUSE BILL NO. 461, HD 1
RELATING TO THE UNIFORM MILITARY AND OVERSEAS VOTERS ACT

April 4, 2011

Chair Hee and members of the Senate Committee on Judiciary and Labor, thank you for the opportunity to testify on House Bill No. 461, HD 1. The purpose of this bill is to make changes to our laws regarding absentee voting by military and overseas voters.

No one disagrees with the premise that making election services available to all voters, including our uniformed and overseas voters, is important. It is for this reason that Congress through the legislative process passed the Military and Overseas Voter Empowerment Act (MOVE) in 2009 which made amendments to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) (42 USC §§ 1973ff et seq.). These uniform and standardized requirements regarding voting by military and overseas voters apply to all jurisdictions in which there is a federal office on the ballot.

The most significant requirement was the requirement that ballots be mailed out to UOCAVA voters at forty-five days prior to an election. This 45 days of ballot transit time (i.e. the time in which ballots are mailed, voted, and returned to election officials) was considered more than reasonable, especially since prior litigation regarding what was a reasonable period of time had found 30 days was reasonable. In addition, the electronic transmission of blank ballots to UOCAVA voters was authorized, in essence essentially cutting the voter's ballot transit time needs in half. Congress believed these changes would more than adequately address the needs of our overseas and military voters.

As indicated in the oral testimony of the Uniform Law Commission in prior hearings, no one disagrees that the State of Hawaii is in compliance with federal

law. The State of Hawaii has passed administrative rules putting in place all requirements of UOCAVA and the date of the Primary Election has been moved to the second Saturday of August, to ensure that ballots are mailed out at least 45 days prior to the election.

We would like bring to the following issue to the attention of the committee:

STATE CONSTITUTIONAL ISSUE REGARDING ALLOWING NON-RESIDENTS TO VOTE IN STATE AND COUNTY ELECTIONS

Specifically, the Hawaii State Constitution provides that

[e]very citizen of the United States who shall have attained the age of eighteen years, have been a *resident of this State* not less than one year next preceding the election and be a *voter registered* as provided by law, shall be *qualified to vote in any state or local election*.

Article II, Section 1 (emphases added).

In order to be a registered voter, our state laws require the filling out an application to register which includes a statement that the person is a legal resident. HRS § 11-15. Residence is essentially defined as “that place in which the person’s habitation is fixed, and to which, whenever the person is absent, *the person has the intention to return*.” HRS § 11-13(1) (emphasis added). Consistent with this definition, our law recognizes that state residents who are members of the military, students, and others who are away temporarily and who intend to return are still state residents and as such able to vote. HRS § 11-13(5)&(6).

Separate and apart from state law, the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) requires that covered voters be permitted to participate in elections for *federal office*. 42 USC § 1973ff-1. The result of this is a category of *federal only voters* which applies to voters who are U.S. citizens, are not residents of the State of Hawaii or any other state, and have ties to the State of Hawaii.

Specifically, there are individuals who were residents of the State of Hawaii, who subsequently left for overseas, and are now residing outside the United States indefinitely. There are also overseas voters born outside the United States, but whose parents were last eligible to vote in the State of Hawaii before they left the country. These individuals do not meet the requirement of

Testimony on House Bill No. 461, HD 1
April 4, 2011
Page 3

being residents of the State of Hawaii and as such cannot under our state constitution vote in state and county elections. Article II, Section 1. However, the Federal Post Card Application and the Federal Write-In Absentee Ballot allows such voters to self designate that they are a "U.S. CITIZEN RESIDING OUTSIDE THE U.S. INDEFINITELY." These stateless voters are still U.S. citizens and as such are permitted to vote for *federal offices only*.

The present bill appears to extend coverage to these U.S. citizens living abroad who are not residents of the State of Hawaii, and allows them to vote in our state and county elections. Specifically, the definition of "covered voter" in Section -2 includes voters who "*except for a state residency requirement, otherwise satisfies this State's voter eligibility requirements.*"

While there may be policy reasons why allowing such individuals to vote in state and county elections may be appropriate, the definition of residence does not appear to permit them to vote in compliance with the State Constitution. As such, we would recommend that the language regarding "except for a state residency requirement" page 2, line 1, should be removed.

Thank you for the opportunity to testify on House Bill 461, HD 1, as proposed.



OFFICE OF THE DEPUTY ASSISTANT SECRETARY OF DEFENSE
(MILITARY COMMUNITY AND FAMILY POLICY)

4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

DoD-State Liaison Office

Senator Clayton Hee, JDL Committee
April 1, 2011

Testimony of
Laurie Crehan, Ed.D.
Quality of Life Regional Liaison
Office of the Assistant Secretary of Defense, Military Community & Family Policy
DoD-State Liaison Office

HB 461 Relating to the Uniform Military and Overseas Voters Act

The Department of Defense State Liaison Office operates under the direction of the Under Secretary of Defense for Personnel and Readiness, and the Deputy Assistant Secretary for Military Community and Family Policy. Our mission is to be a resource to state policymakers as they work to address quality of life issues of military families.

Testimony

Chair Hee and members of the Senate Judicial and Labor Committee, on behalf of the Deputy Assistant Secretary of Defense, I would like to thank you for the opportunity to submit testimony today on HB 461, a bill relating to the Uniform Military and Overseas Voters Act.

The Department of Defense State Liaison Office, in working with all the military service branches, considers improving absentee voting for overseas military members and their families as one of our Top Ten Key Issue related to quality of life. The Secretary of Defense feels that military members and their families need assurance that their vote will be counted, and that anything the states do to be flexible in their processes for absentee voters is a positive step.

Provisions in HB 461 increase the chance that overseas military members will be able to register, receive voting materials, vote, and have their vote counted. Thank you for your consideration of these provisions.

Thank you for your continued support for our military members and families.

Dr. Laurie Crehan
State Liaison
DoD State Liaison Office
858-361-1731

STATE OF HAWAII
DEPARTMENT OF DEFENSE

TESTIMONY ON HOUSE BILL 461 HD1
A BILL FOR AN ACT RELATING TO MILITARY AND OVERSEAS VOTERS
ACT

PRESENTATION TO THE
SENATE COMMITTEE ON JUDICIARY AND LABOR

BY

MAJOR GENERAL DARRYLL D. M. WONG
ADJUTANT GENERAL

April 4, 2011

Chair Hee, Vice Chair Shimabukuro, and Members of the Committee:

I am Major General Darryll D. M. Wong, State Adjutant General. I am testifying on House Bill 461 HD1.

We strongly support House Bill 461 HD1. This measure allows military personnel deployed or stationed outside the United States and other overseas voters an opportunity to vote and submit their ballots for federal, state, and county office in a general, special, primary, or runoff election.

Thank you for the opportunity to provide this written testimony.

THE OAHU VETERANS COUNCIL

OAHU VETERANS COUNCIL

President - Fred Ballard
1st V.P. - Cecil Meadows
2nd V.P. - Jim Santos
Secretary - John Harms
Treasurer - Eugenia Woodward
Chaplain - Frank Lamson

OAHU VETERANS CENTER EXECUTIVE DIRECTOR

Sandy Ballard

MEMBER ORGANIZATIONS

5th Regimental Combat Team -
45th Infantry Division Association.
Air Force Assn. - Chapter 138
Air Force Sergeants Association
American Legion Aux. - Dept. of HI
American Legion - Dept. of HI
American Legion - Post 32
American Veterans Empowerment & Support -
Community Operations
BPOE VAWS - Hawaii Dist.
China-Burma-India Veterans Association.
Chosin Few - Aloha Chapter
Combat Infantrymen's Association.
Combat Veterans Motorcycle Club
Disabled American Veterans - Chapter 3
Fleet Reserve Association - Branch
and Unit 46
Hawaii Multiple Schools Unit - Jr. ROTC
Korean War Veterans Assn - Chapter 1
Military Officers Assn. of America -
Aloha Chapter
Military Officers Assn. of America -
Hawaii State Chapter
Military Order of the Purple Heart
Military Order of World Wars
National Association. for Atomic Veterans
National Association. of Uniformed Services
National Sojourners - Hawaiian # 9
National Sojourners - Honolulu # 11
National Sojourners - Kamehameha #439
Pearl Harbor Survivors Association
Radiated Veterans
Samoan Providers
Society of Military Widows - Aloha Chapter
Sons & Daughters of Pearl Harbor Survivors
Special Forces Association. - Chapter VIII
State Office of Veterans Services
Veterans of Foreign Wars - Dept. of Hawaii
Veterans of Foreign Wars - Post 970
Vietnam Veterans of America - Chapter 858
Waves National - Unit 131
Women Veterans of America #26



"a gathering place for veterans"
OAHU VETERANS CENTER

April 2, 2011

TESTIMONY IN SUPPORT OF HOUSE BILL 461 HD1 and SENATE BILL 1080 RELATING TO THE UNIFORM MILITARY AND OVERSEAS VOTERS ACT

SENATE JUDICIARY AND LABOR COMMITTEE

HEARING ON MONDAY APRIL 4TH, AT 9AM, IN CONFERENCE ROOM 016

Aloha Chair Hee: The Oahu Veterans Council's member organization's identified in the left margin represent the interests of over 80,000 veterans and their families. On Thursday, January 27th, our legislative committee voted to testify, in support of House Bill 461, as follows:

We firmly believe the Uniform Military and Overseas Voters Act should be adopted into State law: Its provisions will ensure that members of our military community and other eligible voters, who are overseas, receive their ballots and balloting materials in a timely manner and the votes they cast by facsimile or electronic mail will be counted in all elections for federal, state, and local offices.

Oahu Veterans Council delegates performed creditable military service under the flag of the United States of America and the State of Hawaii. We honor our Nation and State under these flags, and firmly believe establishing this official tradition is a sound investment in our inclusive American way of life.

We thoughtfully and respectfully encourage your committee to remind those who undermine subject access to the ballot-box, of the limitations placed on their sentiments by the US Constitution, in recommending approval of HB 461 as written.

Mahalo for allowing us to testify in support of this very important Bill.

Fred Ballard

Fred Ballard; President



1298 Kukila Street, Honolulu, Hawaii 96818

Email: sballard@oahuveternascenter.com; Phone: 808-422-4000; Fax: 808-422-4001

www.oahuveternascenter.com



Hawaii Chapter, MOAA
P.O. Box 1185
Kailua, Hawaii 96734-1185

Testimony of
Thomas Smyth, President
Military Officers Association of America, Hawaii Chapter
Before the Senate Committee on Judiciary and Labor
Monday, April 4, 2011, 9:00 a.m., Room 016
HB 46 HD1
Relating to the Uniform Military and Overseas Voters Act

Chair Hee, Vice Chair Shimabukuro and Committee Members

Our 400 retired and currently serving officers of the Uniformed Services support HB 461 HD1, as amended, that provides state codification of the federal law related to Military and Overseas voters.

Since Hawaii, among all the other states, has our primary election the closest to our general election, in 2010 we ran up against the federal mandate to allow 45 days for return of ballots from overseas voters. In fact, in the most recent analysis of overseas voting by the Pew Center on the States, Hawaii did a fairly good job of getting ballots out and back in earlier elections, in spite of having the shortest time period.

Now is the opportunity to make the process permanent for federal, state and county elections. Moving the statewide federal and state primary election back helps, but other factors need to be put into place to allow the Chief Elections Officer and County Clerks the authority to act prudently.

We understand that the details of the process are complex and different for different types of elections.

The final version of this bill should be based on the input from elections officials charged with carrying out this most important responsibility. We believe this bill is the appropriate vehicle.

Thank you for the opportunity to provide testimony.

**TESTIMONY OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION**

**ON H.B. NO. 461, H.D. 1
RELATING TO THE UNIFORM MILITARY AND OVERSEAS VOTERS ACT.**

BEFORE THE SENATE COMMITTEE JUDICIARY AND LABOR

DATE: Monday, April 4, 2011, at 9:00 a.m.
Conference Room 016, State Capitol

PERSON(S) TESTIFYING: KEVIN SUMIDA, Commissioner
KEN TAKAYAMA, Commissioner
Commission to Promote Uniform Legislation

WEB: <http://www.capitol.hawaii.gov/emailtestimony>

To Chair Hee, Vice Chair Shimabukuro, and Members of the Committee:

Our names are Kevin Sumida and Ken Takayama and we are testifying on behalf of the Commission to Promote Uniform Legislation (CPUL), which strongly supports passage of H.B. No. 461, H.D.1, the **UNIFORM MILITARY AND OVERSEAS VOTERS ACT** (“**UMOVA**”), as amended in the attached proposed S.D.1 draft.

The proposed S.D.1 draft is the product of discussions between the CPUL and the Elections staff of the Honolulu City Clerk’s office on behalf of state and county elections officials. The draft ameliorates concerns expressed by state and county elections officials when this measure and its Senate companion, S.B. No. 1080 were heard by this and other committees. A summary listing of the changes made to H.B. No. 461, H.D.1 by the proposed S.D.1 draft is also attached.

Military personnel and overseas civilians face a variety of challenges to their participation as voters in U.S. elections, despite repeated congressional and state efforts to facilitate their ability to vote. These include difficulty in registering abroad, frequent address changes, slow mail delivery, ballots and ballot applications that never arrive, difficulty in obtaining information about candidates or issues, the inability to comply with notarization or verification procedures, or the voter’s failure to properly comply with non-essential requirements for absentee materials.

Unfortunately, the federal Uniformed and Overseas Citizens Absentee Voting Act of 1986 (**UOCAVA**) and Military and Overseas Voter Empowerment Act of 2009 (**MOVE**), as well as the various state efforts, have not been wholly effective in overcoming difficulties that

these voters face, and the federal laws do not encompass state and local elections. Further, American elections are conducted at the state and local levels under procedures that vary dramatically by jurisdiction, and many are conducted independent of the federal elections to which UOCAVA and MOVE do apply. Lack of uniformity and consistency between jurisdictions, and lack of application of the federal statutes (and some state statutes on military and overseas voting) to state and local elections, complicate efforts to fully enfranchise these voters and represent a major impediment to their ability to vote.

At its 2010 Annual Meeting, the National Conference of Commissioners on Uniform State Laws, also known as the Uniform Law Commission, promulgated the Uniform Military and Overseas Voters Act (UMOVA) to address these issues, with the benefit of expertise and input from a wide array of interested parties and observers. UMOVA extends to state elections the assistance and protections for military and overseas voters currently found in federal law. It seeks greater harmony for the military and overseas voting process for all covered elections, over which the states will continue to have primary administrative responsibility.

UMOVA simplifies and expands the class of covered voters and covered elections, and establishes reasonable, standard timetables for application, registration, and provision of ballots and election information for covered voters. The act implements the federal requirement of a 45-day minimum window between providing ballot materials to covered voters and the election, and expands use of the FPCA and FWAB for registration, application for materials, and voting. It settles the issue of which address to use for active-duty military and overseas voters. UMOVA requires creation of electronic transmission methods for applications and receipt of registration and balloting materials, and tracking the status of submissions. It requires ballots to be counted where non-essential requirements are not complied with, and obviates notarization requirements where the proper declaration is made under penalty of perjury. The new UMOVA uses and builds upon the key requirements of UOCAVA and MOVE, and makes these important protections and benefits applicable to federal, state, and local elections.

HB 461, SD1 would make one policy change from current practice that should be noted for the Committee. The Uniform Military and Overseas Voters Act applies its protections for all covered voters to all covered elections – federal, state, and local. In the case of overseas civilian voters, UMOVA does not differentiate between them based on a subjective or arbitrary designation of “temporary” versus “permanent” and all may cast their vote in any covered election.

Although it may seem counterintuitive that a voter who is absent for a prolonged period of time would have an interest in local or even state contests, often that is not the case, especially for out of state Hawaii residents maintaining roots in this State. There are many possible situations in which voters may find themselves overseas indefinitely (as opposed to “permanently” or “temporarily”), and not all of them are easy to classify. Many born and raised in Hawaii but living overseas or on the mainland continue to maintain their ties to this state. Some may have a defined period of absence, but many may have a general intent to return but are not certain when. Many of them may still own property in the state, and their interest in local issues remain strong. Currently, the intent of the voter is self-designated – making the distinction even more arbitrary. However, placing the ability to classify a voter in the hands of a government agency also poses a great potential risk to the enfranchisement of the voter, who may not have ready access to challenge such a decision.

According to the most recent U.S. Census numbers, Hawaii has an overall population of roughly 1.36 million people. In Presidential years, the total number of Hawaii overseas civilians statewide that typically vote, and are limited to voting in federal contests only, is roughly 600 – less than .05% of the total population of the state. Given the extremely low number of voters this affects, and the correspondingly small likelihood of any measurable impact on a given election, UMOVA eliminates 1) the need to draw arbitrary lines that do not and likely cannot fairly take into account all of the possible situations in which an overseas voter should be enfranchised; and 2) any related complications or expense on the part of local and state governmental entities related to creating different ballots and managing differences between artificial classes of voters.

The National Conference of the Council of State Governments (CSG) adopted a resolution in December 2010 urging all states to adopt UMOVA. Similar resolutions in favor of UMOVA had previously been adopted by the CSG Southern Legislative Conference, with 15 member states, as well as the CSG-West, with 13 member states. The National CSG also approved UMOVA as “Suggested State Legislation,” which means it is part of a compilation of legislation on topics of current interest and importance to the states.

The Act is also supported nationally by the American Bar Association’s Standing Committee on Election Law and Standing Committee on Armed Forces Law.

This Act has been enacted by Utah, and has so far been introduced before the legislatures of ten other states, Colorado, Connecticut, Illinois, Main, Nevada, North Carolina, North Dakota, Oklahoma, South Dakota, and Tennessee.

Please find attached to this testimony are copies of:

- (1) H.B. No. 461, H.D.1, S.D.1 (proposed);
- (2) A summary of the changes made to H.B. No. 461, H.D.1 by the proposed S.D.1 draft; and
- (3) The Resolution by the Council of State Governments, supporting this proposed legislation.

Thank you for giving us the opportunity to present this testimony.

Report Title:

Military and Overseas Voters Act

Description:

Enacts Uniformed Military and Overseas Voters Act to ensure ability of members of the military and others eligible voters who are overseas to participate in all elections for federal, state, and local offices. Authorizes election materials to be transmitted by electronic transmission system established by the Chief Election Officer.

1 (3) An overseas voter who, before leaving the United
2 States, would have been last eligible to vote in this State had
3 the voter then been of voting age and, except for a state
4 residency requirement, otherwise satisfies this State's voter
5 eligibility requirements; or

6 (4) An overseas voter who was born outside the United
7 States, is not described in paragraph (2) or (3), and, except for
8 a state residency requirement, otherwise satisfies this State's
9 voter eligibility requirements, if:

10 (A) The last place where a parent or legal guardian of
11 the voter was, or under this chapter would have been, eligible to
12 vote before leaving the United States is within this State; and

13 (B) The voter has not previously registered to vote in
14 any other state.

15 "Dependent" means an individual recognized as a dependent by
16 a uniformed service.

17 "Federal postcard application" means the application
18 prescribed under section 101(b)(2) of the Uniformed and Overseas
19 Citizens Absentee Voting Act, 42 U.S.C. section 1973ff(b)(2).

20 "Federal write-in absentee ballot" means the ballot
21 described in section 103 of the Uniformed and Overseas Citizens
22 Absentee Voting Act, 42 U.S.C. section 1973ff-2.

1 "Military-overseas ballot" means:

2 (1) A federal write-in absentee ballot;

3 (2) A ballot specifically prepared or distributed for use
4 by a covered voter in accordance with this chapter; or

5 (3) A ballot cast by a covered voter in accordance with
6 this chapter.

7 "Overseas voter" means a United States citizen who is living
8 outside the United States.

9 "State" means a state of the United States, the District of
10 Columbia, Puerto Rico, the United States Virgin Islands, or any
11 territory or insular possession subject to the jurisdiction of
12 the United States.

13 "Uniformed service" means:

14 (1) Active and reserve components of the Army, Navy, Air
15 Force, Marine Corps, or Coast Guard of the United States;

16 (2) The Merchant Marine, the commissioned corps of the
17 Public Health Service, or the commissioned corps of the National
18 Oceanic and Atmospheric Administration of the United States; or

19 (3) The National Guard and state militia.

20 "Uniformed-service voter" means an individual who is
21 qualified to vote and is:

1 (1) A member of the active or reserve components of the
2 Army, Navy, Air Force, Marine Corps, or Coast Guard of the United
3 States who is on active duty;

4 (2) A member of the Merchant Marine, the commissioned corps
5 of the Public Health Service, or the commissioned corps of the
6 National Oceanic and Atmospheric Administration of the United
7 States;

8 (3) A member on activated status of the National Guard or
9 state militia; or

10 (4) A spouse or dependent of a member referred to in this
11 definition.

12 "United States", used in the territorial sense, means the
13 several states, the District of Columbia, Puerto Rico, the United
14 States Virgin Islands, and any territory or insular possession
15 subject to the jurisdiction of the United States.

16 **§ -3 Elections covered.** The voting procedures in this
17 chapter apply to:

18 (1) A general, special, or primary election for federal
19 office;

20 (2) A general, special, or primary election for statewide
21 or state legislative office or state ballot measure; and

1 (3) A general, special, recall, primary, or runoff election
2 for local government office or local ballot measure conducted
3 under section 11-91.5 for which absentee voting or voting by mail
4 is available for other voters;

5 **§ -4 Role of chief election officer.** (a) The chief
6 election officer shall be the state official responsible for
7 implementing this chapter and the State's responsibilities under
8 the Uniformed and Overseas Citizens Absentee Voting Act, 42
9 U.S.C. section 1973ff et seq.

10 (b) The chief election officer shall establish an
11 electronic transmission system through which a covered voter may
12 apply for and receive voter registration materials, military-
13 overseas ballots, and other information under this chapter. The
14 chief election officer may satisfy the requirements of this
15 chapter by utilizing an electronic transmission system
16 established by the Federal Voting Assistance Program in lieu of
17 creating a separate electronic transmission system.

18 (c) The chief election officer shall develop standardized
19 absentee-voting materials, including privacy and transmission
20 envelopes and their electronic equivalents, authentication
21 materials, and voting instructions, to be used with the military-
22 overseas ballot of a voter authorized to vote in any jurisdiction
23 in this State;

1 (d) The chief election officer shall accept forms prescribed
2 by the Uniformed and Overseas Citizens Absentee Voting Act, 42
3 U.S.C. section 1973ff et seq. for use by a covered voter that
4 contains the prescribed standard declaration to swear or affirm
5 specific representations pertaining to the voter's identity,
6 eligibility to vote, status as a covered voter, and timely and
7 proper completion of an overseas-military ballot.

8 **§ -5 Overseas voter's registration address.** In
9 registering to vote, an overseas voter who is eligible to vote in
10 this State shall be assigned to the voting district of the
11 person's residence, or the last place of residence prior to
12 leaving this State, or, in the case of a voter described by
13 paragraph (4) of the definition of "covered voter," the address
14 of the last place of residence in this State of the parent or
15 legal guardian of the voter. If that address is no longer a
16 recognized residential address, the voter shall be assigned a
17 district for voting purposes.

18 **§ -6 Methods of registering to vote.** (a) To apply to
19 register to vote, in addition to any other approved method, a
20 covered voter may utilize the federal postcard application, or
21 the application's electronic equivalent for all elections
22 conducted in the State.

1 (b) A covered voter may use the declaration accompanying a
2 federal write-in absentee ballot to apply to register to vote
3 simultaneously with the submission of the federal write-in
4 absentee ballot, if it is received not later than thirty days
5 prior to the election pursuant to section 11-16.

6 (c) The chief election officer shall ensure that the
7 electronic transmission system described in section -4(b) is
8 capable of accepting both a federal postcard application and any
9 other approved electronic registration application sent to the
10 appropriate election official. The voter may use the electronic
11 transmission system or any other approved method to register to
12 vote.

13 **§ -7 Methods of applying for military-overseas ballot.**

14 (a) A covered voter who is registered to vote in this State may
15 apply for a military-overseas ballot using the absentee ballot
16 application prescribed in section 15-4, the federal postcard
17 application, or the application's electronic equivalent, as
18 appropriate.

19 (b) A covered voter who is not registered to vote in this
20 state may use the federal postcard application or the
21 application's electronic equivalent to apply simultaneously to
22 register to vote under section -6 and for a military-overseas
23 ballot.

1 (c) The chief election officer shall ensure that the
2 electronic transmission system described in section 15-4(b) is
3 capable of accepting the submission of both a federal postcard
4 application and any other approved electronic military-overseas
5 ballot application sent to the appropriate election official.
6 The voter may use the electronic transmission system or any other
7 approved method to apply for a military-overseas ballot.

8 (d) A covered voter may use the declaration accompanying the
9 federal write-in absentee ballot as an application for a
10 military-overseas ballot simultaneously upon its submission if it
11 is received by the appropriate election official by the deadline
12 prescribed in section 15-4.

13 **§ -8 Timeliness and scope of application for military-**
14 **overseas ballot.** An application for a military-overseas ballot
15 shall be timely if received by the request period prescribed in
16 section 15-4. An application for a military-overseas ballot for
17 a primary election, whether or not timely, shall be effective as
18 an application for a military-overseas ballot for the general
19 election and all subsequent elections held before December 31 of
20 that calendar year.

21 **§ -9 Transmission of unvoted ballots.** (a) Not later
22 than forty-five days before the election or, if the forty-fifth
23 day before the election is a weekend or holiday, not later than

1 the business day preceding the forty-fifth day, the election
2 official in each jurisdiction charged with distributing a ballot
3 and balloting materials shall transmit a ballot and balloting
4 materials to all covered voters who by that date submit a valid
5 military-overseas ballot application.

6 (b) A covered voter who requests that a ballot and
7 balloting materials be sent to the voter by electronic
8 transmission may choose facsimile transmission or electronic mail
9 delivery, or, if offered by the voter's jurisdiction, internet
10 delivery. The election official in each jurisdiction charged
11 with distributing a ballot and balloting materials shall transmit
12 the ballot and balloting materials to the voter using the means
13 of transmission chosen by the voter.

14 (c) If a ballot application from a covered voter arrives
15 after the jurisdiction begins transmitting ballots and balloting
16 materials to voters, the official charged with distributing a
17 ballot and balloting materials shall transmit them to the voter
18 not later than two business days or as soon as allowable after
19 the application arrives.

20 **§ -10 Receipt of voted ballot.** (a) A valid military-
21 overseas ballot shall be counted if it is received by the close
22 of polls on election day and meets the requirements prescribed in
23 section 15-9.

1 **§ -11 Declaration.** A military-overseas ballot shall
2 include or be accompanied by a declaration or affirmation signed
3 by the voter that a material misstatement of fact in completing
4 the ballot may be grounds for a conviction of perjury or related
5 offenses under the laws of the United States or this State.

6 **§ -12 Federal write-in absentee ballot.** A covered voter
7 may use a federal write-in absentee ballot to vote for all
8 offices and ballot measures in an election described in
9 section -3.

10 **§ -13 Confirmation of receipt of application and voted**
11 **ballot.** The chief election officer, in coordination with local
12 election officials, shall implement an electronic free-access
13 system by which a covered voter may determine by telephone,
14 electronic mail, or Internet whether:

15 (1) The voter's federal postcard application or other
16 registration or military-overseas ballot application has been
17 received and accepted; and

18 (2) The voter's military-overseas ballot has been received.

19 **§ -14 Use of voter's electronic-mail address.** (a) The
20 local election official may request an electronic-mail address
21 from each covered voter who registers to vote after the effective

1 date of this chapter. An electronic-mail address provided by a
2 covered voter may not be made available to the public or any
3 individual or organization other than an authorized agent of the
4 local election official and is exempt from disclosure under
5 chapter 92F. The electronic-mail address may be used only for
6 official communication with the voter about the voting process,
7 including transmitting military-overseas ballots and election
8 materials if the voter has requested electronic transmission, and
9 verifying the voter's mailing address and physical location.

10 (b) A covered voter who provides an electronic-mail address
11 may request that the voter's application for a military-overseas
12 ballot be considered a standing request for electronic delivery
13 of a ballot for all elections held through December 31 of the
14 calendar year of the date of the application or another shorter
15 period the voter specifies, including for any runoff elections
16 that occur as a result of those elections. An election official
17 shall provide a military-overseas ballot to a voter who makes a
18 standing request for each election to which the request is
19 applicable. A covered voter who is entitled to receive a
20 military-overseas ballot for a primary election under this
21 subsection is entitled to receive a military-overseas ballot for
22 the general election.

23 **§ -15 Publication of election notice.** (a) As soon as
24 practicable before an election, an official in each jurisdiction

1 charged with printing ballots and balloting material shall
2 prepare an election notice for that jurisdiction, to be used in
3 conjunction with a federal write-in absentee ballot. The
4 election notice shall contain a list of all of the ballot
5 measures and federal, state, and local offices that as of that
6 date the official expects to be on the ballot on the date of the
7 election. The notice may contain specific instructions for how a
8 voter is to indicate on the federal write-in absentee ballot the
9 voter's choice for each office to be filled and for each ballot
10 measure to be contested.

11 (b) A covered voter may request a copy of an election
12 notice. The official charged with preparing the election notice
13 shall send the notice to the voter by facsimile, electronic mail,
14 or regular mail, as the voter requests.

15 (c) As soon as ballot styles are finalized pursuant to
16 section 11-119, and not later than the date ballots are required
17 to be transmitted to voters under section 15-4, the official
18 charged with preparing the election notice under subsection (a)
19 shall update the notice with the certified candidates for each
20 office and ballot measure questions and make the updated notice
21 publicly available.

22 (d) A local election jurisdiction that maintains an
23 internet website shall make the election notice prepared under

1 subsection (a) and updated versions of the election notice
2 regularly available on the website.

3 (e) The chief election officer or clerk in the case of
4 county elections may satisfy the requirements of this section by
5 making available ballot facsimiles or a certified list of
6 candidates and ballot measures available on their respective
7 websites.

8 **§ -16 Prohibition of nonsubstantive requirements.** (a) If
9 a voter's mistake or omission in the completion of a document
10 under this chapter does not prevent determining whether a covered
11 voter is eligible to vote, the mistake or omission shall not
12 invalidate the document. Failure to satisfy a nonsubstantive
13 requirement, such as using paper or envelopes of a specified size
14 or weight, shall not invalidate a document submitted under this
15 chapter. In a write-in ballot authorized by this chapter if the
16 intention of the voter is discernible under this State's uniform
17 definition of what constitutes a vote, an abbreviation,
18 misspelling, or other minor variation in the form of the name of
19 a candidate or a political party shall be accepted as a valid
20 vote.

21 (b) Notarization is not required for the execution of a
22 document under this chapter. An authentication, other than the
23 declaration on the federal postcard application and federal

1 write-in absentee ballot, shall not be required for execution of
2 a document under this chapter. The declaration and any
3 information in the declaration may be compared with information
4 on file to ascertain the validity of the document.

5 **§ -17 Equitable relief.** A court may issue an injunction
6 or grant other equitable relief appropriate to ensure substantial
7 compliance with, or enforce, this chapter on application by:

8 (1) a covered voter alleging a grievance under this
9 chapter; or

10 (2) the attorney general of the state;

11 No award of attorney fees or costs shall be permitted in any
12 private cause of action initiated under this chapter.

13 **§ -16 Relation to electronic signatures in global and**
14 **national commerce act.** This chapter modifies, limits, and
15 supersedes the Electronic Signatures in Global and National
16 Commerce Act, 15 U.S.C. section 7001 et seq., but does not
17 modify, limit, or supersede section 101(c) of that act, 15 U.S.C.
18 section 7001(c), or authorize electronic delivery of any of the
19 notices described in section 103(b) of that act, 15 U.S.C.
20 section 7003(b)."

21 SECTION 2. Section 15-3.5 is repealed:

1 "~~[\$15-3.5] Federal write-in absentee ballot.~~

2 ~~Notwithstanding the provisions of this chapter and chapters 11~~
3 ~~and 16, the federal write in absentee ballot for overseas voters~~
4 ~~in general elections for federal office which must be prescribed~~
5 ~~under section 1973ff of title 42, United States Code, as amended,~~
6 ~~may be used in general elections for federal offices.]"~~

7 SECTION 3. Section 15-5 is amended by amending subsection
8 (b) to read as follows:

9 **§15-5 Delivery of ballots.** (a) Immediately upon receipt
10 of a request within the time limit specified in section 15-4, the
11 clerk shall examine the records to ascertain whether or not the
12 voter is lawfully entitled to vote as requested. As soon as the
13 printed official ballots are available, the clerk shall mail in a
14 forwarding envelope or deliver in person if the voter appears at
15 the office of the clerk, an official ballot and other materials
16 prescribed in section 15-6 except that an incapacitated voter may
17 send a representative to obtain the voter's ballots pursuant to
18 the rules promulgated by the chief election officer. All
19 requests received upon the last day specified in section 15-4 for
20 receipt shall be mailed to the voter requesting the same as soon
21 as reasonably practicable, but in no event later than twenty-four
22 hours after receipt thereof.

1 (b) If mailed absentee ballots are not received by the
2 voter within five days of an election, [~~the~~] a covered voter
3 under Chapter , Uniformed Military and Overseas Voter Act may
4 request that absentee ballots be forwarded by facsimile. Upon
5 receipt of such a request and confirmation that proper
6 application was made, the clerk may transmit appropriate ballots
7 by facsimile together with a form requiring the affirmations and
8 information required by section 15-6, and a form containing a
9 waiver of the right to secrecy, as provided by section 11-137.
10 The voter may return the voted ballots and executed forms by
11 facsimile or mail; provided that they are received by the issuing
12 clerk no later than the close of polls on election day. Upon
13 receipt, the clerk shall verify compliance with the requirements
14 of section 15-9(c), and prepare the ballots for counting pursuant
15 to section 15-10.

16 SECTION 4. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 5. This Act shall take effect on July 1, 2011.

SUMMARY OF CHANGES

The following is a brief analysis of the principal, substantive differences between the existing H.B. No. 461, H.D.1 and the Proposed SD1 draft.

(1) HD1 Section -4: the proposed SD1 makes a number of changes in section -4, dealing with the role and authority of the chief elections officer. First, certain language (found in old subsection (b)) that describes current practices was deleted as superfluous. Second, the proposed SD1 would clarify that, in lieu of developing a new system, the use of a system developed by the U.S. Department of Defense's Federal Voting Assistance Program (FVAP) may be used to comply with the requirements pertaining to electronic transmission system through which a voter may apply for and receive voter registration material and ballots. The proposed SD1 also deletes language requiring coordination with other states, and requires acceptance of the federal forms and materials proscribed by the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff, *et seq.* The proposed SD1 also removes the requirement from the existing draft which requires the chief elections officer to develop a state-specific form for a declaration to accompany military-overseas ballots.

(2) HD1 Section -7: the proposed SD1 deletes language in the existing H.D.1 draft which would provide express guidance on methods of informing the election officials that the voter is a covered voter under the act. This function is moved in substantive principal to section -4(d) of the proposed SD1 draft.

(3) HD1 Section -8: the proposed SD1:

- (1) Aligns timeframes for timely application for a military-overseas ballot with current timetables used by the chief elections officer.
- (2) Incorporates the requirement of section -15(b) in the H.D.1 of a "standing request for ballot transmission" concept, but makes the standing request run only through December 31 of the year of the request, instead of December 31 of the following year.

(4) HD1 Section -9: the proposed SD1 adds a clause to subsection (c) stating that requests for ballots that arrive after the 45-day window will be filled within two business days "or as soon as allowable after the application arrives."

(5) HD1 Sections -10 and -12: the proposed SD1 changes to a straightforward "close of polls" standard, to roughly the same effect as would have been achieved under current Hawaii law and election day procedures, and the uniform act's language.

(6) HD1 Section -16: the proposed SD1 changes the language from a 100 day requirement in subsection (a) to "as soon as practicable." Proposed SD1 section 15 also adds a new subsection (e) bolstering the ability of election officials to satisfy these requirements electronically.

(7) HD1 Section -18: the proposed SD1 language retains the ability for citizens and the Attorney General to pursue equitable relief, but adds a prohibition of award of attorney fees in any private

cause of action.

(8) Sections 2 and 3 of proposed SD1 draft: Make conforming amendments to Hawaii's absentee voter statute, chapter 15, Hawaii Revised Statutes.

(9) Section 4 of proposed SD1 draft: Changes effective date of the measure from July 1, 2020 to July 1, 2011.

THE COUNCIL OF STATE GOVERNMENTS

RESOLUTION SUPPORTING THE UNIFORM MILITARY AND OVERSEAS VOTERS ACT

Resolution Summary

Military personnel and overseas civilians face a variety of challenges to their participation as voters in U.S. elections, despite repeated congressional and state efforts to facilitate their ability to vote. These include difficulty in registering abroad, frequent address changes, slow mail delivery, ballots and ballot applications that never arrive, difficulty in obtaining information about candidates or issues, the inability to comply with notarization or verification procedures, or the voter's failure to properly comply with non-essential requirements for absentee materials. The federal Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA) and Military and Overseas Voter Empowerment Act of 2009 (MOVE), as well as the various state efforts, have not been wholly effective in overcoming difficulties that these voters face, and the federal laws do not encompass state and local elections. Further, American elections are conducted at the state and local levels under procedures that vary dramatically by jurisdiction, and many are conducted independent of the federal elections to which UOCAVA and MOVE do apply. Lack of uniformity, and lack of application of the federal statutes to state and local elections, complicates efforts to fully enfranchise these voters.

At its 2010 Annual Meeting, the national Uniform Law Commission promulgated the Uniform Military and Overseas Voters Act (UMOVA) to address these issues. UMOVA extends to state elections the assistance and protections for military and overseas voters currently found in federal law. It seeks greater harmony for the military and overseas voting process for all covered elections, over which the states will continue to have primary administrative responsibility.

UMOVA simplifies and expands the class of covered voters and covered elections, and establishes reasonable, standard timetables for application, registration, and provision of ballots and election information for covered voters. The act implements the federal requirement of a 45-day minimum window between providing ballot materials to covered voters and the election, and expands use of the FPCA and FWAB for registration, application for materials, and voting. It settles the issue of which address to use for active-duty military and overseas voters. UMOVA requires creation of electronic transmission methods for applications and receipt of registration and balloting materials, and tracking the status of submissions. It requires ballots to be counted where non-essential requirements are not complied with, and obviates notarization requirements where the proper declaration is made under penalty of perjury. The new UMOVA uses and builds upon the key requirements of UOCAVA and MOVE, and makes these important protections and benefits applicable to federal, state, and local elections.

At the 2010 annual meetings of the Southern and Western Legislative Conferences of the Council of State Governments, those regions adopted policy positions supporting their member states' enactment of UMOVA. Both regions are supportive of the national Council of State Governments adopting a similar resolution.

This policy resolution:

- Asserts that military personnel and overseas civilians experience a wide variety of obstacles in exercising their right to vote;
- Asserts that the national Uniform Law Commission has promulgated a new uniform law to comprehensively address individual as well as systemic obstructions to military and overseas civilian voting, as a matter of state law;
- Asserts that the Southern and Western Legislative Conferences of the Council of State Governments have adopted policy positions in support of the Uniform Military and Overseas Voters Act; and
- Urges CSG member states to adopt the Uniform Military and Overseas Voters Act.

Additional Resources

- Uniform Law Commission – <http://www.nccusl.org>
- Federal Voting Assistance Program – <http://www.fvap.gov/>
- The Pew Charitable Trusts and the Pew Center On the States – http://www.pewtrusts.org/news_room_detail.aspx?id=47924

CSG Management Directives

- **Management Directive #1:** CSG will transmit a copy of this resolution to the executive and legislative leaders in each state, the National Association of Secretaries of State (NASS), the Adjutants General Association of the United States (AGAUS), the Civil Rights Division of the United States Department of Justice, and to the sponsor and co-sponsors of the Military and Overseas Voter Empowerment Act (S.1415) which was incorporated into the 2010 Defense Authorization Act and which mandated the implementation of the policies contained in UMOVA with respect to federal elections.
- **Management Directive #2:** CSG staff will post this approved resolution on CSG's Web site and make it available through its regular communication venues at the state and local level to ensure its distribution to the state government and policy community.

THE COUNCIL OF STATE GOVERNMENTS

RESOLUTION SUPPORTING THE UNIFORM MILITARY AND OVERSEAS VOTERS ACT

WHEREAS, Military personnel and overseas civilians face a variety of challenges to their participation as voters in U.S. elections, including difficulty in registering abroad, frequent address changes, slow mail delivery, ballots and ballot applications that never arrive, difficulty in obtaining information about candidates or issues, the inability to comply with notarization or verification procedures, and cumbersome non-essential requirements for absentee materials;

WHEREAS, these problems exist despite many state and federal legislative efforts to alleviate them, and the protections of the federal Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA) and Military and Overseas Voter Empowerment (MOVE) Act of 2009 amendments extend only to federal elections;

WHEREAS, U.S. elections are conducted at the state and local levels under procedures that vary dramatically by jurisdiction, and a lack of uniformity and consistency in procedures for overseas civilians and military personnel is, in itself, a primary obstacle to many of these voters' ability to effectively exercise their right to vote;

WHEREAS, at its 119th Annual Meeting in 2010, the national Uniform Law Commission promulgated the Uniform Military and Overseas Voters Act (UMOVA) to extend application of the protections for military and overseas civilian voters currently found in federal law to state and local elections; simplify and expand the class of covered voters and covered elections; establish reasonable, standard timetables for application, registration, and provision of ballots and election information for covered voters; and to seek greater harmony within state law for the military and overseas voting process for all covered elections; and

WHEREAS, at the 2010 annual meetings of both The Council of State Governments – West and the Southern Legislative Conference of The Council of State Governments, those regions adopted policy positions supporting their member states' enactment of UMOVA.

NOW, THEREFORE BE IT RESOLVED, that The Council of State Governments urges that all member states consider and enact the 2010 Uniform Military and Overseas Voters Act (UMOVA), to help states comply with the federal Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA) and Military and Overseas Voter Empowerment Act of 2009 (MOVE), and to extend the application of, and broaden the coverage of, the important principles of these laws with regard to state and local elections, for the benefit and enfranchisement of our military personnel and overseas civilians.

BE IT FURTHER RESOLVED, that a copy of this resolution shall be forwarded to the executive and legislative leaders of each state, the National Association of Secretaries of State (NASS), the Adjutants General Association of the United States (AGAUS), the Civil Rights Division of the United States Department of Justice, and to the sponsor and co-sponsors of the Military and Overseas Voter Empowerment Act (S.1415) which was incorporated into the 2010 Defense Authorization Act and which mandated the implementation of the policies contained in UMOVA with respect to federal elections.

Adopted this 6th Day of December, 2010, at CSG's 2010 National Conference in Providence, Rhode Island.

Governor M. Michael Rounds, SD
2010 CSG President

Senate President David L. Williams, KY
2010 CSG Chairman



FEDERAL VOTING ASSISTANCE PROGRAM

Department of Defense
Rosslyn Plaza North
1777 North Kent Street
14th Floor, Suite 14003
Arlington, VA 22209-2162

Written Testimony

In support of HB 461 by
Bob Carey, Director,
Federal Voting Assistance Program,
U.S. Department of Defense

The Federal Voting Assistance Program (FVAP) of the US Department of Defense presents this written testimony in support of the State of Hawaii's adoption of the Uniform Military and Overseas Voters Act (UMOVA), as adopted in July 2010, by the National Conference of Commissioners on Uniform State Laws. FVAP was created to assist military and overseas civilian voters to effectively cast a ballot and to have it counted. We submit this testimony in support of Hawaii's effort to assist during elections our targeted voting population, the estimated 9,300 men and women of the armed services, their spouses and voting age dependents, as well as those citizens of Hawaii who are overseas Election Day, whether federal workers, Peace Corps Volunteers, business men & women, missionaries or students abroad, by passage of UMOVA.

Background

As President Truman recognized in 1952, the men and women of the armed forces, "in many cases risking their lives, deserve above all others to exercise the right to vote."¹ For over half a century, this still remains a significant problem for this nation. Congress has determined that it is the right of absent uniformed services voters and overseas voters to vote by absentee ballot in all elections for federal office. Congress has codified this right through the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA), as amended in 2009, by the Military and Overseas Voter Empowerment Act (MOVE Act), and by other federal legislation. As Congress has stated: "All eligible American voters should have an equal opportunity to cast a vote and have their vote counted."²

Today military and overseas voters still face many challenges. FVAP's 2008 Report to Congress indicates the existence of a significant discrepancy in the number of successfully returned ballots between the stateside non-UOCAVA absentee voting population (91% return rate) and the UOCAVA absentee voters, of whom only 67% were able to successfully return their ballots in U.S. elections.

The overwhelming area of failure in the absentee voting process for UOCAVA voters, comprising the military, their spouses and voting age dependents and overseas citizens, was not registration problems or absentee ballot application failures, but ,primarily, ballot return problems and, secondarily, voted ballots that were returned by UOCAVA voters, but not counted, usually because they arrived back too late. In fact, FVAP's surveys indicate that over 78% of all UOCAVA voting problems fell into these two areas.

¹ March 28, 1952 letter from President Truman to Congress, contained in the 1952 Report of the Subcommittee on Elections, Committee on House Administration, U.S. House of Representatives.

² Pub. L. 107-107



FEDERAL VOTING ASSISTANCE PROGRAM

Department of Defense
Rosslyn Plaza North
1777 North Kent Street
14th Floor, Suite 14003
Arlington, VA 22209-2162

FVAP's goal is that military and overseas voters have the same absentee ballot return and acceptance rate as the general absentee voter population. Towards that end, States, including Hawaii, need to address a variety of problems facing UOCAVA voters, such as:

- Difficulty in registering to vote from outside the State;
- Frequent address changes among military voters;
- Slow mail delivery that causes ballots and ballot applications to arrive late or not at all;
- Difficulty in obtaining information about candidates or issues from outside the State, particularly when internet access is spotty or non-existent;
- Inability to comply with witness or verification procedures in places where there may not be other Americans, much less voters from the same State, and
- A voter's unintentional failure to properly comply with seemingly insignificant requirements to vote absentee, such as the use of "8 1/2 x 11" size paper, in a location where the available standard paper size is different.

The challenges to voting presented to military and overseas citizens are myriad. Finding the forms to register or to apply for an absentee ballot, whether on paper or online, and then returning these forms can be a challenge. Even more difficult, however, is timely receipt and return of absentee ballots. Many of the problems faced are often not the fault of the military or overseas voter; these can be, for example, postal delays when a Peace Corps volunteer uses foreign postal services, or postal delays for military serving on the front lines or on ships at sea, or when the military postal service is also the transportation/delivery network for food, ammunition, medical supplies and other wartime essentials. More minor challenges, but still significant barriers to participation when they arise, include the inability of the voter to find a proper witness under state law, the inability to properly print forms when the paper available overseas does not match stateside paper size or layout, difficulty in determining who is the proper local election official, or who the general election political nominees are, when access to the internet is minimal or non-existent. Different military and overseas voters face unique challenges, and, therefore, the best solutions are multiple solutions. Providing emailed blank ballots assists some voters; making blank ballots available for a military or overseas citizen to access online and print out at the cyber-café, simplifies the voting process for other voters.

Most overwhelming are the logistical challenges presented by the transit by mail of paper applications and ballots. FVAP acknowledges that there are significant logistical challenges for state officials to send ballots at least 45 days in advance. Yet, for some UOCAVA voters, ballots sent 45 days in advance by mail may still not give them enough time to vote. In November 2008, MPSA, the military postal service agency, recommended on its website the allowance of a period of 28 days for a one-way transit of mail to Iraq and Afghanistan. The average Priority mail delivery times to aircraft carriers frequently exceed two weeks; and carriers are the first stop in mail distribution to the smaller ships in a carrier battle group. If a soldier or sailor is at the end of this logistics distribution chain and cannot open, act upon and return mail during the short time that the mail delivery personnel are in the area, it can be weeks before this voter is again able to post his/her ballot for return.



FEDERAL VOTING ASSISTANCE PROGRAM

Department of Defense
Rosslyn Plaza North
1777 North Kent Street
14th Floor, Suite 14003
Arlington, VA 22209-2162

Also myriad, and challenging, is the sheer variety of state and local officials, existing laws, regulations, and requirements relative to absentee voting. Procedures vary dramatically from state to state, and in some cases from locality to locality within a state. The lack of uniformity complicates efforts to more fully enfranchise these voters, as military Voting Assistance Officers assist on average 147 voters, who may come from 20-30 different states. FVAP publishes a Voting Assistance Guide every two years. It compiles absentee voter and registration laws of the 55 states and territories to guide military and overseas voters on how to register and vote in their state of legal residence. The 2008-2009 edition was almost 400 pages. FVAP, after careful editing, reduced the number of pages for the 2010 – 2011 Edition to a mere 296 pages. If UMOVA was adopted across the country, it is conceivable that future editions of the Guide could be only a few dozen pages – thus greatly simplifying the process for voters as well as for those trying to assist them, such as the voting assistance officers.

Following the 2008 elections, the Uniform Law Commission (ULC), working with a number of interested parties like the Pew Charitable Trusts' "Make Voting Work" project, the Federation of American Women's Clubs Overseas and the American Bar Association, began work on a new draft model state law to help bring more uniformity to the states' registration and absentee balloting process for military and overseas voters, as part of an effort to assist these voters.

Since 1892, the Uniform Law Commission has provided states with non-partisan, well conceived, and well drafted legislation that brings clarity and stability to critical areas of state statutory law. The ULC can only propose, as no uniform law is effective until a state legislature adapts the uniform law to the state's specific situation, and adopts it. Due to the commitment by ULC to this issue, a compressed timeframe was initiated to make it more likely that States could adopt improvements in absentee voting laws prior to the 2012 election cycle. In July 2010, the Uniform Military and Overseas Voters Act (UMOVA) was approved by the Uniform Law Commission (ULC). As of today, two states, Utah and North Dakota, have already passed UMOVA legislation.

UMOVA's Provisions

UMOVA uses and builds upon the key requirements of federal law already in place, which includes the following:

- Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) of 1986;
- Military Overseas Voter Empowerment (MOVE) Act, in Subtitle H of the National Defense Authorization Act (NDAA) for Fiscal Year 2010.

UMOVA's purpose is to extend the important protections and benefits to UOCAVA voters in your state, so as to allow them to vote in state and local elections, and to, thereby, more fully and effectively enfranchise our military personnel and overseas civilians. This will, for example, enable a National Guard member who is also an elected local official, to vote in his/her own election; or a reservist serving in Iraq will be able to vote for his Mom who is running for mayor, or a Peace Corps Volunteer in Central Africa will be able to vote for the candidate for whom they had done volunteer work in the U.S. during an election campaign.



FEDERAL VOTING ASSISTANCE PROGRAM

Department of Defense
Rosslyn Plaza North
1777 North Kent Street
14th Floor, Suite 14003
Arlington, VA 22209-2162

UMOVA is not intended to revise all state procedures on voter registration or absentee voting, but to provide greater uniformity among the states in the processes and procedures applying to this specific population, which is substantially burdened and whom state law must handle differently with regard to federal elections.

More specifically, UMOVA would:

- Expand the category of covered voters to include, in addition to the federal voters covered in federal law, both a state's National Guard and state militia units;
- Extend to state and local elections the assistance and protections currently afforded to military and overseas voters by federal law, including:
 - Absentee ballots for all elections to be sent at least 45 days prior to an election;
 - Electronic transmission to a voter, upon request, of voting materials, including blank absentee ballots for all elections;
 - Expanded use of the Federal Post Card Application (FPCA) and the Federal Write-In Absentee Ballot (FWAB), to state & local elections for registration and voting purposes;
 - Elimination of the requirement for notarization of military and overseas ballots in all elections; and
 - Expanded acceptance of the federal back-up ballot, the FWAB, for use by these voters, when their official ballot is not received in time to mark the ballot, and return the ballot in time to have it count in the election.

Our military and overseas voters will no longer have to worry that their votes won't get back in time to be counted, as a result of earlier and faster ballot receipt, along with the backup plan of a FWAB. Greater uniformity in absentee balloting laws for military and overseas voters will be of enormous assistance to those voters, many of whom are reassigned frequently and who find the variation among state laws confusing. This clarity will also help election officials and others who are attempting to assist these military and overseas voters.

Because UMOVA covers the major goals of federal law, the adoption of UMOVA by a state would also bring a state into better compliance with the federal MOVE Act and with UOCAVA.

It should be noted that UMOVA does *not* suggest the electronic return of ballots. While absentee ballots and other material should, under UMOVA, be made available electronically, upon request, UMOVA does *not* expect states to accept an electronically *returned* voted ballot from military or overseas voters. Everyone recognizes the security concerns regarding electronic return of voted ballots.

Who is supporting UMOVA

The following organizations have already endorsed UMOVA:

- The Council of State Governments
- The American Bar Association



FEDERAL VOTING ASSISTANCE PROGRAM

Department of Defense
Rosslyn Plaza North
1777 North Kent Street
14th Floor, Suite 14003
Arlington, VA 22209-2162

- The Pew Center on the States

And two States have already had UMOVA engrossed and sent to the Governor: Utah, where it has just been signed, and North Dakota, where the Governor will sign it this Thursday, April 7th.

Conclusion

Military sacrifice should not include sacrificing the right to vote, either in federal elections, or in state and local elections. Passing UMOVA will improve voter success for the many military, as well as overseas voters, and their families.

The military, their families, and those who represent the best of America overseas deserve the protections provided by UMOVA.

Please join Utah, North Dakota and several other states also in progress in adopting legislation in support of your military and overseas voters, bringing greater uniformity, simplicity and general improvement to Hawaii's military and overseas absentee voting process.

Many thanks for your consideration of FVAP's testimony.