

To: Drafting Committee on Uniform Military Services and Overseas Civilian
Absentee Voters Act, Advisors, and Observers

From: Steve Huefner, Reporter

Date: Feb. 18, 2009

Re: Report on February 6-7 Meeting of the Drafting Committee

The Drafting Committee on Uniform Military Services and Overseas Civilian Absentee Voters Act met in Portland, Oregon, for two full days on February 6 and 7, 2009. The purpose of the meeting was to consider the first draft of the uniform act. This memorandum summarizes that meeting and related progress of the drafting committee to date.

Over the course of the two days, committee members Terry Care, Jack Davies, Barry Hawkins, Claire Levy, Luke Messer, Susan Nichols, Ralph Thompson, and Steve Wilborn, along with Martha Walters, President of the Uniform Law Commission, Bob Stein, Chair of the Executive Committee, and Steve Huefner, Reporter, met with ABA Advisor Jack Keeney and Observers Bob Carey, Lucy Laederich, Polli Brunelli, and David Becker to work through the draft section by section. Written comments were submitted on behalf of the Pennsylvania Department of State and the Indiana Election Commission, as well as from the following Observers: Chip Levengood (Overseas Vote Foundation); Jackie Bugnion (American Citizens Abroad); Carol Paquette (Operation BRAVO); Bob Carey (National Defense Committee); Tom Intorcio (NCSL); and Susan Dzieduszycka-Suinat (Overseas Vote Foundation). The Chair and Reporter worked to assure that the ideas presented in the written comments were given full consideration during the meeting.

Throughout the committee's consideration of the draft, two overarching topics were the focus of much attention: (1) the proper relationship between a uniform state act and the UOCAVA, 42 USC §§ 1973ff *et seq.* (the existing federal law in the area); and, (2) how to best promote uniformity in the face of the substantial variations that now exist in state election processes generally.

On the first topic, there was agreement to proceed on the working assumption that UOCAVA should be relied upon in large measure, without making the uniform act solely dependent upon it. Accordingly, the starting point for the definitions in the uniform act will remain the UOCAVA definitions, supplemented with additional defined terms unique to our Act. There was also agreement to rely upon several of the forms and documents already established under UOCAVA processes as the preferred forms and documents under a uniform state act. The second draft, prepared for our March meeting in Chicago, will reflect these initial decisions.

As to the second topic, the Reporter was directed to continue working with all interested parties to identify those areas where uniformity is not only critical but also

obtainable – recognizing that some aspects of state election processes may of necessity remain non-uniform. As an adjunct to this effort the reporter will in the next draft prepare multiple alternatives for several of the sections, reflecting existing state variations.

The following is a summary of the major working decisions derived from the Portland meeting. The new draft of the Act, now under preparation for our Chicago meeting, will reflect in much greater detail the totality of the section by section discussion. In addition, ABA advisor Jack Keeney also has prepared a summary of the Portland meeting, which may be accessed at the ULC website at www.nccusl.org.

Article 1 – GENERAL PROVISIONS (including definitions)

The committee had extended discussion about whether to use the terms “domicile” and “reside” in the same way as the UOCAVA uses them, without additional clarification, or to seek to more clearly define the terms in the uniform act. The reporter is to explore possible definitions of these terms for the next draft.

Substantial discussion about whether and how to cover the class of voters defined in section 102(4)(D) of the first draft (U.S. citizens with no direct personal tie to a particular state, who are children of a U.S. citizen who does have a tie to a particular state). Currently, once 18 years of age, these “stateless children” have no rights under the UOCAVA to participate in U.S. elections. To date at least sixteen states expressly grant them the right to vote in the state of their parent’s former residence/domicile. The committee continues to support including these voters in the uniform act’s coverage for federal elections.

Article 2 - VOTER REGISTRATION AND ABSENTEE BALLOT APPLICATION

Tentative consensus was reached to rely upon the voter registration and absentee ballot application forms already developed by the Federal Voting Assistance Program under the UOCAVA. This would be in lieu of states developing their own forms and applications. Voters would not be precluded from using other state created forms; however, for voters to receive the special protections of the uniform act they would need to use these special forms and documentation. To this end, the next draft will make the uniform act’s protections contingent on the use of the key federal forms.

Article 3 - DEADLINES

For the purpose of focusing the debate in Chicago and at the annual meeting in Santa Fe on general policy considerations rather than on a specific number of days for each stage of a process, either before or after the election, the number of days will initially be left blank. The committee anticipates continuing to develop a framework among these stages, such that timeframes will relate directly to the extent to which the state relies upon electronic transmission of ballot applications, blank (unvoted) ballots, and related ballot materials, as provided in Article 4.

Article 4 - ELECTRONIC VOTING PROVISIONS

The committee concluded the uniform act should do more to encourage the development of and require the use of electronic means to transmit ballot applications, blank (unvoted) ballots, and related ballot materials. However, based at this time on the unresolved integrity and security issues inherent in the electronic transmission of *voted* ballots the committee has determined to remove Section 403 from the original draft in its entirety; and move forward without electronic transmission of voted ballots as part of the uniform act.

Article 5 - WRITE-IN ABSENTEE BALLOT PROVISIONS

As in other portions of the draft, the committee opted to focus entirely on the existing Federal Write-In Absentee Ballot; and delete any state requirement to develop an alternative form of State Write-In Absentee Ballot.

Article 6 - BURDEN REDUCTION PROVISIONS

Work will continue to develop a set of uniform voting procedures which will enable overseas and military voters to vote without the requirement of having their signature notarized or witnessed. In discussing the nature of an oath or affirmation that voters would be required to execute, questions arose about the enforceability of state perjury charges against individuals outside the U.S. The reporter will research this issue for the Chicago meeting.

Article 7 - MISCELLANEOUS PROVISIONS

The extent to which a uniform act facilitating voting by overseas and military voters could or should affect those voters' obligations under state and local tax laws was debated. The committee's working position is that the uniform act should not in and of itself change the applicability of state-based tax laws, or other obligations or rights, to these voters.

OTHER MATTERS

The need for an additional provision which would specify enforcement mechanism(s) and remedies available for violations of the act was discussed. The reporter is to include a section dealing with this topic in the next draft.

A question was also raised as to whether it might be beneficial for the committee to arrange to meet with experts on electronic voting technologies. There was no consensus at this point that such a meeting would be beneficial to the broader work of the Committee.