

Absentee Voting by Military Personnel Overseas

Some 6 million military and overseas civilian voters have the right to cast absentee ballots in U.S. federal elections. This report deals only with military voters and their dependents who live with them. They vote by absentee ballot in the state where they last lived.

The procedure goes something like this, although every state is different. Each of these steps can be time consuming:

1. Soldier requests an application for an absentee ballot, fills it out, and sends it to local election official.
2. Official processes application and mails an unmarked ballot to soldier before election day.
3. Soldier fills out ballot and returns it to the election official.
4. Usually, the completed ballot must arrive by election day. Some states allow it to be counted two weeks after the election. Some also require that the signature on the ballot be notarized, which adds to the difficulty.
5. Some states require prior registration to vote. Others don't.

Problems with this procedure:

1. Military postal system is very slow. It usually takes about 3 weeks for mail from the United States to get to overseas military posts.
2. Because of late primaries, challenges to primaries, ballot access lawsuits, and state laws, some states don't even distribute ballots until 30 days before election day. This makes it virtually impossible to fill out the ballot and get it back on time.
3. Other problems include difficulty in determining the date of postmark because the dates frequently are illegible. In places that require notarization, many ballots are not notarized or signed. These ballots, which probably number in the thousands nationwide, are simply discarded and not counted.

Deployed service members who are allowed to vote through secure electronic means by e-mail or fax can avoid or complete all these steps in minutes. The problem is that secure electronic transmissions have not been authorized except in a few places.

Among those who reported not voting in 2004, 30% said they couldn't vote because their ballots never arrived or arrived too late. Another 28% said they didn't know how to get a ballot, found the process too complicated, or were unable to register.

Of those surveyed in 2008, more than half tried to vote but couldn't because their ballots were late or didn't arrive at all.

The Pew Center undertook a detailed study of these problems in its States' Make Voting Work project and issued a report in January 2009. It's called *No Time to Vote: Challenges Facing America's Overseas Military Voters*, and it's on the Web in its entirety. The time required for overseas military voters and election officials to complete each step of the absentee voting process was calculated, and the report assessed whether each state's overseas military voters would have enough time to vote.

The study found that 25 states and the District of Columbia need to improve their absentee voting process for overseas military voters; 16 do not provide enough time, and 3 others are at risk of not allowing enough time. Some of them allow just 5 days or less of extra time for any delays in the process.

Thirty-one states do allow enough time; 19 of these allowed voters to return their completed ballots by fax or e-mail, raising concerns about security and privacy of the votes. In 13 of the 19 states, military personnel have enough time to mail back their completed ballots, but an additional 6 states don't mail out their ballots soon enough.

The federal government tried to deal with some of these difficulties in a law passed in 1955, the Overseas Citizens Voting Rights Act and in 1986 the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). These laws gave "absent uniformed services voters" within or outside the United States the right to vote in primary, general, special, and runoff elections for federal offices. They also give the U.S. Attorney General the authority and responsibility to enforce military voting rights by filing suit in federal court against any state that deprives these citizens of the right to vote.

In 2009, President Obama signed into law the National Defense Authorization Act (NDAA). NDAA included the Military and Overseas Voter Empowerment Act (MOVE Act), which made several amendments to UOCAVA. States are now explicitly required to mail absentee ballots to military citizens who have requested them at least 45 days before election day. If a state is unable to meet that standard, it can request a waiver from the Secretary of Defense. The state must show that it has made an alternative arrangement that will enable military citizens to cast ballots and ensure that they are counted. The Department of Justice has been criticized as being unduly patient with non-complying states, which means that military personnel probably are still being denied the right to vote.

Another federal law passed in 2009 was the Military and Overseas Empowerment Act (MOEA), which also was designed to speed up the process. The federal government has issued and placed on the Web a 304-page *2010-11 Voting Assistance Guide* detailing every state's procedures and contact information. In July 2010, the Uniform Law Commission released the Uniform Military and Overseas Voter Act (UMOVA). This is not a mandate but rather a model that may be adopted by state legislatures around the country to standardize state laws governing military and overseas ballots by the 2012 election. Generally UMOVA extends the provisions in federal law to state and local elections while also adding some new measures.

Both Tennessee and Kentucky have early primary elections and already were complying with the law's requirement to send out ballots at least 45 days ahead of the election. They have had

positive responses to e-mailing ballots to military personnel. Both states have tracking features on their election websites that allow overseas voters to see where their ballots are. These two states require marked ballots to be returned by mail. In Tennessee, more than 18,600 ballots were cast by military and overseas voters in the 2008 election.

Allowing enough time to vote depends largely on how well the different steps work together. “Fixing one step might not be enough if the other steps aren’t working well. In states where laws and practices have been cobbled together over decades, the problem is a failure to take into account how the system works as a whole.”

LESSONS LEARNED

1. Sending out blank ballots via fax or e-mail can give military people time to complete the process. Methods to ensure the security and privacy of completed ballots should be developed to allow them to be returned electronically.
2. States should adopt procedures to distribute blank ballots as early as possible and should allow at least 45 days for the process to be completed.
3. As a back-up measure when the regular ballot is not received in time, the Pew report recommends the use of the Federal Write-in Absentee Ballot. This ballot is widely available online, through voting assistance officers at military installations, and at U.S. embassies and consulates. The ballot is largely blank, and the voter writes in the names and political affiliations of the persons for whom he wants to vote and returns it to the election office. Some states accept it in federal elections only, while others allow its use in city and state elections also.
4. The requirement for notarizing ballots should be eliminated.

Problems involved in absentee military voting have been recognized at least since 1952, when President Truman called upon the states and Congress to fix them. Our citizens should not be disenfranchised in this way.

SOME GOOD REPORTS ON MILITARY ABSENTEE VOTING

No Time to Vote: Challenges Facing America’s Overseas Military Voters
Published by the Pew Center, January 2009
www.pewcenteronthestates.org/uploadedFiles/NTTV_Report_Web.pdf

2010-11 Voting Assistance Guide (304 pp.)
Published by the Federal Voting Assistance Program, October 2010
www.fvap.gov/resources/media/2010vag.pdf

Report prepared by Anne Adamson. November 2010.