

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

From: Steve Huefner, Reporter

Date: Oct. 9, 2009

Re: Report on Sept. 25-26 Meeting of Drafting Committee

The Drafting Committee on a Uniform Military Services and Overseas Civilian Absentee Voters Act met in Minneapolis, Minnesota, for two full days on September 25 and 26, 2009. This was the third meeting of the drafting committee, and the first since the committee's draft act was read at the NCCUSL annual meeting in Santa Fe in July 2009. The committee received a number of helpful comments and suggestions in Santa Fe, and used the September meeting both to work through this feedback and to refine many other aspects of the draft act. This memorandum briefly summarizes the results of the September meeting and identifies in more detail several issues that the drafting committee should continue to discuss, including a couple of matters that the committee may wish to resolve by conference call or email in advance of our spring 2010 meeting. For additional detail about the September 2009 meeting, ABA Advisor Jack Keeney has prepared a memorandum to the ABA, which may be accessed on the ULC website at <http://www.nccusl.org/Update/CommitteeSearchResults.aspx?committee=326> and a copy of which accompanies this memorandum.

The general thrust of the draft act remained unchanged at the September meeting, but a number of modest changes were made to most of its provisions. Many of these changes reflected the helpful input of election administrators and other observers who attended portions or all of the meeting, including Minnesota Secretary of State Mark Ritchie; Tammy Patrick of Maricopa County, Arizona; Beth Fraser from the Minnesota Secretary of State's office; Minnesota state senator Jeremy Kalin; Brenda Shafer-Pellinen from the Minnesota state senate; Federal Voting Assistance Program Director Bob Carey, and the FVAP's John Godley & Scott Weidman; Peter Schalestock from the Committee on House Administration of the U.S. House of Representatives; Lucy Laederich of the Federation of American Women's Clubs Overseas; Joe Green and Lyndsey Reynolds of Democrats Abroad; Hugh Gallagher of Scytl; Faye Johnson, Chief of Operations for the Military Postal Service Agency; Mark Raugust & Colleen Flood from the U.S. Department of State; and David Becker of the Pew Center. Chip Levengood, Chairman of the Overseas Vote Foundation, also submitted extensive written comments before the September meeting, and shortly after the meeting Division Chair and drafting committee member Jack Davies also suggested a number of revisions intended to clarify meaning and improve the flow of the draft.

Accompanying this memorandum is a revised draft of the act. A red-lined copy, marked to show all changes to the September 2009 draft, is also attached. This memorandum will describe only the more important changes to the act and highlight the issues most in need of additional attention, discussing them in the order in which the act is now organized; please consult the red-lined version for other changes.

Section 2 – Definitions: This section contains a new definition of the term “military-overseas ballot,” which is then used throughout the act, as well as a new definition of “dependent.” In addition, its definition of the term “overseas voter” no longer contains components for determining which of these voters are eligible to vote, as these components have now been moved to section 5. Meanwhile, as agreed in Minneapolis, the definition of absent uniformed services voters has been changed to depend only on one’s status as a service member absent from one’s home voting jurisdiction, whether or not the military service causes the absence.

Section 3 – Elections Covered: This is a new section, resulting from moving the substantive definition of what is a “covered election” out of section 2. This new section then breaks the elections covered into three tabulated categories, not only to clarify them but also to make it easier for states to choose to omit the third category of local elections, if they desire. How (and how broadly) to define especially this third category of elections was discussed in Minneapolis, and may merit additional committee discussion.

Section 5 – Overseas Voters’ Eligibility to Vote: This section establishing voters’ eligibility to vote now omits the subsection concerning absent uniformed services voters, who as defined in section 2 are already eligible to vote, and focuses exclusively on establishing the circumstances in which overseas voters are eligible to vote.

Section 6 – Form of Registration and Application for Military-Overseas Ballot: In Minneapolis, the drafting committee’s working approach, though not a clear preference, seemed to be to permit voters to use a variety of methods to register and apply for ballots. Accordingly, this draft has omitted the narrower alternative of earlier drafts that would have required use of the Federal Post Card Application. But the section continues to permit and encourage use of the FPCA, and requires election authorities to seek to collect information akin to that provided on the FPCA. The section also contains a new subsection (d) suggested by Jack Davies making explicit that all voters continue to have all other methods of voting available to them.

Section 8 – Timeliness and Scope of Application for Military-Overseas Ballot: Additional research after the Minneapolis meeting confirmed that the overwhelming majority (about 40) of U.S. states presently accept applications for regular absentee ballots up until 7 days before the election or later. A handful of states require regular absentee ballots to be requested 8, 10, or 11 days before the election, and one state requires application 21 days before the election. Several states have no specific deadline. **The drafting committee will want to decide what deadline to adopt for requesting an absentee ballot.** As a placeholder for further discussion, this draft uses the later of 15 days before the election, or the state’s regular absentee ballot deadline.

Section 9 – Transmission of Unvoted Ballots: As discussed in Minneapolis, this section settles on 45 days before an election as the date for sending ballots, whether electronically or by paper. If 45 days is too ambitious for purely local elections, the committee could consider bifurcating this section to impose a less ambitious timetable for just those elections.

Section 10 – Timely Casting of Ballot: Solely for reasons of drafting clarity, the deadline has been changed from 11:59 p.m. on the day before the date of the election to

12:01 a.m. on the date of the election. This two-minute shift should have no substantive effect.

Section 11 – Acceptance of Federal Write-In Absentee Ballot: As the deadline for receiving the FWAB as a simultaneous voter registration and ballot application, the draft uses the same placeholder that section 8 uses for applying for a ballot. The reason is that the voter using the FWAB in this way has already attempted to register (and is affirming this), but somehow the registration has gone astray. As an accommodation to the difficulties of registering from abroad, this provision's deadline therefore may override a state's regular registration deadline, but only in this circumstance. It still requires that the FWAB arrive by the state deadline for requesting a ballot in order to function as a simultaneous request for a ballot.

Section 12 – Receipt of Voted Ballot: The current draft would require military-overseas ballots to be counted if received by “the end of business the day prior to the latest deadline for completion of the [local canvass or tabulation that creates the final official results].” **In Minneapolis the drafting committee expressed an interest in revisiting this deadline in light of additional information about various states’ local canvassing deadlines.** Although research is ongoing, preliminary findings are that wide variation exists on this subject, with some states requiring local election jurisdictions to complete their canvass within 7 days of the election, others between 8 and 14 days, and others between 15 and 21 days, while a tiny number of states merely require the local jurisdictions to certify their results “upon completion of the canvass.”

Section 15 – Collection of Voters’ Electronic Mail Addresses: Subsection (a) has new language exempting voters’ e-mail addresses from public disclosure requirements. As new language, it merits extra attention. Subsections (b) and (c) now contain what in the prior draft had been “Section 7 – Standing Request for Absentee Ballot.” These subsections are bracketed to reflect that the committee is still considering whether to include in the act this method of permitting voters to make a standing request for a military-overseas ballot (a request that would now be contingent upon providing an e-mail address), or whether to include it in the final draft only as a bracketed section for individual states to make independent determinations whether to adopt. (As of this writing, the U.S. House has just passed an amendment to federal law that would do away with the analogous right of UOCAVA voters to make a standing request for absentee ballots for federal elections, and Senate action is expected to follow shortly.) If the drafting committee includes this provision in the ULC act, the committee may wish to further consider how to describe the time period for which a standing request would be effective. Various options were discussed in Minneapolis; the current draft uses the longer of the 365 days following the date of the application or the end of the federal election cycle then underway. If something like this description is retained, the term “federal election cycle” may merit more precise definition.

Section 18 – Exigent Circumstances: This section now gives to the governor the authority to control when special procedures may be needed to respond to unforeseen difficulties. The Minneapolis discussion of this matter was relatively brief, and the section will merit continuing attention.

Section 23 – Effect on Other State Laws: In light of conflicting views about this section aired in Minneapolis, this section is now bracketed. It therefore also presumably merits continuing attention.

In Minneapolis, the committee contemplated taking an additional opportunity, prior to the committee's spring meeting, to consider a couple of issues by conference call or email discussion. If such an opportunity can be arranged, the key issues appropriate for resolution in this way likely are: (1) in section 8, what deadline to adopt for requesting an absentee ballot; and (2) in section 12, what deadline to adopt for receiving a voted ballot. Time permitting, the committee also might wish to address the topic of standing requests for absentee ballots, if the amendment to federal law on this subject has in fact become law by then. Many other matters also remain in-play, although full discussion of these matters likely will not occur until the spring meeting. Nevertheless, it would be helpful if committee members would conduct a close read of the revised draft now, both to become familiar with its restructuring and to help the reporter to identify and correct any oversights.

Attachments.