

Meeting of the Select Committee on 2020 Emergency Election Support

Wednesday, May 27, 2020 – 2:00 p.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 attending remotely, alone.
- The Committee needs to vote on last Thursday’s minutes. Ms. Hanna moved adoption of the minutes; seconded by Sen. Sherman. Minutes adopted unanimously except for Ms. Seaver, who couldn’t download them.
- Minutes of yesterday’s meeting: Ms. Hanna moved adoption, seconded by Rep. Griffin. Minutes adopted unanimously except for Ms. Seaver, who couldn’t download them.
- Chairman Cook: Today Sen. Sherman and I are participating in a national cybersecurity forum that’s going on at the same time starting just after 2:30—shouldn’t take more than half an hour. We will adjourn briefly and then resume our work.
- Chairman Cook: One item we’d talked about doing was hearing from the Secretary of State’s office on the current process for registering to vote by mail.
- Deputy Secretary Scanlan: Voters do request absentee voter registration applications, but until now it’s not been very common. Typically a voter makes that request of a town or city clerk, and the clerk would forward that information to the voter. If a request for an absentee ballot is received, and when the clerk checks the checklist they find that voter is not yet registered, then the absentee registration form would automatically be sent to the voter, along with the ballot for the voter to fill out and return.
- Sen. Sherman: So voters can return their absentee registration application and their absentee ballot in one envelope?
- Deputy Secretary Scanlan: Yes.
- Sen. Sherman: And then that voter is registered and their ballot would be counted?
- Deputy Secretary Scanlan: Correct. Sometimes when an absentee ballot comes back, the registration information is actually in the affidavit envelope, which isn’t supposed to be opened until processing occurs on election day.

- Ms. Seaver: We generally ask voters to return the registration form in a separate envelope if possible so we can get them registered ahead of election day. If it's before the last supervisors' session, we can have those applications ready for the supervisors so the voters' names can be added to the checklist ahead of election day.
- Deputy Secretary Scanlan shared with the committee the documents that are involved with the process.
 - The absentee registration form: It starts off by identifying a person, who is agreeing under penalties of voter fraud that the information they provide is true and accurate. Applicants must prove their identity and domicile by providing either a current and valid NH driver's license or an armed services ID, or some other photo ID issued by the U.S. government that shows the voter's name and address. Or, if the voter doesn't have any of those, a copy of a current and valid photo ID along with a current utility bill, bank statement, paycheck, or governmental document showing their name and address. In the case of someone in an elderly care facility, a letter from the administrator of the facility is sufficient proof of domicile.
 - Once the voter collects that information and submits it, they must have this document witnessed and attested to before they can send it back. Along with this form, the voter also has to fill out the standard voter registration form, which all voters must fill out when they register to vote.
 - The information is then returned to the clerk. This information is then passed on to the supervisors of the checklist who, at their regularly scheduled meeting required by statute, can approve these applications. Supervisors of the checklist are required to hold a meeting between 6-13 days before the election, after which registrations cease until the day of the election. This provides supervisors with the opportunity to finalize the checklist that will be used on election day, and any absentee registration forms received between that meeting and the election are processed on the day of the election day, as same-day voter registrations.
- Mr. Van Loan: If the voter produces a current and valid NH driver's license showing their name and address, does that mean you don't have to produce any other evidence of domicile?
- Deputy Secretary Scanlan: Yes. That's all that's required on the absentee voter registration form. A driver's license is sufficient proof.
- Mr. Van Loan: With respect to what the voter has to supply in terms of documentation, does everybody have to fill out the NH voter registration form?
- Deputy Secretary Scanlan: Yes.
- Mr. Van Loan: And that includes a fair amount of personal information?
- Deputy Secretary Scanlan: Yes.
- Mr. Van Loan: I'm unclear on whether or not a voter who wants to register by absentee can or is encouraged to do so electronically. I looked at the supervisors of the checklist FAQ's provided on the Secretary of State's website. One of the questions is: Can an applicant provide proof digitally? And the answer provided is that the applicant should not do that. And yet, there's another similar question which says the applicant can provide proof digitally, and to extent they contain personal information, the voter assumes the risk if that email is hacked. Those seem like contradictory answers. It's unclear to me what the position of the Secretary of State's office is on whether this information can be provided by the voter electronically.

- Deputy Secretary Scanlan: I'll review the website. I can tell you that absentee voter registration forms have to be returned through the mail; there is currently no provision allowing that to occur electronically.
- Mr. Van Loan: We know that a voter who registers in-person on election day who lacks the requisite documentation can file an affidavit attesting they are a qualified voter. The question has come up several times about whether that same opportunity exists for those registering absentee. Can they execute an affidavit by absentee?
- Deputy Secretary Scanlan: The affidavits used for voter registration can be used anytime a voter appears before either the clerk or the supervisors to register to vote; it doesn't have to be on the day of the election.
- Mr. Van Loan: So can it be used if you're registering absentee and not in-person?
- Deputy Secretary Scanlan: We do not believe the statutes currently allow for the use of affidavits if a voter is registering by absentee.
- Mr. Van Loan: Finds the instructions to voters and supervisors unclear on that matter. Would the committee recommend to the Secretary of State that there be some modification made there, for the purposes of the upcoming elections?
- Deputy Secretary Scanlan: The answers on the FAQ's are dealing with legalities, and they are vetted by attorneys in both the Secretary of State's office and the Attorney General's office.
- Ms. Seaver: An important point about the affidavits is they have to be attested to in front of an election official, which isn't possible when a voter is registering absentee. We have to actually sign that affidavit. The affidavit would have to be changed significantly for use in absentee registration.
- Ms. Hanna: Are those forms the only two documents that one needs to register absentee?
- Deputy Secretary Scanlan: Those are the only two documents that need to be filled out, but the voter also has to include the documentation proof of their qualifications.
- Ms. Hanna: Are those forms available on your website?
- Deputy Secretary Scanlan: The regular voter registration form is not, because when we make documents available what happens is we have individuals that will download them, fill them out, and mail them in, when an actual voter registration form has to be filled out with an election official.
- Chairman Cook: So this is a different circumstance. Usually people can go to the town clerk and do all this without a problem. I can understand why you haven't had it posted before. Even if we don't change this form, and the requirement for identification and the witness remain, don't you think those forms should both be posted and available?
- Deputy Secretary Scanlan: That's an interesting question. The current process allows the clerks to have some control over the process and keep track of which documents are moving around. Ms. Seaver, you may be better able to comment on how important you think that is, versus just making those forms available on the website.
- Ms. Seaver: I remember when a city did add them to their website, and candidates sent them out to everyone, and we were inundated with registrations we couldn't accept because of various errors, and it was a mess. It can get dangerous and complicate the process. I also think towns are slowly going to start opening for voter registration soon, giving voters more flexibility in registration.
- Committee briefly adjourned at 2:30 p.m.
- Committee resumed at 3:00 p.m.
- Ms. Hanna: Baffled by why the Secretary of State's office does not want to post the official forms for absentee registration on their website. I think there are ways you could ameliorate the problems

Ms. Seaver referenced. The forms could be accompanied by very specific instructions. It seems we post almost all official forms on websites of the government, and I think it would be a service for people if they knew they could go to the website and simply download it. Maybe if you need to know who's asking for it they could be instructed to alert you that they've downloaded it and they will be mailing in their application form. RSA 654:16 states that a person who wants to register absentee can apply to the Secretary of State's office or their city or town clerk's office. I've heard of people calling the Secretary of State's office and being referred to their town clerk's office, which most of which aren't open right now. What we should want is for as many qualified people to register and to vote as possible.

- Deputy Secretary Scanlan: The absentee voter registration is designed for voters who are disabled or absent. NH otherwise is not a register-by-mail state, and that's what happens when people have gotten a hold of voter registration forms in the past; they fill them out and mail them in to the clerk or supervisors and think they're all set when in fact they are not. That's been the practice, historically. There aren't many absentee voter registration forms that have been filled out and submitted in the past, and the only reason we're delving into this now is because of the situation we find ourselves in because of COVID-19, and we're forced to look at these potential changes to ensure our election process works smoothly and fairly for everyone this year.
- Ms. Hanna: I appreciate that. Our job is not to change the situation permanently, but rather to recommend how people can manage to register and vote absentee in this current situation. I would hope that you may consider posting those forms for these very important upcoming elections.
- Rep. Griffin: I think we keep recreating the wheel. I understood this committee to be dealing with recommendations for the expenditure of funds in regards to safety issues—not issues that people may have with the Secretary of State's office's website, or whether forms could be processed differently. Those items are not related to safety. Having been on House Election Law, hearing complaints about the Secretary of State's website is not a new thing. As far as the documents, we can argue about the statute, but RSA 654:18 says voter registration and absentee applications shall be forwarded directly to the applicant by their city or town clerk or the Secretary of State. We can discuss that being online, but I still think we're going beyond our purview.
- Chairman Cook: My perspective is the reason the absentee registration came up in my mind, and the reason making it available online is related to safety, and is therefore under our purview, is that people either would have to go to the town clerk's office, which have been closed for the most part, or would have to wait until they could register in-person, and we're trying to keep the poll crowds down. If the only alternative someone has for registration was to go register in-person, absentee registration is related. The question I have is: If there are thousands more people registering absentee, and therefore thousands of more applications for registration sent out by town clerks or the Secretary of State's office, what's that do to process, and is it going to be more expensive?
- Sen. Sherman: I have to fundamentally disagree with Rep. Griffin on her interpretation of our charge. The reason we're looking at absentee registration is because Mr. Van Loan came up with some basic assumptions, including: the safety of this election is going to hinge on people's ability to participate on an absentee basis. If we accept that assumption, which I thought we did, everything having to do with absentee processes and making them readily accessible is under our purview. The Secretary of State needs to feel supported. I don't think any of us have been critical of the work of the Secretary of State, and I certainly am not trying to be. I'm trying to look forward and say: let's

get downloadable forms on the website, because clerks aren't readily available. Let's do everything we can to accommodate the absentee system during this critical time.

- Rep. Griffin: I come back to the practical reality of absentee voting and registration. The reality is that by far the majority of registrations occur on election day, and that's why you hear from the Deputy that there really aren't that many registration requests throughout the course of the year. And we can identify, by year, the locations where all of those registrations are occurring. I understood the executive order to deal with the ability to have people vote absentee because of COVID-19. It's not maybe just a policy issue; I see a functional issue that we need to address. We've been spending lots of time on absentee stuff, and I'm more concerned with the polling place, because I think lots of people are going to vote at the polls. The fall is a long way away, and the data on COVID-19 is changing dramatically every week, and I'm more concerned about the polls and getting a flow and best recommendations from how polling places should be arranged.
- Chairman Cook: If we think that people's conduct in 2020 facing this pandemic isn't going to be different; there's no purpose for this committee. Our whole purpose is to minimize the number of people who feel compelled to go to the polls in-person. Many people may still go, but it's frustrating to me that we've done all this work based on the premise we're keeping people from going in-person and then we're making assumptions that people's behavior won't change. That's our whole purpose.
- Sen. Sherman: I think we have a lot of people cheering for a safe election. We heard from the universities saying they can put out information in their summer mailings to get students prepared. I do believe this is an all-hands-on-deck kind of year. I believe it will be significantly different from prior years, and we need to be prepared. There are 2 major buckets: I think we've spent a lot of time on in-person voting and we have a really reasonable approach as to how to move forward with that. But on absentee, again, my interest in that is that this may be the key: both registration and ballots, and I think Gene had the one-stop-shopping ballot request form. That really gets at what the Chair was just talking about, which is, we want to make it easy for people to stay home but still vote. When they show up, and hopefully they won't in large numbers, we'll keep people healthy and safe.
- Mr. Van Loan: I am sympathetic to what Deputy Secretary Scanlan and Ms. Seaver say about the problems with having the voter registration absentee form online. I also understand Ms. Hanna's and Sen. Sherman's position that we should try to facilitate people in their efforts to register absentee. How about if the Secretary of State's office posted on the website the absentee voter registration form with the instructions that COVID-19 qualifies as a disability, and so if you want to register by absentee and you don't want to go in-person you can fill out this form and we will send you the voter registration form, which you must then fill out and send back.
- Ms. Seaver: This could also be achieved with the mailing to every door option we'd discussed. That mailing piece will be key.
- Ms. Hanna: I think it is better than nothing to have the Secretary of State's office simply have a very clear statement under the elections section of their website saying if you want to register to vote you can do so by absentee this year by saying that you have a fear of COVID-19, and then go on to clearly outline the absentee process and what's required of the voter. I still think it would be no problem whatsoever in my view, but I see others are concerned about posting the forms in downloadable form online.
- Sen. Sherman: I agree with all the above—especially the every house mailing. It is important to reach out to voters in various modalities.

- Chairman Cook: We've been asking and wondering what the status is of the review of the absentee registration process, because as I understand the law and the forms, the two forms, the affidavit, the witness—all the things presently required by law will have to be complied with.
- Attorney Chong Yen: My office has a draft of a joint guidance memo re: absentee ballot requests, which will outline that process and identify what is going to be the “new normal” in the context of COVID-19, using the framework that we have under the statutes. My understanding is that's currently with the Attorney General for consideration, and I'll be able to get back to you with something more definitive soon.
- Sen. Sherman: Last Thursday's vote indicated that this is too expensive, but we're reconsidering that. We've found that the cost of going to a flat envelope that large is approximately double the cost of doing what is currently being done. The postage issue is very complicated. Partly because there are so many different rates, which depend somewhat on who has permits to do this, and that makes it more expensive for options that would intuitively seem less expensive. I'd like the committee to think about: If we go forward with paying return postage, which many people feel is critical, do we need to be covering both outgoing (from clerk's office) and return (from voter)? Would we need to stick with large flat envelopes which double the price, or is it really worth it to make them less likely to jam but be so much larger that they're that much more expensive? Also on the large envelopes: Some people have very narrow, small post office boxes. What currently comes out from the Secretary of State's office typically would fit in a normal sized post office box. When you take a full sized flat envelope you have to bend it to get it into some boxes. Is it worth it? Those are just some overall considerations. I think it'll be helpful for us to revisit the question of envelope size.
- Deputy Secretary Scanlan: I compiled the results of the questionnaire we sent out to election officials; it was copied to each member of the committee. There were about 50 responses out of 200+ clerks that could've responded. We had a range of large cities to very small towns represented in the responses, and I think the numbers tend to reflect the size of the polling place. I'm not sure whether the clerks completely understood the question; I think some provided numbers that anticipated needs for the primary and the general elections, while others may have just anticipated numbers for the general and not the primary election. I think we can get a general sense of the numbers of workers in a polling place related to size. Attorney Fitch has been doing some projections of the number of poll workers based on voter population that will probably be helpful. Other questions included: Are there any extra Accuvote machines available to loan to other towns? It's pretty obvious there aren't many extra machines available through the loaning process. Some towns are considering changing their polling place locations to accommodate potential problems around COVID-19, and some locations are thinking about having satellite sites to receive absentee ballots, but not on a large scale.
- Chairman Cook: My question regarding the cost of PPE: Is there an alternate mechanism by which clerks can do this? As I understood it, DOS orders PPE and has it on hand and town clerks coordinate to get what they need. We've got to put a number on it somehow and I'm struggling with how to arrive at that.
- Attorney Fitch: There are some significant logistical concerns; I don't suggest they're the work of this committee, but I'll share them. We can't pay for, with federal funds, any PPE that's going to go to a town or city until we have a sub-grant agreement with that town or city that's coming out of any funds we're authorized to use, whether it's CARES Act funds or security funds—you have to have an

agreement with them that it'll be received and used for authorized reasons under federal law per sub-grant agreements they must enter into. We have to have records of receipt of the PPE by towns and cities receiving it. There are some practical issues to be considered. We've incorporated into the potential contract with an accounting firm coverage of receipt and documentation of what towns receive. I do think it's beyond the timeline for this committee to get to a refined answer; it would be very helpful to get your guidance based on personal expertise and received testimony around priority PPE items. What's most important to provide? The approach we're using for estimating is identifying a set of PPE for each polling place then trying to identify how many additional items will be needed. We're trying to sort that based on the number of registered voters in each community, though we may move to looking at historical turnout numbers.

- Chairman Cook: We can come up with who should have what and provide recommendations, as you suggest. We can say it's high-priority that PPE be prepared. Any cost estimates would be very helpful. There have been several comments in the chat room from clerks who didn't see the questionnaire and would like to access it. Could we remind people where they can find it?
- Deputy Secretary Scanlan: Yes, that will get posted at the conclusion of the meeting. It's available on the Secretary of State's website, under the link for this committee's page, which is where all these relevant documents are located.
- Sen. Sherman: Attorney Fitch's input was helpful because it changes my algorithm for how PPE would be allocated. I've been thinking about when we talk about PPE, two things: the first message is we need to know from the towns what they need. These kind of PPE request forms already exist in other departments like DHHS for nursing homes and hospitals. And then the second part of that the towns might have to spend the money first, keep their receipts, then get reimbursed.
- Attorney Fitch: Per your guidance we'll develop a metric for reimbursement and coverage. Our concern, in talking with colleagues around the country, is that getting ahold of PPE is difficult, so it may not be practical that the towns just go buy their own and then get reimbursed. We're looking at trying to work with colleagues in state government doing this for other folks so we know what we'll have access to in terms of PPE. Towns are pretty resilient—some folks already have everything in-hand.
- Assistant Commissioner Perry Plummer has been organizing delivery of PPE materials for hospitals and nursing homes already; they'll just need to know how much and what we need.
- Mr. Van Loan: Do you think it would be permissible from the federal point of view—could we create groupings of municipalities based on similarities?
- Attorney Fitch: At the very least we'd break it down by thousands of voters. For example: for polling places with so many thousand voters, X amount of PPE is needed.
- Chairman Cook: We meet at 11:30 tomorrow. We have yet to go over some of the recommendations in my matrix.
- Mr. Van Loan: We need to address issue of whether or not we should be recommending legislative change or executive order to allow absentee registrants lacking adequate documentation to use an affidavit.
- Sen Sherman: I think there would be huge legislative pushback if it was intended as a permanent change, but I think there would be less pushback if it was adopted as a temporary fix just for this year.
- Ms. Seaver: Keep in mind the affidavit also has to have a witness signature.

- Ms. Hanna: I'd prefer to see the affidavit used absentee for just this election. I'd hope we could come up with some mechanisms by which a person could take a picture of their qualifications and get it to the clerk that way. I'd previously asked about that of Attorney Chong Yen, who said he didn't believe that would be acceptable because of the cybersecurity component. But then I thought it was in the FAQ sent to supervisors that one could accept digital proof.
- Dave: I'd want to defer to Attorney Chong Yen on that point, but beyond that I'd say the committee is touching on an important subject: statute is currently pretty rigid re: what's required, so I think you raise a good point that some people may not be able to print or copy documents, and the affidavit issue may be a problem. I think that's a point that needs to be addressed.
- Attorney Chong Yen: On pages 6 question 8 in the FAQs: I understand that the member pointed out it seemed confusing. The answer to your question is yes, these proof documents can be sent if there's a phone capable of taking photos and email or text that proof, that's acceptable. In terms of the cybersecurity risks, that voter assumes the cybersecurity risk of transmitting personal data.
- Chairman Cook: Tomorrow we'll discuss the affidavit question, what we know about money, process recommendations, and see if we can identify things that would need changes in law from one place or another, and I'll be making assignments for drafting the report.
- Sherman moved to adjourn, seconded by Mr. Van Loan. Committee voted unanimously, by roll call, to adjourn.