

HB461,HD1



**STATE OF HAWAII
OFFICE OF ELECTIONS**

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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

February 2, 2012

Chair Hee and members of the Senate Committee on Judiciary and Labor, thank you for the opportunity to testify in opposition to House Bill No. 461, HD 1, in its present form.

The following are some of the various issues that are raised by the present bill:

**STATE CONSTITUTIONAL ISSUE REGARDING ALLOWING NON-RESIDENTS
TO VOTE IN STATE AND COUNTY ELECTIONS AS OPPOSED TO ONLY FEDERAL
ELECTIONS**

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).

Under the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA), covered voters are permitted to participate in elections for *federal office*. 42 USC § 1973ff-1. No reference is made to such covered voters being able to vote in state elections, as eligibility to vote in a state election is controlled by state law. This is normally a non-issue, as most individuals seeking to vote for federal office, also meet the state requirement to vote in state and county elections (i.e. being a resident of the state). As such, they are provided a combined federal/state/county ballot.

However, 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* as opposed to *temporarily*. In order to be a registered voter, our state laws require the filling out of 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). It does not recognize individuals who are indefinitely away. 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, who are indefinitely out of the state or who have never resided here, do not meet the requirement of 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 of the proposed chapter in this bill includes voters who “*except for a state residency requirement, otherwise satisfies this State's voter eligibility requirements.*” Additionally, section 3 of the proposed chapter refers to elections for federal, state, and local government offices. If the bill intends to not allow such individuals to vote in state and county elections, then it should clarify that. If it does intend for such individuals to vote in state and county elections then a constitutional amendment would be required.

APPROPRIATION LANGUAGE FOR AN ELECTRONIC TRANSMISSION SYSTEM
AND AN ELECTRONIC FREE ACCESS SYSTEM

An appropriation may be necessary in regards to the establishment by the Office of Elections of an “electronic transmission system” referred to in sections 4(c), 6(c), and 7(c) of the proposed chapter in this bill. The “electronic transmission system” is not defined by the bill but it refers to a covered voter being able to “apply for and receive” various election materials. To the extent this requirement is met through the use of email, in which PDF documents are attached to the email by election officials and by the voter returning said materials, such a system is already in place. However, if the bill

envisions something different then it would need to be further defined and an appropriation would be necessary to pay for the development of such a system.

Additionally, an appropriation may be necessary to establish "an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet" whether Federal Post Card Applications, voter registration, and absentee ballot applications have been received and accepted. This is in addition to the ability to determine whether a voter's ballot has been received and the status of the ballot. Section 14 of the Proposed Chapter. Currently, federal law requires a "free access" system by which UOCAVA voters can determine whether their ballots has been received.

This system basically allows any UOCAVA voter to send us an email. The name of the voter is manually entered into the statewide voter registration system to pull up the voter's file to see whether the ballot for the voter has been received. The voter is then contacted with the appropriate information. For the 2010 elections, the federal government asked how we met the "free access system" requirement of UOCAVA, and it had no problem with the system we utilized.

It is unclear if the present bill's reference to an "electronic free-access system" is to an electronic system, similar to the ability to call your credit card company and use your keypad to pull up information, or the ability to log in to a website to access such information. If so, then we would need an appropriation to develop such a system.

OPERATIONAL AND POLICY ISSUES

County Special Elections

Sections 3 and 11 of the proposed chapter in this bill would apply to all state and county elections, in addition to those elections in which a federal office is on the ballot. This would mean that all county special elections would be subject to the provisions of UOCAVA including the requirement that ballots be mailed out at least forty five days prior to an election and in utilizing the federal write in absentee ballot. This amendment would conflict with county charter provisions that require vacancies to be filled in a prescribed time period (sixty days, in the case of the City & County of Honolulu). As such, the period in which seats would remain vacant would be lengthened under this proposal.

Earlier Deadline to Mail Ballots

Section 9 of the proposed chapter would require ballots to be mailed out 46 days as opposed to the 45 days required by federal law. Specifically, the 45TH day prior to the General Election is a Saturday. While election officials plan to mail out ballots, no

later than that day, the proposed section would require ballots to be mailed out on Friday as Saturday is a weekend day. With an already tight election timeline, there is no reason that it needs to be further shortened in this manner.

Extended Deadline for Casting and Receipt of Ballots

Sections 10 and 12 of the proposed chapter, provides that ballots could be mailed as late as 12:01 a.m. on the day of the election and still be counted regardless of when they are received. This is a major policy change from the current law which requires that absentee ballots be received by the close of polls. HRS § 15-9. This would create two categories of absentee voters, some who have to have their ballots returned by the close of polls and those who have an indeterminate amount of time for the ballot to be received by election officials. It could also raise issues as to when the elections would be considered to be finally completed.

Election Notice

Section 16 of the proposed chapter attempts to create a requirement that an election notice be issued prior to ballots being finalized under HRS § 11-119 (75 days prior to an election), in an attempt to facilitate voters who may wish to utilize the Federal Write-In Absentee Ballot. The Federal Write-In Absentee Ballot is simply a form which can be downloaded from internet anywhere in the world. It can then be filled in and mailed to local election officials.

It should be noted that the ballot questions will not be known until they are submitted in compliance with HRS § 11-119. As for candidates, the deadline for candidate filing is not until 67 days prior to the election, not taking into account the time period in which nomination papers could be challenged. HRS §§ 12-6 & 12-8. Simply put, the contents of the ballots are not known prior to compliance with the deadline in HRS § 11-119.

Additionally, the Federal Write-In Absentee Ballot is supposed to be a fail safe tool for those who did not receive their ballot which was mailed out to them 45 days prior to the election, or who do not have the ability get a copy of their ballot sent to them electronically during an even shorter period of time. It is not clear how providing an incomplete list 100 days prior to an election accomplishes anything. Specifically, a voter's ballot is supposed to be mailed to him or her 45 days prior to an election. If the voter does not receive the ballot, he or she can simply go to the Office of Elections' website at that time to see facsimiles of his or her ballot, which the voter can use in filling out a Federal Write-In Absentee Ballot.

Litigation

Section 18 of the proposed chapter authorizes a private cause of action by any covered voter to sue for an injunction or other equitable relief if they believe a violation of the proposed chapter has occurred. Under UOCAVA, no private cause of action is statutorily provided. Instead, UOCAVA only provides that the Attorney General may bring a civil action to carry out the purposes of the law. Under state law, an election contest can only be filed by a candidate, a qualified political party, or thirty voters of an election district. HRS § 11-172. The idea of such laws was to discourage frivolous litigation before the courts that would unnecessarily interrupt the elections.

Vacationers and Designation as Covered Voters in Non-FPCA Documents

Section 2 of the proposed chapter has a broad definition of overseas voters (“a United States Citizen who is living outside the United States”) which expands coverage to not only voters temporarily or indefinitely living overseas, but also those who are merely traveling abroad on vacation.

Military voters and voters temporarily or indefinitely living overseas, due to UOCAVA, understand that they must fill out the Federal Post Card Application or Federal Write-In Absentee Ballot, which allows voters to self designate themselves as fitting into one of the following three categories:

I REQUEST ABSENTEE BALLOTS FOR ALL ELECTIONS IN WHICH I AM ELIGIBLE TO VOTE AND I AM *(Mark only one):*

- (a) A MEMBER OF THE UNIFORMED SERVICES OR MERCHANT MARINE ON ACTIVE DUTY, OR AN ELIGIBLE SPOUSE OR DEPENDENT
- (b) A U.S. CITIZEN RESIDING OUTSIDE THE U.S. TEMPORARILY
- (c) A U.S. CITIZEN RESIDING OUTSIDE THE U.S. INDEFINITELY

Federal Post Card Application (Standard Form 76-A)(Section 1).

Election administrators are able to look to the Federal Post Card Applications to determine which voters are covered by UOCAVA. With this information, they are able to determine ballot printing and other logistical issues related to ensuring that ballots are mailed to these voters and other requirements of UOCAVA are met for this population.

The definition of “covered voter” and “overseas voter” in section 2, in combination with sections 6 and 7 of the proposed chapter, regarding methods of registering to vote

and applying for an absentee ballot, may create administrative problems in determining the population of voters covered by this law and in ensuring the timely processing of voter registration and absentee ballot applications for all voters.

Specifically, with the expansion of what is a "covered voter" and "overseas voter," this bill attempts to expand the source document for applications from the Federal Post Card Application, to the standard voter registration application and absentee ballot application used by all voters. What was originally a small population of forms that could be easily identified and given special treatment under UOCAVA, would now be replaced by a requirement to review the total universe of all voter registration and absentee ballot applications received by the county clerks. The clerks would be required to look for any evidence that the voter might declare themselves to be a "covered voter."

Ultimately, we would defer to the county clerks as to their opinion on the administrative impact of these provisions.

Thank you for the opportunity to testify in opposition to House Bill No. 461, HD 1, in its present form.

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 HB 461, the Uniform Military and Overseas Voters Act (UMOVA). FVAP previously supplied testimony in support of HB 461 on April 4th, 2011 to the Senate Committee on Judiciary and Labor. 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 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.

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 has remained 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. In researching the military and overseas voter participation in 2010 election, FVAP found that while more military participation in the election increased from 2006 (the previous comparable election), problems still remain, particularly with ballot delivery and submission. An estimated 112,000 military voters reported not receiving a ballot that they had previously requested. Thankfully, largely because of States expanding the use of the Federal Write-In Absentee Ballot (FWAB), 46,000 of these voters were still able to cast a ballot. Also, the percentage of military voters who were able to successfully return an absentee ballot (91%) was still far lower than the rate for the general population of stateside, non-UOCAVA absentee voters (99%).

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

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

- when internet access is spotty or non-existent;
- A voter's unintentional failure to properly comply with insignificant requirements to vote absentee, such as the use of "8 1/2 x 11" paper, if the available the 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.

Also challenging is the sheer variety of state and local officials, existing laws, regulations, and requirements relative to absentee voting. President Franklin Roosevelt noted this problem in 1944, stating, "[the] practical difficulties [...] make it virtually impossible for soldiers and sailors and marines spread all over the world to comply with the different voting laws of 48 States [...], unless something is done about it, they will be denied the right to vote." Today, procedures still 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. 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 to assist these officers. It compiles absentee and registration laws from all the 55 states and territories. The current Guide is 394 pages long. 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.

UMOVA

Following the 2008 elections, the Uniform Law Commission (ULC), working with a number of interested parties like the Pew Charitable Trusts, 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.

In July 2010, the Uniform Military and Overseas Voters Act (UMOVA) was approved by the Uniform Law Commission. As of today, six states, Colorado, Nevada, North Carolina, Oklahoma, North Dakota, Utah and the District of Columbia have enacted UMOVA.

UMOVA's Provisions

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.

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.

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
- The Pew Center on the States
- The Alliance of Military and Overseas Voting Rights

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 Colorado, Nevada, North Carolina, Oklahoma, North Dakota, Utah and the District of Columbia 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.

For your reference I have attached the latest FVAP Legislative Initiative letter for the State of Hawaii, dated November 16, 2011. Enactment of UMOVA would cover all of our recommendations. Many thanks for your consideration of FVAP's testimony.

November 16, 2011

Mr. Scott T. Nago
Chief Election Officer
Office of Elections
802 Lehua Avenue
Pearl City, HI 96782

Dear Mr. Nago,

Thank you for the work you, your staff, and your colleagues in the Hawaii Legislature have done to support military and overseas voters. As you know, the Federal Voting Assistance Program (FVAP) is the Department of Defense office charged with implementing the *Uniformed and Overseas Citizens Absentee Voting Act* (UOCAVA), as amended by the 2009 *Military and Overseas Voter Empowerment Act* (MOVE Act). Since the passage of the MOVE Act, State lawmakers and election officials have gone to great lengths to improve voting rules and procedures for military and overseas voters. To date,

- At least 23 States have codified the MOVE Act's 45-day prior transmission requirement into State law, with others pending.
- For the 2010 General Election, 31 States tested web-based tools designed to help military and overseas voters fill out registration and ballot request forms online, and for some States, to access a blank ballot through a secure, online download.
- Six States have adopted the Uniformed Law Commission's model legislation.
- All but five States have eliminated witness and notary requirements for military and overseas voters.

These developments will help expand opportunity for military and overseas voters to participate in U.S. elections. There is, however, still more that can be done. With that in mind, I want to take this opportunity to discuss the FVAP Legislative Initiatives. Each year, FVAP contacts the Chief Election Officer and the legislative leadership in each State to recommend Legislative Initiatives that, once enacted, will expand opportunity for military and overseas voters to participate in U.S. elections.

As you know, the Hawaii legislature enacted HB 716 which changes the date of Hawaii's primary election, giving election officials enough time to create and transmit ballots to military and overseas voters at least 45 days prior to the election as required by the MOVE Act. To further expand opportunity for military and overseas voters and to improve their voting experience, FVAP recommends Hawaii adopt the following measures in statute or regulation:

- **Codify the 45-Day Transmission Deadline.** FVAP recommends each State codify the 45-day requirement in State law (statute or administrative rule) and authorize the Chief Election Official or another State official to enforce the requirement should local election officials cannot meet the 45-day deadline. FVAP has found that State officials, once authorized to enforce the requirement, are able to remedy unexpected events—and get ballots to voters—sooner and with less hassle than States requiring federal enforcement actions. *This Legislative Initiative has been revised for 2012.*
- **Expand electronic transmission options for registration and ballot materials.** Hawaii currently employs email and fax to provide, or “push,” election materials to voters. FVAP recommends Hawaii also adopt a method that would allow voters to obtain, or “pull,” election materials at their own convenience. For example, “pull” methods allow voters to go to an election website and “pull” or download their ballot. Having both “push” and “pull” electronic transmission is important because some military information systems automatically emails from non-military third parties or block access to non-governmental email systems. Further, many military voters do not know their overseas military email address before deploying. *This legislative Initiative has been revised for 2012.*
- **Expand use of the Federal Write-In Absentee Ballot (FWAB).** Hawaii currently only counts the FWAB in general elections for federal office, the bare minimum requirement of federal law. Given the inherent delays in sending ballots by mail, the FWAB represents the only ballot readily available for many of these voters. Therefore, FVAP recommends States expand the use of the FWAB to include simultaneous registration, ballot request, and voted absentee ballot for federal, State and local offices for the elections required by the MOVE Act: general, primary (including Presidential Preference primary), special, and runoff.
- **Enact the Uniform Law Commission (ULC) model legislation.** The ULC, an interstate commission made up of State legal experts, has presented the “Uniform Military and Overseas Voters Act” (UMOVA) for adoption by the States. FVAP supports the Commission in this endeavor, and recommends the States adopt the Act. To date, six States have adopted UMOVA. The sheer diversity of individual election laws regarding Uniformed Services and overseas voters is, in and of itself, a serious hindrance to these voters successfully exercising their franchise. Uniformity and standardization of voting laws for the Uniformed Services and overseas voters would substantially ease the burden of compliance, improve voter success, and would help reduce the variation in terms and procedures between States.
- **Extend the period of registration and absentee ballot request validity.** Absentee ballot applications, including the Federal Post-Card Application (FPCA), submitted by military and overseas voters, should be valid for all elections from the date the application is submitted through the next federal general election. While the MOVE Act repealed the prior federal requirement that States send absentee ballots for two general election cycles after the application was made, limiting validity to a single calendar year produces significant problems for military and overseas voters, especially in States with early Presidential Preference Primaries and for special elections. FVAP, therefore,

recommends States move to a one general election rule for ballot application FPCA validity. *This Legislative Initiative is new for 2012.*

- **Permit Emergency Authority for State Chief Election Official.** During a period of a declared emergency or other situation where a short time-frame for ballot transmission exists, the Governor, the Chief Election Official, or designated State official should have the authority to designate alternate methods for handling absentee ballots to ensure military and overseas voters have the opportunity to exercise their right to vote.

These recommendations are more thoroughly outlined in the attachment below. I have also included of chart of each State's adoption of FVAP recommendations.

Please do not hesitate to contact my staff or me. We will be happy to provide research, sample language, or testimony—anything that will assist you in serving military and overseas voters.

Sincerely,

Bob Carey
Director, Federal Voting Assistance Program

Enclosures:

1. 2012 Legislative Initiatives and Sample Language
2. Chart: 2012 Legislative Initiatives by State

cc:

The Honorable Shan Tsutsui
The Honorable Calvin Say
The Honorable Sam Slom
The Honorable Gene Ward

2012 FVAP Legislative Initiatives for Hawaii

In addition to the explanation of need for each of the Legislative Initiatives detailed below, draft legislative language is provided. This language is derived from the legislative language provided in the Uniform Military and Overseas Voters Act (UMOVA), drafted by the Uniform Law Commission in June 2010. A complete copy of the model legislation can be found at www.umova.org. A copy of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) as amended by the Military and Overseas Voter Empowerment (MOVE) Act is available at: <http://www.fvap.gov/resources/media/uocavalaw.pdf>.

Note: An updated 55-State /Territory Legislative Initiative comparison chart is available at: (Website address TBD by 15 November 2011).

45-Day Ballot Transit Time

Ballots must be sent 45 days prior to the election in order to provide adequate time for voters to receive, vote, and return ballots. Despite the requirement of Express Mail ballot return for overseas military ballots, significant delays in postal mail delivery of ballots still occurs. For example, while the average military mail delivery time to the Middle East is 11-14 days, this is only to the military post office. Follow on delivery to combat outposts and forward operating bases can add another seven to 10 days to the total transit time. For ships at sea, 20 additional days are not unusual. For ballot return, although ballots were returned in an average 5.2 days from overseas military post-offices using the Express Mail services, the delays to the remote locations discussed above still exist. For overseas citizens, the transition between foreign postal services and the US Postal Service can be complex, generating their own delays.

Additionally, accepting and counting absentee ballots that were cast up to Election Day, but received after the election, would further enfranchise these voters. Some States also chose to transmit ballots to voters more than 45 days before the election.

FVAP highly recommends that each State codify the 45-day requirement in State law (statute or administrative rule) and authorize the Chief Election Official or another State official to enforce the requirement should local election officials not meet the 45-day deadline. FVAP has found that State officials, once authorized to enforce the requirement, are able to remedy unexpected events—and get ballots to voters—sooner and with less hassle than States requiring federal enforcement actions.

Sample Language

For any general, special, [presidential preference,] [runoff,] or primary election for federal office; any general, special, [recall,] [runoff] or primary election for statewide or state legislative office [or state ballot measure]; any general, special, [recall,] [runoff] or primary election for local government office [or local ballot measure] conducted under [insert state law] [for which absentee voting or voting by mail is available for other voters], not later than 45 days before the election the official charged with preparing and distributing ballots and

balloting materials in each jurisdiction shall transmit ballots and balloting materials to all absent uniformed services voters and overseas voters who by that date have submitted a valid military-overseas ballot application. If a ballot application from an absent uniformed services voter or overseas voter arrives after the jurisdiction begins transmitting ballots and balloting materials to voters, the official charged with distributing ballots and balloting materials shall transmit these materials to the voter not later than two business days after the application arrives.

Email and Online Transmission of Voting Materials

FVAP recommends States employ multiple electronic means to transmit voting materials to, and communicate with, voters. Specifically, each State should offer UOCAVA voters multiple electronic means to receive their ballot, including a way to provide (“push”) ballots to voters and a way that allows voters to obtain (“pull”) ballots from specified web servers. An example of “push” means is emailing a PDF of the blank ballot. “Pull” methods allow voters to go to an election website, and after inputting an identification code, “pull” or download their ballot. States should also expand their use of email, social media and online systems to communicate with voters throughout the voting process, including the transmission of registration and ballot request materials.

Email and online capabilities are widely available eclipsing the usefulness of faxing. After a September 2008 visit to military bases in the Middle East, Asia and Europe, a delegation of six State Chief Election Officials reported that “...reliance on fax machines to speed the voting process... is largely unworkable for deployed troops,” and that visited military personnel “indicated a strong preference for, and almost universal access to, email or internet based voting procedures.” Additionally, FVAP’s experience in the 2006 through 2010 election cycle indicates that email or online deliveries alone are insufficient to reach all voters; for example, different military information technology networks block user access to third-party email systems, and the voter’s deployed military email address may not have been known when the Federal Post Card Application was submitted. Conversely, some voters have access to email but not to web surfing services. Providing ballots by both systems substantially improves the likelihood that a voter will be able to receive their ballot electronically.

Sample Language

An absent uniformed services voter or overseas voter may apply for registration and an absentee ballot by electronic transmission, if otherwise qualified to apply for and vote by absentee ballot. An absent uniformed services voter or overseas voter who requests that ballots and balloting materials be sent to the voter by electronic transmission may choose facsimile transmission or electronic mail delivery, or if offered by the voter’s jurisdiction, Internet delivery. The election official in each jurisdiction charged with distributing a ballot and balloting materials shall transmit the ballot and balloting materials to the voter using the means of transmission chosen by the voter.

Expanded Use of Federal Write-In Absentee Ballot

FVAP continues to encourage and assist Uniformed Service and overseas voters to greatly increase the use of the Federal Write-in Absentee Ballot (FWAB). Given the inherent delays in sending ballots by mail, the FWAB represents the only ballot readily available for many of these voters. Therefore, FVAP recommends that States expand the use of the FWAB to include simultaneous registration, ballot request, and voted absentee ballot for federal, State and local offices for the elections required by the MOVE Act: general, primary (including Presidential Preference primary), special, and runoff. In expanding the use of the FWAB in this manner, individually-developed State Write-In Ballots will no longer be needed, and FVAP recommends that they be replaced with the FWAB alone. Universal adoption of the FWAB will standardize the “emergency ballot” process for UOCAVA voters, reduce confusion as to which form to use, and allow election officials to focus their education on a single form and its processes for timely return.

Sample Language

(1) An absent uniformed services voter or overseas voter may use a Federal Write-In Absentee Ballot, in accordance with the provisions of the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff, to vote for all offices in any general, special, primary, or runoff election for Federal, State, or local government office, or a ballot measure.

(2) An absent uniformed services voter or overseas voter may use the declaration accompanying a federal write-in absentee ballot to apply to register to vote simultaneously with the submission of the federal write-in absentee ballot[, if the declaration is received by [insert this state’s voter registration deadline for that election]]. [If the declaration is received after that date, it must be treated as an application to register to vote for subsequent elections.]

Adoption of Recommendations of the Uniform Law Commission

The Uniform Law Commission (ULC), an interstate commission made up of State legal experts appointed and elected by their State governments or commissions, has presented the “Uniform Military and Overseas Voters Act” (UMOVA) for adoption by the States. FVAP supports the Commission in this endeavor, and recommends that the States adopt the Act. To date, six States have adopted UMOVA. The sheer diversity of individual election laws regarding Uniformed Services and overseas voters is, in and of itself, a serious hindrance to these voters successfully exercising their franchise. Uniformity and standardization of voting laws for the Uniformed Services and overseas voters would substantially ease the burden of compliance, improve voter success, and would help reduce the variation in terms and procedures between States. This model legislation is endorsed by the Alliance of Military and Overseas Voting Rights, the American Bar Association, and the Council of State Governments, as well as being included in the Council’s list of Suggested State Legislation.

Some States currently have statutory provisions that go beyond the recommendations of the UMOVA, providing greater opportunities for military and overseas voters. While FVAP encourages adoption of the UMOVA language for uniformity, care must be taken to avoid

regressing by adopting legislation that is less than what is already provided by State law. FVAP and the Uniform Law Commission both stand ready to assist States in legislative drafting to optimize both voter opportunity and standardization. Further information on UMOVA is available at www.umova.org.

Sample Language Notes

DOD, including FVAP and the Defense State Liaison Office staff, as well as the Uniform Law Commission, nationally and in the various states, stand ready to assist States in legislative drafting and passage of UMOVA in the various States to optimize both voter opportunity and minimum standardization.

UMOVA is best passed by minimal amendment to the draft act as a whole, rather than trying to lift the language and place it in various places in a State Code. This is one of those situations where “the whole is greater than the sum of the parts.” Further information on the UMOVA draft language is available at www.umova.org.

Ballot Application FPCA Validity

Absentee ballot applications, including the Federal Post-Card Application (FPCA), submitted by UOCAVA voters, should be valid for all elections from the date the application is submitted through the next federal general election. In 2009, the MOVE Act repealed Section 104 of UOCAVA, which had required States to treat absentee ballot applications from UOCAVA voters as valid through two general election cycles. Since the repeal, some States have limited the validity of ballot applications to the calendar year in which they are submitted. This is a concern in Presidential election years, when some States hold early primaries and voters need to submit a ballot application in the previous calendar year. FVAP, therefore, recommends States move to a one general election rule for ballot application FPCA validity.

Sample Language

An application for a military-overseas ballot for a primary election, whether or not timely, is effective as an application for a military-overseas ballot for the general election. [An application for a military-overseas ballot is effective for a runoff election necessary to conclude the election for which the application was submitted.]

Emergency Authority for State Chief Election Official

During a period of a declared emergency or other situation where a short time-frame for ballot transmission exists, the Governor, the Chief Election Official, or designated State official should have the authority to designate alternate methods for handling absentee ballots to ensure UOCAVA voters have the opportunity to exercise their right to vote. Examples of such emergencies could include natural disasters such as floods, earthquakes, or man-made disasters, such as a fire, power outage or terrorist attack.

Sample Language

If an international, national, state, or local emergency or other situation arises that makes substantial compliance with the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff et seq., impossible or impracticable, as confirmed by the existence of armed conflict involving United States Armed Forces or the mobilization of those forces, including State National Guard and Reserve component members of this state, or by the occurrence of a natural disaster or the existence of a state of emergency, civil unrest, war, or other exigency in a foreign country, or by an official declaration by the governor that a state of emergency exists, the governor directly, or by delegation to [the state's chief election authority], may prescribe, by emergency order or rule, a special procedure or requirement as may be necessary to facilitate absentee voting by those absent uniformed services voters, or overseas voters directly affected who are eligible to vote in this state. [The state's chief election authority] shall take reasonable steps to provide absent uniformed services voters and overseas voters with timely notice of any special procedure or requirement prescribed under this section.

**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: Thursday, February 2, 2012, at 9:30 a.m.
Conference Room 016, State Capitol

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

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

My name is Kevin Sumida and I am 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 amends H.B. No. 461, H.D. 1 by making a variety of comparatively technical amendments. It is not in any way a wholesale "rewrite" or "gut and replace". The changes are described in the summary included with this testimony.

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, S.D. 1 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, Maine, 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.

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

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, 2012.

A BILL FOR AN ACT

RELATING TO THE UNIFORM MILITARY AND OVERSEAS VOTERS ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 UNIFORM MILITARY AND OVERSEAS VOTERS ACT

6 § -1 Short title. This chapter may be cited as the
7 Uniform Military and Overseas Voters Act.

8 § -2 Definitions. In this chapter:

9 "Covered voter" means:

10 (1) A uniformed-service voter or overseas voter who is
11 registered to vote in this State;

12 (2) An overseas voter who, before leaving the United
13 States, was last eligible to vote in this State and, except for a
14 state residency requirement, otherwise satisfies this State's
15 voter eligibility requirements;

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
15 may apply for a military-overseas ballot using the absentee
16 ballot application prescribed in section 15-4, the federal
17 postcard application, or the application's electronic equivalent,
18 as 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)**

9 If 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, 2012.

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.



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

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WASHINGTON, D.C. 20301-4000

DoD-State Liaison Office

**Senator Clayton Hee, JDL Committee
January 30, 2012**

**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
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