

2010

**SECRETARY OF STATE  
REPORT TO THE  
GOVERNOR AND  
LEGISLATURE  
Senate Bill 367**

**Montana  
Secretary of State  
Linda McCulloch**

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## BACKGROUND

The 61<sup>st</sup> Legislature passed Senate Bill 367 with the intent to enhance the voting opportunities for absent military and overseas citizens.

Months later, in October of 2009, the United States Congress passed and the President signed the Military and Overseas Voter Empowerment (MOVE) Act. The impetus for the MOVE Act came from a Senate Committee on Rules and Administration survey indicating that about one in four overseas military voters who requested ballots for the 2008 election never received their requested ballot and were therefore unable to vote.

Both SB 367 and the MOVE Act require states to provide electronic registration and voting opportunities to absent military voters and overseas citizens. Both bills also require that ballots be mailed to UOCAVA voters no later than 45 days before a federal primary or federal general election.

The MOVE Act does not go so far, however, as to require internet-based voting. There is still widespread concern about the risk of identity theft, fraud and confidentiality when using the internet to vote, versus using it to provide election materials. Once the U.S. Election Assistance Commission, the National Institute of Standards and Technology and the Federal Voting Assistance Program have developed standards for internet-based voting and begin to certify internet-based voting systems, states can begin to look at such systems to serve absent military and overseas voters.

Secretary McCulloch's continued outreach to Montana's military voters includes attendance at military pre-deployment events to educate military voters and their families about the registration and voting opportunities available to them. This outreach is supplemented by a comprehensive webpage dedicated to absent military and overseas voters, as well as materials provided to military leaders for inclusion in pre-deployment information.

## IMPLEMENTATION

### SENATE BILL 367

Senate Bill 367, sponsored by Senator Hamlett, requires that counties offer electronic registration and voting services to UOCAVA voters. In addition the bill provides for late registration availability for UOCAVA voters.

REQUIREMENTS OF SENATE BILL 367	MONTANA IMPLEMENTATION
<b>Late registration availability (13-21-201 (2))</b>	Implemented
<b>Electronic registration and voting (13-21-207)</b>	<p>Implemented availability of fax and/or email of elections materials, including blank ballot in all counties</p> <p>Internet-based voting system not available pending standards to be set by U.S. Election Assistance Commission, and certification of internet-based voting systems by the U.S. Election Assistance Commission.</p> <p>The Montana Secretary of State partnered with the Federal Voting Assistance Program to provide a Ballot Marking Wizard to Montana UOCAVA voters that allows the voter to mark the ballot electronically and return it by their preference of mail, fax or email to the county election office.</p> <p>The Ballot Marking Wizard, while not full internet-based voting, still takes care of concerns about ballot transmittal time, and concerns about the voter being able to return the ballot through other channels besides mail.</p>
<b>Application for absentee ballot (13-21-210(2))</b>	Implemented – applications can now be received and processed up to and including on election day.
<b>Report to Governor and Legislature</b>	Implemented

## MOVE ACT

Congress passed the MOVE Act in 2009. Montana Secretary of State Linda McCulloch has worked with county election administrators and the Federal Voting Assistance Program, who administers the federal responsibilities of the U.S. Secretary of Defense under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) on implementation strategies.

To address any provisions of the MOVE Act that the state was not already in compliance with, the Montana Secretary of State took the following actions:

- Issuing a Directive advising each county election administrator that they must provide electronic transmission of election materials to voters covered under UOCAVA to include
  - Voter Registration Applications
  - Absentee Ballot Applications
  - Blank Ballots
- Issuing a Directive advising each county election administrator that they must provide electronic services including using the Ballot Marking Wizard provided by the Federal Voting Assistance Program for voters covered under UOCAVA for requesting and marking a ballot.
- Issuing a Directive instructing county election administrators to include a way for voters covered under UOCAVA to designate whether the voter prefers that the material be transmitted to the voter by mail or electronically.
- Preparing proposed legislation to remove the requirement to automatically send ballots to UOCAVA voters for two federal elections after receipt of a Federal Post Card Application.
- Preparing proposed legislation to require that ballots be mailed to UOCAVA voters no later than 45 days before a federal primary election.
- Implementing a Ballot Tracking program for voters covered under UOCAVA and for all Montana absentee voters to enable them to track whether an absentee ballot has been mailed to them, and if the voted ballot has been received at the election office.

REQUIREMENTS OF THE MOVE ACT	MONTANA IMPLEMENTATION
1. Design an electronic means of communication for UOCAVA voters	
a. Include means of electronic communication on information and instructions sent to UOCAVA voters	Implemented - Updated forms to include county email and fax information, as well as information regarding the voter's option to receive and transmit their registration and ballot information electronically.
2. Implement procedures for UOCAVA voters to electronically request and receive absentee ballot applications	Implemented - Issued Directive #01-10
3. Implement procedures for electronically transmitting blank ballots to UOCAVA voters	Implemented - Issued Directive #01-10
4. Send ballots at least 45 days before election	Already in existing law for general election, will need to change law for primary – Amend 13-13-205 (2)
5. Eliminate requirement to send ballots for two general elections after receipt of FPCA	Amend 13-21-210 to remove the requirement in MT law that ballots be sent to UOCAVA voters for 2 general elections after receipt of Federal Post Care Application (FPCA).
6. Request a waiver if hardship prevents compliance with the 45-day requirement	Montana will not be requesting a waiver.
7. Develop a system to allow UOCAVA voters to confirm that their ballot was received	Implemented a free access system to allow UOCAVA voters and all Montana absentee voters to track their absentee ballots, including if the ballot has been sent, the address it was sent to, and if it has been received by the county election office.
8. Expanded use of Federal Write-In Absentee Ballot	Implemented - Federal write-in absentee ballot is available for UOCAVA voters for general, primary, and special elections.

## CONCLUSION AND RECOMMENDATION

Under the guidance of the U.S. Secretary of Defense and the Federal Voting Assistance Program, great strides have been taken to provide electronic election services to absent military and overseas citizens through enactment of the MOVE Act.

The most significant barrier to successful absentee voting has been the late receipt of ballots, leaving voters without sufficient time to vote and return the ballots by mail. While nothing in the MOVE Act requires a state to allow a voter to return their voted ballot electronically, Montana law has allowed this option since 1999.

Montana elections officials continue to be proactive in using technology to provide quick, cost-efficient, and effective elections services to military and overseas voters. Election officials offer voter registration, requests for absentee ballots, and blank ballots electronically, and voters can return a voted ballot electronically via facsimile or email.

Challenges to providing internet-based voting for UOCAVA voters include:

- No internet based voting system has been certified by the U.S. Election Assistance Commission
- Standards for internet based voting have not been set by the U.S. Election Assistance Commission
- Technology for internet based voting has not been used in any U.S. Federal election by any state

Costs to implement internet-based voting are unknown until standards are set and voting systems are certified for use by states. Secretary of State McCulloch recommends that the state of Montana continue to be proactive in assisting voters covered under UOCAVA to receive their ballots and to return the voted ballots using facsimile or email in order to ensure that the voter's ballot is received on time so that it can be counted. A recent survey by the Federal Voting Assistance Program ranks Montana among the top states for their efforts in providing access and enfranchisement to Montana's absent military and overseas voters. Additionally, the Secretary of State will continue to work with Montana members of the armed forces and county election offices to provide timely and convenient access to registration and ballot materials.

It is Secretary of State McCulloch's recommendation that with passage and implementation of the MOVE Act, the following legislative changes should be made in the 2011 legislative session:

**13-13-205. When ballots to be available.** (1) Except as provided in subsection (2), the election administrator shall ensure that ballots are available for voting at least:

- (a) 30 days prior to an election for those elections held in compliance with [13-1-107\(1\)](#);
- (b) 20 days prior to an election for those elections held in compliance with [13-1-104\(2\)](#) and (3) and [13-1-107\(2\)](#); and

(c) 30 days prior to an election held in conjunction with a federal general election in compliance with [13-1-104](#)(1).

(2) A ballot requested pursuant to Title 13, chapter 21, must be sent to the elector as soon as the ballot is printed or at least 45 days in advance of an election held in conjunction with a federal general or federal primary election in compliance with [13-1-104](#)(1).

**13-21-210. Application for absentee ballots.** (1) (a) A United States elector may apply for a regular absentee ballot as follows:

(i) by making a written request, which must include the elector's birth date and signature; or

(ii) by properly completing, signing, and returning to the election administrator the federal post card application.

(b) A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) An application for a regular absentee ballot must be received by the appropriate county election administrator by the time specified in [13-2-304](#) for late registration.

(3) An application under this section is valid for all state and local elections in the calendar year in which the application is made ~~and the next two regularly scheduled federal general elections~~ unless an elector requests to be mailed an absentee ballot for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as the elector remains eligible to vote and resides at the address provided in the initial application.

(4) If an elector fails to provide the address confirmation required by [13-13-212](#), the elector will be removed from the permanent absentee ballot list. An elector who is removed from the permanent absentee ballot list will continue to receive absentee ballots during the period covered in the elector's initial application under this section.

(5) The elector's county election administrator shall provide the elector with a regular absentee ballot for the elections described in subsection (3) as soon as the ballots are printed, but not later than 45 days before either a federal primary or federal general election.