

Meeting of the Select Committee on 2020 Emergency Election Support

Tuesday, May 5, 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 2:05 p.m.
 - Noted members are now co-hosts and they can mute and un-mute themselves.
 - Welcomed everyone to the first substantive session of this committee.
- Chairman Cook provided a brief update on what's happened since the committee's last meeting:
 - Received a briefing on the Right-to-Know law from the Attorney General's Office.
 - Committee has assembled a non-exhaustive list of individuals and organizations they hope to solicit information and ideas from, including representatives from the healthcare community, legal assistance, municipalities, underrepresented populations, political parties, and others.
 - There has been correspondence with local election officials to ensure they're aware of these meetings. The Town/City Clerks will be addressing the committee tomorrow, and other local election officials will do so on Thursday.
 - Committee has gotten a better understanding about how funds can be used, particularly re: the important distinction between supplementing and not supplanting existing funds as a requirement of this federal money. For example: if 10% of voters generally vote absentee but we expect 50% of voters to do so this year, these funds cannot pay for the original 10% but they can be spent on additional percentage of absentee voters.
- Chairman Cook ran down the day's agenda which consists of approval of last meeting's minutes, a legal update on the status of various inquiries the Attorney General's office is making, what funds need to be reserved at state level from the federal funds appropriated, a description of the RFP for accounting services the State has issued, an update on communications the Secretary of State's Office got from the US Postal Service through the Federal Elections Commission, and the public comment portion.
- The Chair called the roll. Members of the Committee introduced themselves. All committee members were present and alone as they remotely attended the meeting.

- Senator Sherman moved approval of last meeting’s minutes; Kathy Seaver seconded. Chairman Cook called the roll: minutes were adopted unanimously.
- Nick Chong Yen, Assistant Attorney General: Introduced himself as the Assistant Attorney General in charge of the election law unit at DOJ. At last meeting he briefly provided an overview of the projects his office is working on to address concerns re: absentee ballot requests, absentee voter registration, party affiliation change, and filing for office. These are still ongoing issues that need some form of remedy, whether that be joint guidance from the Attorney General and Secretary of State or by an emergency order.
- Attorney Chong Yen shared that since the committee’s last meeting his office has been in conversations with the Attorney General to come up with solutions and approve solutions re: absentee voter registration, party affiliation change, and filing for office processes. Solutions are expected in the near future.
- Chairman Cook: Many of the communications we’ve gotten from town and city clerks and supervisors have stressed their need for solutions and clear guidance on those matters quickly and definitively. Obviously party changes and filing for office are early in the political calendar so the faster we can get these, the better.
- Senator Sherman referenced the ability to remotely notarize documents and asked Attorney Chong Yen whether the filing period can be shifted to being done by mail or electronically, as well. Also raised the issue of how candidates should file for office if they cannot do so in person at the Secretary of State’s Office—how do we foresee facilitating this? Finally, underscored the need for ample time for public notice of any new procedures.
- Attorney Chong Yen noted that in terms of candidates filing for office, the DOJ is considering options that would help modify the requirement that an individual appear in person. No particular solution yet but the DOJ is trying to accommodate, as much as possible, folks with concerns about COVID-19. Reminded attendees of the guidance jointly issued by the Secretary of State and the Attorney General’s Office, available on the Secretary of State’s website re: the absentee ballot request process.
- Katherine M. Hanna asked Attorney Chong Yen about having absentee voter registration forms on the Secretary of State’s website.
- Attorney Chong Yen noted that he has reservations about posting specific forms at this point, as there could be something additional the Governor puts through, or guidance that is sent out jointly between the Secretary of State and the Attorney General’s Office that could potentially confuse the public or could complicate the process.
- Katherine M. Hanna noted that there seems to be a dearth of knowledge among local election officials about the mechanism under current statute by which voters can register absentee. Believes it would be helpful to have this information on the website as soon as possible.
- Deputy Secretary Scanlan noted that the Secretary of State’s Office can post things on the website per that suggestion. We anticipate there will be an executive order on the issue of absentee voter registration and change of party registration deadlines. The hope is that sometime this week the appropriate guidance will be issued and then we can all proceed. In terms of the candidate filing period, a candidate doesn’t have to file in-person until the last day of the filing period. So, starting on the first Wednesday in June through the first day of the following week, current statute says a candidate can file their candidacy papers through the mail or have a trusted friend deliver them or get them to the clerk by whatever means necessary. It’s only the last day of the filing period that the

candidate is required to appear in person. The Secretary of State's Office is reviewing that with the Attorney General's Office to see if that requirement still makes sense given COVID-19. In the case of the Secretary of State's office, there will likely be staff stationed outside with drop boxes so folks can get their papers filed.

- Chairman Cook noted that the next order of business is an update from the Secretary of State's office re: communications they've received and discussion of funding needs they see on state level from CARES Act funding.
- Deputy Secretary Scanlan noted that all elections staff have been working very hard since this crisis started on adjusting to and preparing for a different type of election. We have reached the point where it's time to hear from the individuals that will be pulling this off on the ground. The hearings the committee has scheduled this week and probably in the future will be followed up with input and listening sessions directly from the Secretary of State's office. He noted that the concerns of local officials have are paramount. We know there will be changes in procedures and there will be an additional workload on election officials in terms of processing absentee ballots
- Deputy Secretary Scanlan further noted that the Secretary of State's Office is concerned for poll workers' personal safety, as many individuals who work at local elections are high-risk and we want to ensure they're protected. There will be efforts to recruit new poll workers, and we have to figure out how to do that. It's an opportunity to get folks engaged in more civic activity. The worst case scenario would be asking the National Guard for resources. We just have to follow the nature of the virus that's going on and see how things are looking in the fall before we can make final decisions in that regard.
- Deputy Secretary Scanlan went on to say that ensuring the health and safety of voters is also of paramount importance. Obviously there are high-risk individuals who want to exercise their right to vote. Voters most impacted will likely be the elderly, persons with disabilities, and military and overseas citizens. One of the items of correspondence that Chairman Cook referred to was from the U.S. Postal Service warning of interruptions of mail at the international level. We already know they're struggling domestically, but there have been international agreements with foreign countries that have fallen apart and it's going to be hard in some situations to send and receive back in a timely fashion these absentee ballots. The federal MOVE Act does require if a military/overseas citizen requests a ballot by email they have the opportunity to get it by email, then they are required to print it off, mark it, and statute requires them to mail it back. That is where we'll likely have to get creative in making sure these folks from NH have the opportunity to return their ballots. In the past, when the federal government first started looking at how to engage military and overseas voters, the Department of Defense became involved and if the mail was sent from the clerk to an APO address, that APO address where it ended up stateside was then collected by the Department of Defense and they were responsible for getting those ballots to the Secretary of State's office. Hopefully the Department of Defense can get organized to provide that service to countries where we know international mail will be difficult.
- Deputy Secretary Scanlan went on to say the goal is to address voter safety by allowing for the expanded use of absentee ballots if they believe the virus is not safe for them. If they do choose to vote at a polling place, we want to make sure conditions there are safe: proper voting booth spacing, personal protective equipment readily available for poll workers and voters, etc. One benefit of there being an anticipated larger number of absentee ballots is, as a result, we may be

able to reduce the number of polling booths required in polling places, which will help space remaining booths out and provide for a safer voting experience.

- Deputy Secretary Scanlan went on to say that in terms of the funds available, the general fund funds a good part of the Secretary of State's office's budget in terms of conducting elections. Those funds are used primarily for printing of ballots. We do not anticipate the number of ballots printed to change dramatically, but the nature of the ballots will shift from fewer official ones to more absentee ones. Also, the state prison is printing a much larger number of absentee ballots that can be distributed to city and town clerks in advance of the election.
- Deputy Secretary Scanlan noted that the trainings the Secretary of State's Office puts on are going to be a lot more involved this time around; we are less likely to be on the road going around the state for training sessions and more likely to do something similar to what we're doing now: Zoom or WebEx. The Secretary of State's Office will be producing instructional videos that will be available. That will be paid for by existing HAVA funds—not out of CARES Act funds. There will also be a greater effort on voter education because we'll have to communicate all these processes to voters, and that will be a new expense. It's probably beneficial to election workers and voters if we can stick to the statutory routine as much as possible because those are procedures poll workers and voters are familiar with, and then just deviate from that through exec order to the extent necessary.
- Deputy Secretary Scanlan: The federal CARES Act funds we have available dedicated to dealing with the COVID-19 crisis amount to \$3.2 million dollars. We fully expect all that money is going to be targeted at the local level to help pay for costs that surround the increased use of absentee ballots and the need for additional poll workers and procedures/processes to keep polling places safe. The federal act does require a 20% match, and we believe those funds can be found by local communities. Anything they spend in excess of what they'd normally spend could likely satisfy that match. Any funds left unspent 20 days after the election will have to be returned to the federal government. That is not likely to happen unless the current situation changes drastically.
- Deputy Secretary Scanlan: Along those lines, the Secretary of State's office has issued an RFP to help the state meet the federal requirements of keeping track of those funds and surviving the anticipated audit on how those funds are used.
- Attorney Fitch noted that at the staff level, the Secretary of State's office is tasked with trying to start identifying strategies to make it as easy as possible to get funds to local communities. He had the opportunity at one point, working with Governor Lynch, dealing with lots of similar programs where federal money was sent to states that had to be spent very quickly under similar restrictions. In that instance, we had situations where in small communities it didn't make sense for them to try to get the money because the federal accounting requirements for receiving it and proving it was used correctly was going to cost more than the actual award. We need a strategy for communities to consider to circumvent that problem. As such, the Secretary of State's Office has issued a request for proposal for accounting firms. There are a few components to the request:
 - The most immediate federal requirement is extensive recordkeeping. Any time you receive federal funds you must be able to demonstrate that you supplemented and didn't supplant funds, and that you used the funds exclusively for their intended purpose. As a result, clerks will get a heavier workload. Clerks will likely divert time from other work in order to get this work done, as absentee ballots and registrations will be priority. It is challenging to produce accounting paperwork on top of that. One example: extensive timekeeping process where

- one accounts for all hours an employee is paid for, by unit of government, and which hours were normal election work and which were done because of COVID-19 in excess of prior efforts. Our understanding is that very few clerks must do this recordkeeping to meet normal audit requirements, but these federal requirements will be a substantial add-on.
- The Election Assistance Commission can approve substitute election processes, and now we're proposing a request for approval of a substitute process based on a statewide established standard rate for the cost of sending one additional absentee ballot. That way instead of clerks trying to keep track of their time every moment, they can document how many absentee ballots were cast as the point of measure because that's already a matter of public record. There would be a reimbursement based on the primary and general elections. Again, this requires preapproval from the Election Assistance Commission; we can't do this on our own.
 - We want to hire an accounting firm with expertise in accounting/auditing for federal funds so they know what they need to do. Reimbursement will likely involve sage/salary surveys to arrive at this number. The accounting firm will come up with what the standard statewide rate of pay will be. The second element is time study: how long does it take to intake an application for an absentee ballot, fully process getting it out, and receiving it back. There would also be a little work eligible at polling places for these funds: processing of absentee envelopes on election day.
 - Again, these funds can only apply to work that wouldn't have been done otherwise, specifically required because of COVID-19. We would use the 2016 election (most recent similar election) to determine how many absentee ballots communities will need. Traditionally 5% of voters in a primary election will vote by absentee and 10% will do so in a general election. It is difficult to know how high this will go this year but we know it will increase significantly. The most extreme likelihood is what Wisconsin experienced: they had similar absentee voter numbers to us prior to COVID-19, and the media is reporting that 80% of Wisconsin voters voted by absentee during this latest election. The more people who vote by absentee, the less demand at polling places. Extra effort on the absentee side of things may diminish effort/staff needed dealing directly with voters.
 - The Secretary of State's office has a call tomorrow with potential firms and anticipates receiving proposals in the near future.
- Chairman Cook asked whether the Secretary of State's office needs to retain any of the \$3.2 million for costs. Stated that the committee needs an estimated number from the Secretary of State's office on how much of that money you need to keep there.
 - Mr. Van Loan noted that it is critically important for us to do whatever we can at the state level to get advance approval from the federal government as to an accounting system that is simple and easy for local officials to understand, and which doesn't require us to do customary federal record-keeping that would eat up all the money. If there's any way we can get this proposal approved by the FEC and the accountants can come up with simple ways to do the accounting, that would be great. We should attempt to cost out the cost of an absentee ballot.
 - Deputy Secretary Scanlan noted, in terms of federal HAVA funds, we have \$3.2 million in CARES funding but we also have a security grant we received in the year prior where those funds were to be used for cybersecurity efforts with elections systems. The EAC and federal government have said those funds can also be used for the COVID-19 crisis to the extent we go beyond \$3.2 million with

expenditures that are required at SOS level or additional funds needed at local level, we do have some options there as well.

- Senator Sherman noted that every bit of federal money from the CARES Act will require some degree of auditor oversight. Has there been any discussion in state government about pooling that resource so each department that has access to a certain chunk of that money isn't hiring a separate auditor?
- Attorney Fitch noted that the accounting firm wouldn't be paid to audit; that happens after the fact. They'll be paid to assist in advocating to the EAC for a new proposed process, then they'll account for how funds are being used so they'll be assisting municipalities. Every town will have to sign a sub-grant agreement. The Secretary of State's office regularly manages federal funds but never have we done a sub-grant to towns and cities, so they'll produce something to create a set of records in excellent shape when we are audited.
- Rep Griffin noted she is most focused on what we need to get done when. In reviewing the political calendar, alternate town elections come up next week on the May 12th and I'm wondering if the Secretary of State's office knows how things have gone in those communities for absentee ballot requests and how they're physically handling those? Also asked about notice of primary that municipalities are required to post. The primary is less than a month away and I suspect some communities may want alternative primary locations—how will that work? How will they post their hours?
- Deputy Secretary Scanlan noted that those postings will still go up. It's early to establish what they'll look like this fall so we may have to adapt as we move forward. Those officials are responsible for posting and should still plan on doing so. We'll adjust as time goes on.
- Chairman Cook opened the meeting to public comment.
- Darryl Perry: At the last meeting it was discussed that voters shouldn't have to choose between their health and the right to vote. I'm wondering about minor party/independent candidates choosing between their health and their constitutional right to be a candidate. Noted that a federal court in Illinois recently ruled in a case brought by the libertarian and Green parties that petitions be reduced to 10% of normal requirement in light of COVID-19, and Vermont has suspended all petition requirements.
- Chairman Cook noted that the issue of independents and the petition process has been raised with us early on in the process and it's on our list of things to figure out with the Attorney General's office. One of the sessions we'll hold will be focused on hearing from the various political parties including the libertarian party and we appreciate your comments.
- Mr. Van Loan noted that his understanding is CARES Act money is only available for incremental costs with regard to federal elections. To the extent the questions just asked related to petitioning to get onto the ballot for state or local office, isn't that outside our purview?
- Attorney Fitch: I believe you are correct; I'm unsure that we could justify spending CARES Act money on something related to gaining access to ballot. People running in the primary in any party confront the same issues: They can't engage in usual campaigning as they would. This is not a challenge unique to third party candidates.
- John Lisle, Moderator in ward 8 in Nashua. Has sent to the SOS office a long list of concerns. Concerned about clarity around the filing period. Very concerned as a moderator about how to handle election day. I can tell you from experience that if we have to process more than 200 absentee ballots during an in person election, we end up processing remainder of them after

election closes. We need to have a mechanism for pre-processing absentee ballots, either Saturday or Sunday before election. Also, our polling place will never cover socially distant number of voting stations that are required by state law. Another issue no one has mentioned is the return to undeclared checklist. I can't have hundreds of voters sign that actual checklist because they'll have to sign that checklist we'll have a virus pool possible. We handle it for people who were voting absentee by a card provided. Why can't we collect those and let the city clerk process them after the fact in the return to undeclared checklist? Another consideration on funding issue is that currently the plan for getting election workers for election day is they're paid for election day. If they have to work more than that, like for pre-processing, we have to assume they'll be paid more money.

- Chairman Cook noted that Thursday's meeting is reserved entirely for moderators and supervisors and encouraged those individuals to share their comments all at once on Thursday.
- Vicky Turner, supervisor in Bennington: Echoed Mr. Lisle's concerns. Towns should be talking to all of their poll workers and volunteers to find out what their willingness is to work at the polls so we have rough numbers on availability. CDC guidelines are talking about minimizing in-person voting as much as possible so I think we should be focusing our main efforts on maximizing absentee voting. Everyone should vote absentee so election day is just a couple people. We should also move back the deadline for changing party affiliation.
- Vicky Nawoichyk, supervisor in Exeter: Biggest concern is to Mr. Lisle's point about cesspool of germs for the back to undeclared checklist. Interested in getting list of all supervisors throughout the state so we could have a roundtable to discuss our challenges. I'd also like to push back party affiliation changes dates, too.
- Rep. Horrigan noted the political calendar will be different this year because of suspension of legislature.
- Paul Inderbitzen, moderator in Hudson: Is it the Secretary of State or this committee that will recommend how to apply for these funds? If I go to my selectmen and ask for money for a mass mailing, I'd like to be able to tell them we can request reimbursement under these funds, but I don't know the procedure. Who does this request come from?
- Senator Sherman noted this is a huge issue. If you're working on a town budget and thinking about additional cost of this election, it would be really helpful to have the reimbursement of your costs be known before you commit to those costs.
- Dee Decker, supervisor: Ballot clerks needing to be able to visually ID voters is difficult if they're wearing masks. There needs to be information on how we'll be identifying voters when we can't see their faces.
- Louise Spencer: Does the Governor plan on issuing an order specifically around elections or is this contemplated being done through Secretary of State's office directives? What reassurances do we have that this framework will stay in place in the event emergency declarations are lifted? We need predictability and confidence that whatever framework created will be used in the fall.
- Attorney Chong Yen: The emergency order, when that takes shape, will be pending review of the Governor's office. It may be a combination of a directive to Secretary of State as to what document to create that may help facilitate a more accessible process for absentee voter registration and directives targeted at the process itself: either modifications or relaxing of requirements to ease the process for folks concerned about COVID-19. In terms of extending past current state of emergency, we are all in the same boat in terms of what outlook looks like in September and November. Some of the emergency orders that have been published already—almost 40 at this point—contain

language identifying whether this will be something applicable to certain deadlines outside of state of emergency or whether it's limited to state of emergency. I expect that whatever language is adopted by emergency order or in joint guidance by the Attorney General and Secretary of State will help identify which elections the guidelines will apply to.

- Ms. Spencer: So the Governor could extend past the emergency order expiration date to ensure these new provisions extend through the fall elections? That's a possibility under the law?
- Attorney Chong Yen: Yes, that's something that could be done through emergency orders, but it would be at the discretion of the Governor.
- Ms. Spencer: We need predictability so we can educate the public starting soon about what the procedures will be.
- Judy Knapp, supervisor in Dublin: Moderator and I have been talking about the possibility of putting up Plexiglas shields between us and voters. They could put their ID up so ballot clerk could see and we'd have more personal protection. I think that would reassure poll workers. Would such an expenditure be covered under CARES Act?
- Attorney Fitch: I believe that were the committee and Secretary of State to adopt that as a use, that's something that could be purchased with these funds. The challenge we face is that while there's money, it isn't that much, and if reimbursements focus on absentee ballots the pool may be somewhat limited for other purposes. That's up to the committee to prioritize.
- Bill Klein, moderator in Bedford: I'd recommend someone work with Dave to outline more clearly the charge of this committee, as you're dealing with funding, not procedures that don't require funding. Additionally, it would be helpful to work between the Secretary of State's office at the Attorney General's office to funnel all suggestions received to get them to the right hands so we know these questions will be addressed, by who, and who we should communicate with.
- Chairman Cook: The Secretary of State did describe our charge the other day. Part of it is to see how elections can be done in the face of this crisis and it's necessary in doing that to identify all pieces involved and determine whether they need costs or not.
- Mr. Van Loan moved to adjourn, Senator Sherman seconded. Adjournment unanimously adopted.