

SB 636

RELATING MILITARY AND OVERSEAS VOTERS.

Implements voting provisions for uniformed services and overseas absentee voters, including electronic transmission of balloting materials, as required by the Military and Overseas Voter Empowerment Act.

STATE OF HAWAII
DEPARTMENT OF DEFENSE

TESTIMONY ON SENATE BILL 636
A BILL FOR AN ACT RELATING TO MILITARY AND OVERSEAS VOTERS

PRESENTATION TO THE
SENATE COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS,
AND MILITARY AFFAIRS

BY

MAJOR GENERAL DARRYLL D. M. WONG
INTERIM ADJUTANT GENERAL
February 3, 2011

Chair Espero, Vice Chair Kidani, and Members of the Committee:

I am Major General Darryll D. M. Wong, Interim State Adjutant General. I am testifying on Senate Bill 636.

We strongly support Senate Bill 636. 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.

This concludes my testimony. Are there any questions?



**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 PUBLIC SAFETY, GOVERNMENT OPERATIONS,
AND MILITARY AFFAIRS
ON SENATE BILL NO. 636
RELATING TO MILITARY AND OVERSEAS VOTERS**

February 3, 2011

Chair Espero and members of the Senate Committee on Public Safety, Government Operations, and Military Affairs, thank you for the opportunity to testify on Senate Bill No. 636. The purpose of this bill is to implement and expand beyond the required provisions of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) (42 USC §§ 1973ff et seq.), concerning absentee voting by military and overseas voters.

The Office of Elections respectfully opposes the bill as the State of Hawaii's laws are already in compliance with UOCAVA and the bill unnecessarily expands statutory requirements beyond what is required by federal law.

As background, President Barack Obama signed into law the National Defense Authorization Act for Fiscal Year 2010 on October 28, 2009. Subtitle H of that law, which may be cited as the Military and Overseas Voter Empowerment Act (MOVE), amended various parts of the UOCAVA. Among these amendments was a provision requiring states to transmit absentee ballots to uniformed and overseas voters no later than 45 days prior to a federal election. 42 USC § 1973ff-1(a)(8)(a).

Shortly after the passage of the MOVE Act, the Office of Elections promulgated administrative rules that addressed all mandatory parts of the Act. The rules went into effect on January 9, 2010.

§3-174-22 Voting, registration, and counting of absentee ballots of overseas citizens. (a) The general purpose of the Uniformed and Overseas Citizens Absentee Voting Act (hereinafter referred to as "UOCAVA" or 42 USC §1973ff et seq.) is to:

- (1) Permit absent uniformed services citizens and overseas citizens to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for federal office; and
- (2) Permit overseas citizens to use a "federal write-in" absentee ballot in general elections for federal office.

(b) The term "federal election" means any presidential, U.S. senatorial, or congressional election.

(c) Citizens shall be regarded as residing overseas if they reside anywhere except the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.

(d) The clerk may maintain a separate register for overseas citizens who apply to vote under the provisions of 42 USC §§1973ff et seq., as amended.

(e) An overseas citizen may use the federal postcard (SF-76) form to register to vote and to request an absentee ballot. A federal postcard form used by an overseas citizen to request an absentee ballot which is received in the year of the election will be held and processed sixty days prior to the election.

(f) A duly registered overseas citizen voter who wishes to vote the federal election ballot in person at the clerk's office may do so upon presentation of proper identification.

(g) An overseas citizen who makes timely application for, and does not receive the State's absentee ballot, may use the federal write-in absentee ballot in general elections. In completing the ballot the overseas voter may write-in the name of a qualified candidate or political party and any abbreviation, misspelling, or other minor variation shall be disregarded if the intent of the voter can be ascertained.

(h) The federal election absentee ballot may be a paper ballot or electronic ballot card. The federal election absentee ballot shall be received by the clerk not later than closing of the polls on election day. A federal write-in absentee ballot will be processed according to established procedures for regular absentee ballots only if:

- (1) A request for the state absentee ballot was received at least thirty days prior to the election;
- (2) A state absentee ballot has not been received; and
- (3) There is a valid affirmation signature and no evidence of tampering.

(i) A voter covered by UOCAVA shall be able to request voter registration applications and absentee ballot applications by mail or electronically for general, special, primary, and runoff elections for Federal office. This includes the ability of the voter to designate if the voter wishes to receive the application by mail or electronically. The voter registration application or absentee ballot application will be transmitted based on the preference selected by the voter. If the voter does not indicate a preference, the application shall be delivered as otherwise required by state law. To the extent practicable, election officials must : (1) protect the security and integrity of the voter registration and absentee ballot application request process and (2) protect the privacy of the identity and personal data of the UOCAVA when the voter requests, and is sent a voter registration application or absentee ballot application.

(j) Election officials shall designate at least one means of electronic communication for the following purposes: (1) for use by UOCAVA voters to request voter registration applications and absentee ballot applications; (2) for use by election officials to send voter registration and absentee ballot applications to voters; and (3) for providing UOCAVA voters with election and voting information. In addition to the means of electronic communication designated by election officials. Finally, election officials must include the designated means of electronic communication on all information and instructional materials that accompany balloting materials sent by election officials to UOCAVA voters.

(k) Election officials shall provide for transmitting blank ballots to UOCAVA voters by mail and electronically for general, special, primary, and runoff elections for Federal office. Voters will be able to designate if they wish to receive the blank ballot by mail or electronically. Election officials must transmit the ballot based on the preference selected by the voter. If the voter does not indicate a preference, the ballot must be delivered in accordance with state law. To the extent practicable, election officials must : (1) protect the security and integrity of absentee ballots and (2) protect the privacy of the identity and personal data of the UOCAVA voter throughout the transmission process.

(l) Election officials will have a free access system that allows a UOCAVA voter to determine whether his/her absentee ballot was received by the election officials.

(m) Election officials will allow for the use of the federal write-in absentee ballot in accordance with UOCAVA.

(n) Election officials will comply with the provisions regarding adequate ballot transmittal time for UOCAVA voters, unless a waiver regarding the ballot transmittal time is granted by the federal government.[Eff JAN 09 2010] (Auth: HRS §11-4, 42 USC §§1973ff et seq.) (Imp: HRS §11-16, 42 USC §§1973ff et seq.)

As indicated in the rule, the State of Hawaii, permits UOCAVA voters, among other things, to do the following: (1) utilize federal write-in absentee ballots; (2) use the federal postcard form to register to vote and to request and absentee ballot; (3) vote in person at the clerk's office; (4) request voter registration applications and absentee ballot applications by mail or electronically; and (5) receive blank ballots by mail or electronically.

The only other issue was to ensure that absentee ballots for UOCAVA voters were mailed out at least forty five days prior to any election in which a federal office was on the ballot. As the State of Hawaii's Primary Election was forty five days prior to the General Election it would be impossible to mail ballots out in the required time frame, without a statutory change in the date of the election.

During the 2010 legislative session, an act was passed to change the date of the Primary Election to the second Saturday in August, beginning with the 2012 Primary Election, in order to ensure that the requirement to mail ballots to voters covered by UOCAVA at least forty five days prior to an election containing federal offices was met. Act 126, Session Laws of Hawaii 2010.

Given the short notice in relation to the passage of the MOVE Act and it being an election year, it was deemed unworkable to consider moving the 2010 Primary Election. Ultimately, a memorandum of agreement was worked out with the federal government in which the State of Hawaii agreed to pay for expedited mailing of ballots, as the earliest the ballots could be mailed out was September 24, 2010 (i.e. thirty nine days prior to the General Election and six days after the Primary Election).

At no time in our dealings with the federal government were we ever told that our statutes, administrative rules, or procedures were out of compliance with UOCAVA or the MOVE Act, other than the forty five day mailing requirements, which as noted we agreed to resolve through the use of expedited mailing.

Thank you for the opportunity to testify in opposition to Senate Bill No. 636.

THE CHAMBER OF COMMERCE OF HAWAII
1132 Bishop Street, Suite 402
Honolulu, HI 96813

Testimony to the Senate Committee on Public Safety, Government Operations,
and Military Affairs

Thursday, February 3, 2011

2:45 PM

Conference Room 224

RE: SENATE BILL NO. 636, RELATING TO MILITARY AND OVERSEAS VOTERS

Chair Espero, Vice Chair Kidani, and members of the committee.

My name is Charles Ota and I am the Vice President for Military Affairs at The Chamber of Commerce of Hawaii (The Chamber). I am here to state The Chamber's support of Senate Bill 636, Relating To Military and Overseas Voters.

The Chamber's Military Affairs Council (MAC) serves as the liaison for the state in matters relating to the US military and its civilian workforce, and their families, and has provided oversight for the state's multi-billion dollar defense industry since 1985.

The measure proposes to implement voting provisions for uniformed and overseas absentee voters, as required by the Military and Overseas Voter Empowerment Act.

Voting is a basic right of every eligible American citizen. The procedures proposed in this bill would ensure that Hawaii residents serving in the military are guaranteed voting privileges in state and national elections.

For these reasons, we respectfully recommend that the proposed measure be approved for adoption.

Thank you for the opportunity to testify.

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

ON S.B. NO. 636

RELATING TO MILITARY AND OVERSEAS VOTERS.

**BEFORE THE SENATE COMMITTEE ON PUBLIC SAFETY, GOVERNMENT
OPERATIONS, AND MILITARY AFFAIRS**

DATE: Thursday, February 3, 2011 at 2:45 p.m.
Conference Room 224, State Capitol

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

(FAX TO Sgt.-at-Arms Office at 586-6501)
35 copies required to be submitted.

To Chair Espero, Vice-Chair Kidani, and Members of the Committee:

My name is Kevin Sumida and I am testifying on behalf of the Commission to Promote Uniform Legislation, which supports passage of the **UNIFORM MILITARY AND OVERSEAS VOTERS ACT ("UMOVA")**.

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.

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 already been introduced before the legislatures of three other states, Connecticut, North Dakota, and Oklahoma.

I am attaching to my testimony a copy of the Resolution by the Council of State Governments, supporting this proposed legislation.

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



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 Committee on
Public Safety, Government Operations and Military Affairs
Thursday, February 3, 2011, 2:45 pm, Room 224
SB 636 Relating to Military and Overseas Voters
Chair Espero, Vice Chair Kidani and Committee Members

Our 400 retired and currently serving officers of the Uniformed Services support 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, we ran up against the federal mandate to allow 45 days for return of ballots from these voters. In fact in the most recent study by the Pew Center on the States, Hawaii did a fairly good job of getting ballots out and back.

Now is the opportunity to make the situation permanent. Moving the primary election back will help, but other factors need to be put into place to allow the Chief Elections Officer the authority to act prudently. We believe this bill does that.

Thank you for the opportunity to provide testimony.