

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

From: Steve Huefner, Reporter

Date: February 19, 2010

Re: March Drafting Committee Meeting

Accompanying this memorandum are two revised versions of our Act, one a clean copy and the other a mark-up reflecting changes from the draft that circulated to the drafting committee after our meeting in Minneapolis last fall. The revisions reflect primarily the Style Committee's work last month, as well as a few other stylistic improvements identified by others since Minneapolis. The accompanying revision also includes the first draft of a Prefatory Note.

Also accompanying this memorandum are two additional sets of comments on the post-Minneapolis version of the Act. One set of comments is from Missouri Commissioner Lowell Pearson, forwarded through the drafting committee's ABA liaison, Jack Keeney. Jack reports that the ABA committee discussed these comments but not in detail, and focused most on two points: (1) Section 2, Pearson memo pp. 5-6 and the non-military overseas voter away for vacation; and (2) Section 19, Pearson memo p.12 and the interaction with other possible state laws about injunctive relief. The second set of comments is from the Minnesota Secretary of State's office. These comments do not reflect the official position of the Minnesota Secretary of State or his office, and instead are intended only as helpful suggestions.

A careful review of both the Pearson comments and the Minnesota comments will be helpful preparation for the drafting committee's meeting in Washington, D.C., March 12-14. As additional preparation, committee members should also pay particular attention to the following issues:

Section 8 – Timeliness and Scope of Application for Military-Overseas Ballot. The committee will need to resolve what deadline to adopt for requesting an absentee ballot. As a placeholder for discussion, the post-Minneapolis draft used the later of 15 days before the election, or the state's regular absentee ballot deadline. 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 appear to have no specific deadline.

Section 12 – Receipt of Voted Ballot. The post-Minneapolis draft requires 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. Wide variation exists on this subject, with some states (Alaska & Connecticut) apparently requiring local election jurisdictions to complete their canvass no later than the day after the election, other states within 7 days of the election, others

between 8 and 14 days, and others between 15 and 21 days, while a few states merely require the local jurisdictions to certify their results “upon completion of the canvass.” Given this variation, and the fact that in some states the local canvassing deadline does not buy much additional time, the committee may at least wish to consider adopting a uniform deadline for receipt of the voted ballot.

Section 15 – Collection of Voter’s Electronic Mail Addresses. The drafting committee has not reached a firm decision on whether to permit voters to make a standing request for absentee ballots, which would be tied to the provision of an email address in order to reduce the concerns that local election officials have previously had about the standing request provision in federal law. (Last summer’s MOVE Act repealed this provision of UOCAVA.)

Section 18 – Exigent Circumstances. The Style Committee suggested a substantive redraft to this provision (reflected in the attached revision) that would leave to the Governor whether to invoke this provision. The drafting committee will need to reach a decision about whether to include this provision at all, and if so in what form.

Title. The Style Committee recommended that the title of the Act be changed from “Military Services and Overseas Civilian Absentee Voters Act” to “Military Service and Overseas Absentee Voters Act.” The attached revision does not reflect this change as it requires Executive Committee approval.

Of course, in addition to these issues, drafting committee members should be prepared to discuss any other matters of concern, as the March 2010 meeting will be the committee’s final meeting before the July 2010 annual meeting. At the March meeting we also anticipate some discussion of the implications on our Act of various state efforts already underway or contemplated to comply with the MOVE Act. Committee members not able to attend the March meeting should feel free to submit comments and views in advance of the meeting.

Attachments:

March 2010 version of Act

Redline of October 2009 version of Act

Pearson Memorandum

Minnesota Memorandum