

## Meeting of the Select Committee on 2020 Emergency Election Support

Tuesday, May 26, 2020 – 11:00 a.m.

### Members:

- Bradford E. Cook, Chairman
- Representative Barbara J. Griffin
- Katherine M. Hanna
- Kathy L. Seaver
- Senator Tom Sherman
- Eugene Van Loan III

### Also participating:

- David Scanlan, Deputy Secretary of State
- Orville “Bud” Fitch, Legal Counsel, Secretary of State’s Office
- Nicholas Chong Yen, Assistant Attorney General

### Select Committee meeting

- Chairman Cook opened the meeting at 2:00 p.m.
- Chairman Cook called the roll; all members were present, attending remotely, alone.
- Today is a work session for the committee.
- Our charge is to recommend priorities for funding of appropriate measures to the Secretary of State. Additionally, while we don’t have authority to change laws, we accept responsibility of making recommendations to those with such authority, to the extent the suggestions are responsive to challenges posed by COVID-19 pandemic and are consistent with our mission.
- There’s been a lot of discussion since Thursday, when we voted on the size of envelopes and not to pay return postage. Discussion has suggested that maybe those weren’t the right decisions, or maybe they should be considered in a broader context. Chair credits Ms. Hanna with raising those concerns.
- Ms. Hanna: I had some misgivings after our vote on Thursday, and I want to say I think we were all acting in very good faith. We have a daunting task, and we have what now appears to be a fairly small amount of money, even though it’s \$3.2 million, to try to make for an accessible and secure election. I think what happened is that we acted perhaps prematurely on taking votes before we’d gone through various discussions about what we thought were the most important elements for ensuring a secure election.
  - I think our first vote, which was to have 8.5” x 11” large envelopes, and then our second vote deciding we won’t do prepaid postage, wasn’t a wise thing given that we want to provide for the easiest way possible for people to be able to vote absentee and we’re greatly encouraging folks to do so.
  - For me, the issue on prepaid postage that we can get into in some detail is not so much a constitutional or legal issue from my perspective, it’s a common-sense issue. To ask people during these trying times to put on four stamps instead of one, and maybe have to venture out to buy stamps, is a lot to ask. I would like to wait to make that decision until we

ascertain what other major buckets we have for spending, and then prioritize those various buckets and have perhaps another vote on all of these issues.

- Sen. Sherman: I agree wholeheartedly with Ms. Hanna. Beyond the merits of flat envelopes, I think we voted prior to having a full picture of the financial ramifications of those choices. I didn't have the numbers in front of me and I wish I had.
  - The other reason to revisit this is to think about process, and the process is important, because any votes on expenditures should be taken in the context of all anticipated expenditures, and trying to prioritize and triage what we can and can't afford and building that into a framework of recommendations.
  - I'd make a motion to vacate those two votes. We'll return to that concept either later in the week or next week when we have this package together, and that was the reason for the grid I sent out. This was a premature vote and I move to vacate those two votes for reconsideration later this week or early next week. Mr. Van Loan seconded the motion.
- Rep. Griffin: I will be voting against the motion. While I appreciate the words of my fellow committee members, the reality is that the number one concern we heard about process was about absentee ballots, and I understand that over the weekend since those votes we all got an impressive amount of emails from people, which was even more impressive, because most of the emails came from people who weren't viewers of the meeting, so I appreciate the enthusiasm of proponents for certain types of voting.
  - The reality is, we need to give the Secretary of State some direction, and I don't think for the \$3.2 million we're going to be able to come out with any sort of dollar recommendations. I see our outcome as a prioritization and allocation by percentage based on prioritization. I think we need to move on. The 8.5" x 11" envelopes was a good decision based on the concern, and I suspect we'll have differences on postage too.
- Ms. Seaver: Is there a way to process absentee ballots to the point of completely opening them, checking them on the election day checklist, and then storing them away? That does away with the need to have 8.5" x 11" envelopes because you won't be in such a rush. The biggest problem is the ballots cram up because they've been folded. If you're doing this the day or two prior to the election you can more easily manage this process.
- The Committee took a roll call vote on the motion to rescind the two prior votes on envelopes and prepaid postage, with all but Rep. Griffin voting in favor of the motion. Motion passed by a vote of 5-1.
- Chairman Cook asked Sen. Sherman to discuss his grid.
- Sen. Sherman: The grid takes what Mr. Van Loan sent as essential buckets we're looking at, and tries to put them into the order of timing of where these are in the process.
  - It starts with three revenue categories: First is the CARES Act, which is \$3.2 million; second is the security grant' revenue "other" is there because there may be more federal funding, depending on what happens. I believe senators are working on that in Washington in a bipartisan fashion. Some of that money is specifically for postage.
  - Then we switch into the expenditure side. This is the concept we heard from the postal service, and that would be a statewide mailing. Apparently the state already has an account for every door direct mail and the ability to do this. It's the least expensive way to get a mailing out to every home in the state. If it were a postcard it could contain links that would tell voters in the household where to go to get their absentee ballots and to encourage

them to. If the household has more than one registered voter, that could be problematic unless they were able to copy the sheet, or we could have multiple people request absentee materials on a single request form.

- The next bucket is postage, which is broken up until multiple different sub categories:
- Outbound (mailed by town) application goes out to the voter upon receipt of an absentee request. That wouldn't have to be a flat envelope because it's an application.
- The second one under that is outbound primary absentee ballot, so that's where the clerk is sending out the first absentee ballot. If that's a flat envelope it's the cost of a flat envelope plus return envelope plus affidavit envelope plus ballot.
- Next is outbound general election absentee ballot. Again, you'll see numbers in column where I put rough calculations. These numbers mean if the cost of that outbound mailing was \$1.20, the 2016 total number for the general election was almost 756,000 people. Rough guess: if 80% voted absentee and requested absentee ballots, that's what the .8 means. That's where we come up with that price tag.
- Now, going down to the next one, which is return mail—this is mail coming from the voter back to the clerk. The first one is absentee registration application—it may be more than \$0.55 cents, but it's not a flat envelope; it's a regular envelope. If 80% of all voters from '16 used this, it would be 1.85 times the number of voters, then 80% of that.
- I have some additions to this that would be mitigating factors based on how much of this could be done either through a secure portal, and the other way would be drop-off system, since the bulk of folks will hopefully be voting absentee, but they're not out of town, they're just not coming to the polls.
- The next one is PPE polling place safety, which includes masks, maybe gloves, and PPE for poll workers.
- The other variable is if we say we can start processing absentee ballots days prior to the election, we would then be looking at multiple days of poll workers working and needing PPE.
- We also have to consider voters: We talked about people wearing their own PPE into the polls, but having the option if someone doesn't have a face covering, of being able to provide them with a droplet mask. When I talk about polling place safety, I'm talking about sneeze shields, disinfectant, sanitizing gel, disinfecting wipes, etc.
- In terms of poll workers, there was a question about need for additional staff. We may need to consider increased stipends or even hazard pay.
- Supervisors of the checklist: At this point, if we're shifting to mostly absentee processes and we need to get absentee registration in and absentee ballots out, there's going to need to be tighter maintenance of the checklist so those absentee registrations are entered and we minimize the number of same-day registrations. Supervisors will need to meet more frequently so as absentee registrations come in, they can be processed quickly.
- The next one was the Secretary of State's office. We'd talked about possibly a lump sum for education, marketing, and any miscellaneous challenges the Secretary of State's office has.
- The final one is the accounting services, and Attorney Fitch has said the RFP has gone out.
- This is a work in progress but I thought it would be a helpful framework.
- One problem with sending out postcards are households with multiple voters. It's important to get request materials out there ASAP so informational materials go to every household. If

that request form allowed multiple voters to be on one request form, which would be hugely helpful. These aren't secure forms; the Secretary of State's office has said they make them available, so perhaps you could either send out two request forms with every household mailing, or you could allow it to be photocopied and sent in copies.

- Ms. Hanna: Question about outbound general and primary absentee ballots. What's the figure 750,000 represent?
- Sen. Sherman: That's from the Secretary of State's website from the 2016 general election. The reason I included that for the primary is because we were talking about doing "one-stop shopping", so presumably if someone at the beginning of the process says "I want to vote absentee throughout this process," and they send in their request, they're going to get a primary ballot and general election ballot when the time comes. If you look at 2016, the number of ballots cast for the primary was 190,749 and in the general election it was 755,850. I hope we allow people to cite concerns over COVID-19 to request both forms at once, with one request.
- Ms. Hanna: So if it's 190,000 ballots cast in the primary, wouldn't we expect there to be a quarter of what's going to be cast in the general?
- Sen. Sherman: Right. Say in July you make it known you want to vote absentee this year, so you fill out the single form that gives the voter the ability to request absentee ballots for both the primary and the general elections.
  - Worst case scenario is that this is a gross overestimate. We've decided we need to discuss all of the various buckets to see if we all agree we should spend money on them, and if we do, what the priority of the expenditure should be. On the revised decision matrix form I sent out to you and we discussed, you see all the categories of things we might spend money on. When we talked about postage the other day I wasn't focusing on the outbound, which apparently all the clerks and supervisors thought we were. In terms of revenue, the Secretary of State's office can tell us what revenue we have, and if congress gives us more that's great, but we don't know that yet.
  - The question is: On my sheet, the listing of expenditures started with PPE and polling place alterations/safety measures. Does anyone think we shouldn't spend money on it? What priority should it be?
- Mr. Van Loan: I agree with you. In terms of justification for COVID-19 and CARES Act financing, this priority seems to clearly satisfy the requirements of the grant.
- Ms. Seaver echoes that sentiment.
- Sen. Sherman agrees 100%. We have to protect workers and voters.
- Chairman Cook: Second on the list is increased labor cost for local elections for processing absentee ballots, remote and in-person absentee voting sites, and police/security. We've heard from several folks that increased number of police will be necessary.
- Mr. Van Loan: I would expect this will be low-priority. I think we're all becoming more aware that \$3.2 million isn't going to fund everything we want, and may not even be close.
- Sen. Sherman: I think there may be other money available for other municipalities. There's federal money available through grants for law enforcement costs, so some of this there may be alternative funding for. It has to be COVID-19 related.
- Attorney Fitch: I'd like to respectfully suggest re: additional cost for personnel at clerks' offices and polling places, I think that's a complex task. Our RFP to accountants contemplates trying to get approval for an easier process with an established, standardized statewide cost rate and ways to

account for that time spent on COVID-19 over and above normal time. If the committee could prioritize making payments for whatever those costs are, and however we can support that in the way least burdensome as possible for towns and cities, that might be most helpful way to spend your efforts.

- Chairman Cook: If a town spent more money on elections and didn't get reimbursed at all, would that count toward the 20% state match?
- Attorney Fitch: The answer lies in what they spent more money on and whether it was caused by COVID-19 as determined by auditors.
- Ms. Hanna: We don't need to talk about this right now, but I'd like to discuss in next few days, alternative funds \$3.2 million. I'd like to have some presentation by the Secretary of State's office about the \$15 million HAVA funds that I believe sit in their office, and whether if necessary we can tap those for this most important election during the COVID-19 crisis. Also, I think there are probably additional CARES Act funds that could be more flexibly used, but I'm not certain about that.
- Chairman Cook: I'd comment that our charge is how we spend the \$3.2 million. We can only urge priorities to those who have extra money under their purview.
- Deputy Secretary Scanlan: The request from the Secretary of State was to ask for help from this committee in planning on spending the \$3.2 million we received specifically for the COVID-19 crisis response. I did give a presentation early on, but the HAVA fund contains primarily the initial round of funding when HAVA was passed. We met the mandate required under the federal government, and through the policy decision made by the legislature, have kept a fairly large balance for the purpose of paying for maintenance of the program moving forward. If we spend that money, we have to go back to the general fund every budget cycle for millions of dollars to fund those HAVA requirements. In addition to the initial balance, there was a \$3.2 or \$3 million additional payment to the HAVA fund to be used specifically for the cybersecurity component of elections. The feds have said we can spend some of that money for the COVID-19 situation, and to the extent that this committee has recommendations above and beyond the \$3.2 million, we can take a look at that.
- Sen. Sherman: Re: the security money: Do we have any idea how much we could use for this? Ex: if we were to find there's a secure portal available that would take us into Electionet and allow people to send clerks their requests, similar to what Mr. Cuomo demonstrated for us, would that be something that security funding could be used for? And how much is it? What would be an approved use for that fund?
- Deputy Secretary Scanlan: I'd have to get back to you on the exact amount – unsure how much of those funds are committed to security component. The state is engaged with vendors providing ongoing security measures with some of that money. In terms of doing something similar to the secure voter registration request portal, it's something those funds could probably be used for, but I would caution that trying to do something along those lines for this election cycle is probably unrealistic at this point because it is an IT project and there's a lot that goes into that. In the few months between now and the election, I haven't seen a significant IT project be able to be totally tested and functional that quickly.
- Sen. Sherman: Shares that same concern, but it would be helpful to know what is available to us.
- Deputy Secretary Scanlan will try to have this number for the committee for their next meeting.

- Chairman Cook: The next priority to discuss is preparation for increased absentee ballots, printing, etc. The Secretary of State's office told us ballot numbers won't vary much from past cycles. What priority should this be?
- Sen. Sherman: I'm not sure we'll see a huge increase in ballots, because hopefully we'll have the same number, or a few more voters, than we had in '16, but they'll either be in polling place or absentee. I suspect a voter is a voter and a ballot is a ballot whether it's absentee or in person.
- Rep. Griffin: Deputy Secretary Scanlan, you talked about having the same ballot for absentee and in-person voting. Is your office continuing down that path? From a process standpoint, that might provide some relief to the clerks knowing what that process will look like.
- Deputy Secretary Scanlan: The primary difference between in-person ballots and absentee ballots is that an absentee ballot has the word "absentee" next to "official ballot" and it is also scored for easy folding. It would be possible, we think, to instead of having the word "absentee" on the ballot that we have a couple boxes next to "official" and "absentee" so the clerk could designate with a checkmark or X which one is used for which purpose, or some variation of that.
- Rep. Griffin: If absentee ballots are scored for folding, will our envelope decision impact that?
- Deputy Secretary Scanlan: If the ballots are going to be shipped flat in 8.5" x 11" envelopes, there's no need to score and fold the ballots.
- Chairman Cook: In my opinion, this isn't going to be a huge cost.
- Ms. Seaver: In the scheme of things, I think we put it towards the bottom because we already have higher priorities identified.
- Chairman Cook: What is the cost difference between current envelopes and bigger flat ones?
- Deputy Secretary Scanlan: The price would be significant. We are pricing it out right now. We're talking about 3 envelopes larger than either 8" or 9" by 12" and larger, versus a standard letter-sized envelope and slightly larger envelopes to mail those out. I think the cost of returning an absentee ballot after the voter has filled it out is \$0.70 cents versus probably a dollar more for postage, plus cost of envelopes on top of that.
  - One option: You make it easy for processing of ballot by keeping it flat and sending in larger envelopes (makes it easier to run through machines) but the other end of that is it is more handling and maybe an expense the voter is going to have to bear in terms of getting it back. Alternative: make it easier on the voter. Create absentee ballots with creases in them so they can be sent in small envelopes, you can cut cost on postage, but then you're looking at processing end and additional work that may be required in unfolding ballots and running them through machines. I believe the shorter ballot, 8.5" x 11" creased, goes through the machines easier than a folded 18 inch ballot, which seems more likely to jam.
- Chairman Cook: It sounds like envelope cost isn't the highest priority, but a necessary component.
  - Regarding accounting support for the Secretary of State's office per the RFP: This is a new cost and the Secretary of State's office doesn't have a budget for it. We've had the answer that it's allowed to be used from these funds. Does anyone feel it's not a high priority?
- Sen. Sherman: I think it's a given; it's the cost of doing business. It would be great to know how much it'll cost, but I think it has to be funded, and the logical place it would be funded is out of CARES Act funding.
- Attorney Fitch: We're towards the end of a competitive selection process; it's not legally appropriate to discuss preliminary numbers we have. We hope to have more certain final numbers in a few days.
- Mr. Van Loan: Would this qualify for the state match?

- Attorney Fitch: The state match has to be something paid for by state or local government in the same nature we're using CARES Act funding for.
- Chairman Cook: Maybe someone could give us a plug number if we don't have an actual number soon.
- Rep. Griffin: I don't want a plug number. They're in the middle of evaluating proposals. I don't want anything out there. We can't keep the money we get if we don't account for it, so this is the number-one spending item, in my opinion, and then we'll go from there.
- Sen. Sherman: Agrees with Rep. Griffin. I'd put this in as overhead.
- Chairman Cook: A paid public awareness campaign is necessary. We just don't know how much that will cost.
- Mr. Van Loan: We should develop a simple one-pager telling people about the dates for the elections, specifically informing voters about the COVID-19 allowance for absentee requests. There's also been discussion about a hotline run by the Secretary of State's office. If they could do that, that would be the place to publicize it and refer people to the website for details.
- Ms. Hanna: Agrees with Mr. Van Loan on this point. That's the best way to educate the voters: by mailing to every potential or registered voter a one-pager to include the request for a registration packet and the application for an absentee ballot. I also want to compliment the people who have testified before us: We have many resources out there and we should enlist them to get the word out to their constituencies about this.
- Rep. Griffin: We're getting into substance rather than prioritization. The minute you talk about sending out a mailer with tons of pages in it, you lose people. People don't go through their mail. What's your goal with the mailing? Promoting the ability to vote absentee?
- Sen. Sherman: The envelope or mailer can have messages on them different from typical mailings that will be attention-catching. I think one mailer should have the information on it and other should be the absentee request form.
- Committee agreed this is high-priority under the awareness dollars bucket.
- Chairman Cook: Regarding postage, I think paying return postage makes sense if we can afford it, but that's directly tied to the size of the envelope. Need to think about the size question.
- Mr. Van Loan: Deputy Secretary Scanlan, you said the cost for the typical folded return package going back to clerks' offices was \$0.70 cents. Is that based on past experience and weight of typical ballot and affidavit envelope?
- Deputy Secretary Scanlan: Yes, that's based on past experience. I should double-check because 8.5" x 11" is the smallest ballot we could possibly have; they're usually 8.5" x 14", so that may push it up a mail class. I'll nail that down and report back.
- Sen. Sherman: I'd offer to have a subcommittee of 2 with myself and Deputy Secretary Scanlan, that once he gets that information, we can talk to postal service.
- Ms. Hanna: Regarding prepaid postage: I think it's extremely important for absentee voting this election, so I put that at the top of my priority list. I don't know about the flat envelope, whether it's worth it or not. I have appreciated hearing from the moderators about the difficulty of feeding those ballots into the machine. It seems that if we have to choose between prepaid postage and a larger envelope, I'd go for prepaid postage, but I'd try to think of ways that we can ease the work for those moderators and poll workers who need to feed these into machines. One suggestion I have is to give them more time to do it, and so we could think out of the box and think about allowing them two

days to feed those ballots into machines and simply announce the results of the election the next day so they wouldn't have to rush.

- Attorney Fitch: Part Second, Article 32 of the NH State Constitution says in part that the moderator has to receive votes of all inhabitants, and sort said counts, and make a public declaration thereof. Many understand that to require that ballots be counted and that the count be announced in public before polls can be closed to public. The NH Constitution doesn't allow us to extend counting like other states do.
- Sen. Sherman: We need to focus on how early we could allow the processing of absentee ballots. My understanding is there are 3 phases: one is processing them to the point of checking off on the checklist, putting AV next to name, and not opening affidavit envelope until day of election, and then they'd still have the opportunity to vote in-person, because you'd have their name attached to their ballot for the first two hours; the other option is to eliminate that 2-hour requirement and start processing a week before or a day before and in that processing you go all the way to level of checking them off on the checklist and putting ballots in secure location. In both schemes ballot wouldn't be counted until election day, and all ballots would need to be counted before polls closed. Not advocating for either option—but it sounds like either of those options would be hugely helpful with volume of absentee ballots we're anticipating.
- Ms. Hanna: I would be in favor of allowing the processing to start a day or two prior to the election. I think that change would maybe also raise issues in voters' minds about whether it's being done in public, etc., but I would be in favor of that if we thought it would help to solve the problem the moderators have talked about with the folded ballot. I thought their issue was once they started feeding them in on election day, they were being bounced back and it would take many more hours to do that, so I was trying to figure out ways we could accommodate moderators. Maybe we could look into how much those MA machines cost. As to the issue of whether it's constitutionally allowed to go beyond election day, I haven't researched that, but don't we have instances of polls that have counted and announced the vote after midnight on election day?
- Attorney Fitch: As I understand it, that wouldn't violate the constitution, because you're still engaged in one continuous process, so it's not the tick of midnight that's the problem, it's the notion of closing down the polls, ballots being stored, and the public not knowing the results at the end of the night.
- Ms. Hanna: I wasn't suggesting you'd close down at any point; it would be continuous process perhaps with staggered staff shifts.
- Chairman Cook: Presently, we let voters who sent absentee ballots in who show up on election day vote. Wouldn't it require a law change to start processing beforehand, as you're eliminating their right to do that?
- Attorney Fitch: I believe so. The number of people that have done that, if you look at the last few cycles, is less than 100, so it happens but it's not all that common. My understanding is that the requirement to wait to process absentee ballots for two hours after the polls open is to accommodate those voters.
- Sen. Sherman: But there's one instance where you could process early and not have to eliminate the two-hour window, and that's if you're processing to the level of keeping the ballot attached to the affidavit so the ballot is still connected to a person and a name and then at the end of the two hours then you could start splitting the affidavit from the ballot. For those first two hours, you'd have to have a separate line so people who voted absentee could come into that line and say: "No, I want to

vote in person,” you’d pull their ballot out and then allow them to vote in-person. Other option was for this year, 2020, do we, in the interest of ensuring as many people as possible can vote absentee and we can handle it, do we for just this year eliminate that 2-hour window and allow absentee responses to be processed.

- Attorney Fitch: We have to be careful about the process. The checking of the checklist saying “this person voted” is a critical element of the process, and if we allow pre-marking of the checklist prior to election day, which would require an executive order or law change, we have to be careful about how we manage that person then showing up to vote in person, should they choose.
- Sen. Sherman: I want to make one point: If the whole idea here is to encourage absentee voting in the face of COVID-19, when lots of people have lost jobs and income, I’d say that prepaid postage is a critical component to getting these ballots back and making sure as much as possible that this is an absentee experience that people can afford and accomplish. I would say prepaid postage to me is very high priority. The separate question is: can we afford it? And I think along with that is the question: If our goal is, from a health standpoint, to be minimizing interpersonal contact, this is going to be a key component to that. From a healthcare standpoint this is a very high priority.
- Mr. Van Loan: Priority level of paid postage depends on cost.
- Chairman Cook: Is it practical to say we have two sizes of envelopes for hand counting towns and other towns?
- Dave: Hand-count towns ballots can be folded.
- The committee agreed to continue their work at tomorrow’s meeting, with additional information.
- Sen. Sherman moved to adjourn, seconded by Mr. Van Loan.