

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

Thursday, May 14, 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.
- Our agenda includes some presentations and a committee work session.
- Chairman Cook called the roll; all members were present and attending remotely, alone.
- Approval of yesterday’s meeting minutes: Mr. Van Loan moved adoption; Ms. Seaver seconded. Minutes unanimously adopted by roll call vote.
- The first presentation today is a short one on exactly what steps are required in the absentee ballot process.
- Tricia Picuch, Assistant Secretary of State: We’re going to go over from the beginning to end the nuts and bolts of processing absentee ballots.
  - Someone requests an absentee ballot through writing or on a prescribed form. Clerks receive and retain these requests.
  - Clerks then take those requests and log into the Electionet system, which is where they’ll look to see if the individual requesting an absentee ballot is a qualified voter, and verify that they’re in the correct district, if applicable.
  - Clerks search for voters by the voter’s last and first name, which will bring up their name, address, voter ID, and party affiliation.
  - On the request form, for a state party primary, undeclared voters must choose between a Democratic or Republican ballot.
  - On this screen in Electionet, the clerk can record on the request the voter’s ID number as well as their name, address, and the date of the request. If it is a party primary, many officials will write which ballot the voter is requesting. For a district or ward, we also write that number down, as we want to ensure we’re sending out the correct ballot for that voter.
  - Once we pre-qualify a voter, we’ll go into the absentee ballot screen, where it will be determined whether we add the request. If the voter is an overseas or military voter, this is also where they’re able to log in that military UOCAVA information. UOCAVA voters are able to receive ballots for all elections they’re qualified to vote in for a calendar year.

- Once clerks go into the system and enter the absentee information, they're able to put in the date requested. If absentee ballot requests are received for both the primary and general elections, both can be entered into the system at once. We also have to enter how the request was received. If it's a party primary and the voter is undeclared, that person's requested party needs to be reflected.
- From there, they put in whether the ballot is being sent to the voter's home address.
- If it is a UOCAVA voter, there's the ability to enter their email address, as well.
- Once this information is input and saved we can go print labels. That will automatically update in Electionet that the ballot was mailed.
- There are 3 different envelopes. Many clerks will cut their envelopes open prior to the election.
- Once envelopes have been stuffed, they can be postmarked and mailed out. Whenever absentee ballots are being mailed out, we get a tag 191 from the post office that will go out with any ballots being sent out.
- Now you have to file all those requests in alphabetical order.
- Then the ballot comes back returned to sender. When it comes back, we enter them into Electionet as having been received.
- Deb Cornett: Discussed the verification process that occurs when ballots are received back.
  - We'll print off a list of all absentee ballots received, take that list, and take all the absentee ballots for that town or ward and will go one-by-one to verify the right request is in there, that nothing was forgotten, and that they have the ballot they need.
  - Processing absentees: If you post it and give notice to the public that you're going to start processing absentee ballots two hours after the opening of the polls, you can do so.
  - In smaller towns, the moderator will call out the names of absentee voters during lulls and the ballot clerk repeats the name, domicile address, say "absentee" and marks the checklist "AV" and checks the box, then checks the name one last time, to ensure accuracy.
  - When you go in with your clean copy of the checklist, as they're marked off, you'll notice in red the "AV's" and a line through the last name of the voter being checked off.
- Tricia Piecuch: Deb is going to enter test ballots into the ballot-counting device that are 8 ½ by 14" ballots. We know sometimes ballots are difficult to process when they've been bent or folded. It's important to try to flatten them out as much as possible so they're smoothly processed by the machine.
  - Moved on to 18" ballots being processed.
- Deputy Secretary of State David Scanlan: The 18" ballots are used by Bedford because of the number of candidates they have. They were having issues with the longer ballots being read by the AccuVote machine. It may be helpful to see the difference in processing between the long and short ballots.
- Tricia Piecuch: There are four different score marks on the 18" ballots. These still benefit from being flattened out somewhat.
- Chairman Cook: Do you have any estimate of how long it takes to process each ballot once you receive a request for an absentee ballot?
- Tricia Piecuch: Yes. We'd done up an exercise as to what the different steps were and how long it took to do. We can share that with the committee.

- Anthony Stevens: We only did it for one city, for one special case, which was Nashua. It was a batch process they used, which towns usually can't do. We put together a draft version of this process, in part so that we could help our accountant clean this up and do a full check with many cities and towns so we can get a representative sampling. I can't tell you how long it takes, but I can give you an estimate of what it might take. It takes between a third of an hour and a half an hour to do the absentee ballot preparation process, start to finish—that's the range we're looking at. It might take longer if you're a small town. I don't think there's any way to tell you today how long it actually takes; that's why we're waiting on our professional time study, which we're in the midst of contracting out.
- Ms. Seaver noted it can take much longer for towns, especially given disruptions.
- Ms. Hanna asked Ms. Piecuch: Regarding the process you go through to determine whether a voter made mistakes on the ballot: Could you describe what you do by way of notifying the voter of their mistake?
- Ms. Piecuch: Any time there's an error on an absentee ballot, if there's a phone number, that's our first point of contact: to call that voter. We can also have people email the correction to us, because we can print that and attach it to the ballot to provide backup. We have 7 days upon receipt of the request in order to advise the voter there's a problem with their absentee ballot application.
- Ms. Hanna asked Ms. Piecuch: What happens when a voter decides to deliver their absentee ballot in-person? What happens when a so-called "delivery agent" delivers that ballot?
- Ms. Piecuch: If a voter comes in with their ballot in-person, we'll ask them if it's their ballot. If they confirm that it is, we'll accept it, and stamp "voter verified" if they wish to show a photo ID. That now becomes a voter-verified ballot. If they do not wish to show their ID but want to do a challenged voter affidavit, they have that option, which would also be considered voter-verified. Otherwise it would go through the normal ballot receipt process at the counter, and it's not stamped "voter-verified."
- Ms. Hanna: From what you've described, under the current process, there's no provision for a voter to just come into town hall and leave the ballot, in an attempt to avoid in-person interaction?
- Ms. Piecuch: Correct. At this time it has to be delivered in-person or through the mail. We used to have a drop box in Nashua but we put signs up asking people not to drop their ballot there because we wouldn't be monitoring it.
- Ms. Hanna: What's the law that requires a voter to show their ID when dropping off a ballot?
- Ms. Piecuch: It was a new law that came into effect, so when that ballot goes to the polling location there's no signature verification because the information was already verified when the voter dropped off their ballot.
- Mr. Van Loan: Are voter ID numbers on the checklist?
- Ms. Piecuch: Yes.
- Mr. Van Loan: If you get an application from a voter and the voter claims they're registered in their application and you find out they're not, what's the response at that point?
- Ms. Piecuch: We would send them an absentee voter registration package. On the request form, there's two boxes: one that states they are a registered voter, one that says they're not.
- Sen. Sherman: If someone in your district or municipality sends in a request for an absentee ballot package but you find they're not registered, you'll automatically send them an absentee registration packet?

- Ms. Piecuch: There are two boxes on this form, one for those who are already registered and one for those who are not. If they aren't registered, or we find they aren't, then we do in fact send them out that package.
- Sen. Sherman: We've also heard that some town clerks don't know that you can register by absentee. If it's right on the form, it seems kind of strange to me that they wouldn't know that can happen.
  - I'm trying to figure out the benefits of some of these current practices, which I realize are statutory. What's the benefit of attaching absentee ballot requests to the returned envelope when it arrives?
  - Ms. Piecuch: We attach the absentee ballot request to the ballot envelope. Either the affidavit envelope or request need to be signed.
  - Sen. Sherman: So it's like a failsafe?
  - Ms. Piecuch: Correct.
  - Sen. Sherman: We don't allow drop boxes by statute. Is there any difference in the security that's provided when someone mails things? They both arrive directly to you without in-person verification.
  - Ms. Piecuch: I'd defer to Deputy Secretary Scanlan on the legality there. Are you talking mailing of applications or ballots themselves?
  - Sen. Sherman: That's what we need to determine. Could you provide ballots without requiring an absentee ballot request? Do we lose any security if we do that?
- Rep. Griffin asked Ms. Piecuch: Have you had any problems with Electionet as you do this process? What's your sense of the experience with Electionet?
- Ms. Piecuch: I can't speak to other cities' experiences, but when I was working in Nashua, I never had any trouble with Electionet. The data you get out is only as good as the data you put in.
- Ms. Seaver: 99% of absentee registration packets go out because of the absentee ballot process.
- Ms. Hanna asked Ms. Piecuch: Is it possible that you could, in your town office, put out a table with applications that people could just walk in and take, rather than having to mail in requests for them?
- Ms. Piecuch: Yes, we used to have them on our counter so anyone could come in and pick one up.
- Mr. Van Loan: We need clarification from the Secretary of State's office and the Attorney General's office. I want guidance on whether a drop box would be appropriate.
- Sen. Sherman: It's been brought up that the concept of processing absentee ballots early, whether it's a day or week before, would be very helpful. The only thing we lose there is the ability for people who have already voted absentee to come vote in-person. Otherwise, it's a win, given adequate noticing and public observance.
  - I don't see a security benefit to voter-verified or any of the other steps that occur in the clerk's office that would make it a better process than just having a drop box. I haven't figured out why that voter-verified or in-person verification is necessary. You have two standards: One by which requests come through the postal service and aren't verified, then you've got this other process requiring voter verification at delivery.
- Deputy Secretary Scanlan: Through recent policy changes, this process has become somewhat muddled. Up until four or five years ago, the responsibility was totally on the voter to return their absentee ballot, and they could do that in-person or send it through the mail. Then there was a legislative change that recognized there's a segment of our population for which this isn't an easy

process, so we allowed family members to deliver ballots. “Delivery agent” definition was dramatically broadened recently, to include administrators of nursing homes and their designees.

- Along with that we had the court ruling that said you could no longer compare signatures when trying to determine the validity of an absentee ballot.
- These policy changes and court decisions have muddled the process. Now people other than the voter can have a responsibility to deliver the ballot, but it does open the door to abuse. If you start opening it up to where ballots can be deposited in drop boxes or people who aren’t closely associated are considered “delivery agents” then we’re in the realm of significant policy discussions that would need to take place.
- Sen. Sherman: If your town clerk’s office is right next to the post office and I take 20 ballots because I’m in a group home, and I take those and I pay the postage and drop them in the mailbox, they’re going to arrive with the exact same verification as if the town clerk had a secure drop box they received it in.
- Deputy Secretary Scanlan: That’s correct and could certainly happen now under current statute. There are administrative concerns with that statutory process and at some point it’s going to have to be addressed.
- Rep. Griffin: I’m hearing a lot about security and process, and I think one of the most unsecure things there is would be a drop box. I can tell you from my experience in municipal work, generally speaking, drop boxes are viewed somewhat skeptically. We need to focus on COVID-19 specific changes needed versus broad policy changes beyond the scope of this committee’s charge.
- Chairman Cook: I asked Deputy Secretary Scanlan to tell us why the online suggestions versus by-mail suggestions have always been deemed problematic.
- Deputy Secretary Scanlan: We acknowledge there is room for technology in elections and we’re utilizing that to a certain extent. We’ve been able to keep it simple here in NH. There are other states that have drawn a great deal on technology; some successfully and some with significant failures. The most recent example of that is what occurred in Iowa during their presidential caucus, where they tried to implement an untested system for receiving votes, and that failed so badly they really weren’t able to announce their final results until after the NH Primary took place about a week later.
  - Part of the situation we find ourselves in dates back to when the National Voter Registration Act was passed, aka “Motor Voter”. At that time, Congress passed an act that allowed voters to register to vote online; they didn’t have to register with local election officials. There were state agencies that were announced as voter registration agencies—probably the largest ones were the DMVs in various states.
  - Because of that, those other states developed voter registration systems online and with the cooperation of their divisions of motor vehicles and other various agencies serving as registration agencies. NH was exempt from that act because we had same-day voter registration. NH’s registration process developed independently of the national motor voter law, and we have a system whereby voters show up, mostly in-person, to register, either before the supervisors of the checklist, in front of the town clerk, or on election day.
  - Over the last few years, doing some of this online has caused significant issue and has been the subject of significant debate in NH. There has been some disagreement, which has resulted in the lack of success of how that process should take place. From our perspective, it is a process that should take place one step at a time. It has to involve the users of such a

- system, which would be local election officials and the Secretary of State's office, as well as the legislature. Senator Levesque had organized some sessions with Secretaries of State in some of our neighboring states, and those Secretaries did acknowledge that we had a much greater workload to deal with in terms of implementing things like online voter registration because we do not have the motor voter infrastructure. Some of our conversations with NH DMV indicate there is significant work to be done before we could implement such a process.
- All of these states started with online registration before moving to automatic registration.
  - We've developed a statewide centralized voter database; we also have an accessible voting system for voters with disabilities.
  - We would need to have a software company create such a program, have it properly tested, and train all officials who would have to use it. To expect that that would happen for the fall elections simply isn't realistic. There may be ways we can use technology to ease existing processes. We all have to realize that six months ago the big concern related to elections was cybersecurity. No one is talking about that now but the concern has not gone away. Any electronic system used has to be vetted to ensure it's safe against hacking or bad actor attacks.
  - In terms of the systems we have now, we've taken strong steps to protect their integrity. Staff is heavily trained on cybersecurity; we use multi-factor authentication. We employ as many safeguards as possible.
  - We've been looking at updating our Accuvote machines. New counting devices also come along with required software, and it's likely a vendor would have to design ballots used. Right now the Secretary of State's office is charged with finding a vendor to print the ballots, which is currently separate than the Accuvote vendors.
  - We've also looked at e-poll books, and there are a few vendors out there that can produce those. We have two towns in NH using them on a test basis: Milford and Londonderry. Those e-poll book vendors have not been able to get security approval of the security vendor we're working with to ensure those systems are secure. Those towns both find those devices helpful, even though they use a parallel check-in system in order to be in compliance with statute.
- Chairman Cook: We often get communications from organizations and individuals saying "vote by mail or online", and I think the distinction I wanted to draw out was that online is subject to lots of things that mail isn't. It seems like there are lots of ways we can use the Internet to provide education and resources, but it's not the complete answer.
  - Ms. Hanna asked Deputy Secretary Scanlan: I understand we currently have ability for clerks to track absentee ballot applications; I assume that goes through your office. I'd be interested to hear from you about any hacking concerns around that system. I understand it may seem to be a sea change for us to have online voter registration or online voting; do you see any problem with having an online ability to ask for an absentee registration packet?
  - Deputy Secretary Scanlan: We do have an absentee ballot tracking system in Electionet, which is the statewide centralized voter database, which we are confident in the security of. That's a system that works. Also any voter can check on the SOS website the status of their absentee ballot.
    - In terms of whether we can do things electronically, I think the answer to that is yes. We are ramping up, as the committee deliberates, making our website more user-friendly in that

regard. All of these documents that will be needed by voters will be put in one easily accessible location. We've also added a presence on Twitter and Facebook, so as news develops about how these procedures develop, we'll be using modern communication tools to get the word out. We've also added a communications person to our staff, even before this crisis occurred. We expect we'll be communicating as needed and hopefully it will be more overkill than not enough.

- In terms of additional programming software, it all depends on how complicated that software is. If we can find a vendor that can do it in four weeks with two weeks for testing and it's something we can train officials on, then that's something we can do. The more complex the system becomes, the more reluctant I would be to say we can absolutely get that done.
- Sen. Sherman: Aren't we already doing some degree of online process with UOCAVA, and could that not be expanded for this one election to help facilitate access to voting for those who don't feel comfortable coming in in-person?
- Deputy Secretary Scanlan: UOCAVA was created federally, designed for military and overseas voters. That act requires the states to be able to transfer, by email, ballots to our military voters and citizens living overseas. The ballot is then downloaded and printed by the voter, marked, and then mailed back. It's an application, I suppose, that could be used in an emergency. I heard suggestions yesterday that the disabilities community might benefit from this process.
  - The ballot returned is a unique ballot. I know with the disabilities community, being able to vote privately and independently on a normal-looking ballot, is really important to them. When you have a larger bloc of people voting this way, it's more possible that there will be errors.
- Attorney Chong Yen: Emergency order #43 has just been published on the Governor's website. It waives the in-person requirement relative to change of party affiliation. Instead it authorizes a form to be created by the Secretary of State's office that will be available on their website, sent out through the HAVA list serve, and it will be a form that the voter intending to change their party can sign and send back in order to accomplish party change. The one thing I'll note is the order requires the voter have a witness to their signature.
  - The final piece of the order is a waiver of the in-person requirement relative to filing for office on the last day of the filing period.
- Chairman Cook: If we were to urge the Governor's office to take action on the witness requirement, would that be helpful?
- Attorney Chong Yen: The committee can suggest whatever they need to ensure voters are supported and adequately guided.
- Sen. Sherman: So paperwork needs to be postmarked prior the deadline?
- Attorney Chong Yen: Yes, they must be submitted prior to the deadline. But we have a failsafe in anticipation of challenges posed by pandemic. There's a separate form that can be signed by the candidate filing for office or the individual showing up on election day, and they can state that they already submitted all required paperwork for either change of party status, and they'll be permitted to file for office or change affiliation.
- Sen. Sherman: If you waive in-person requirement for the last day, then there's no way to actually get it to the Secretary of State's office except in-person unless it says it must be postmarked by that last day.

- Attorney Chong Yen: We could draw on Deputy Secretary Scanlan’s experience. When people submit documents through mail on day of deadline and it arrives after deadline, what happens then?
- Deputy Secretary Scanlan: We’ll be available on the last day to receive absentee ballots in-person if someone wants to drop it off. We’ll have a safe procedure set up to facilitate that. The Governor’s executive order allows declarations of candidacy to be received by mail on the last day of the filing period.
- Ms. Hanna: We’ve discussed the fact that the Secretary of State and Attorney General issued an opinion re: applications for absentee ballots and the expansion of the definition of “disability” to include COVID-19 concerns. Does that also apply to absentee registration? Will you be issuing another opinion, or will an executive order be issued about that? Are you going to expand your opinion in writing to apply to absentee registration or are we to just stand on the legal opinion you provided?
- Attorney Chong Yen: The Secretary of State’s office and the Attorney General’s office are planning on issuing further guidance to answer that very question, especially in light of the Governor’s office publishing order #43, it’ll be important for all of us to read the order first and then provide guidance.
- Ms. Hanna: I can’t stress how important it is that that opinion be issued very soon.
- Chairman Cook: Mr. Van Loan prepared a revised absentee ballot application that addressed the 2020 specific issues, which we’d sent out to all of you.
  - Threshold question: Does this substantially comply with the statute, by adding but not deleting any statutorily required language. What did members think about the form? What additional suggestions do you have?
- Ms. Seaver: Thought the language was helpful.
- Ms. Hanna: We need to consider readability. Could we move the “signing under penalty of perjury” to the bottom of the form?
- Rep. Griffin: Having sat on Election Law for a few years, there is a reason that the law says “substantially in the same form”. When I went to print it I ended up with different colors and lines through things, so I had a hard time trying to follow it. I think changing the requirement that it’s just one request form for both ballots is problematic; drastically different.
- Sen. Sherman: The simpler we make this process for this year, the better off we’ll be. I’d love to give folks time to digest this form and get feedback on Tuesday.
- Chairman Cook asked that Mr. Van Loan’s proposal be shared with the public for feedback.
- Chairman Cook: We’ve talked about a lot here. Suggested a rolling recommendation process where we could consider things and vote on them as they arise. Ms. Hanna and Chairman Cook have assembled lists of what we’ve discussed thus far. Chairman Cook distributed both sets of notes to the committee.
- Sen. Sherman: Wants these lists of priorities made available for the public. Affiliation change, candidate process, and absentee voter registration processes must be prioritized and simplified. I would propose that we have some recommendation coming out of Tuesday’s meeting on those three topics, and we could also review Ms. Hanna and Chairman Cook’s lists on Tuesday, after we’ve had a weekend to mull. I’d like a vote or hearty discussion on Tuesday.
- Chairman Cook: We’ll meet Tuesday, Wednesday, and Thursday of next week at 2pm. Tentative plan is to have the colleges and schools on one day, the public health and safety officials on another day, a work session on another day. We’ll sort those out and get agendas out to the members ASAP.



- Sen. Sherman moved to adjourn; Ms. Seaver seconded. Motion to adjourn unanimously adopted by roll call vote.