

REPORT OF THE SPECIAL COMMITTEE ON ELECTION SECURITY

I. INTRODUCTION

New Hampshire Secretary of State William M. Gardner appointed a Special Committee on Election Security on April 27, 2020. He stated the charge of the committee as follows:

“This committee will advise the Department of State on the use of \$3.2 million of federal CARES Act money...”

“These funds will help cover additional costs incurred at the local level for handling and processing absentee ballots over and above the numbers of those cast four years ago and protecting the health and safety of voters and poll workers.” (See Exhibit A.)

Secretary Gardner promptly applied for CARES Act funds when Congress appropriated them to help the states with additional costs faced due to the Covid-19 pandemic, in administering federal elections in 2020. The funds were received and deposited in the state treasury. Rather than unilaterally deciding on the expenditure of these funds, he appointed a six-person committee to advise on their expenditure, specifically seeking wide public comment prior to making decisions.

Mr. Gardner named Ballot Law Commission Chairman Bradford Cook to chair the Committee, with two legislators, Senator Thomas Sherman of Rye and Representative Barbara Griffin of Goffstown, former Farmington Town Clerk Kathy Seaver, and Attorneys Katherine Hanna, former counsel to Gov. John Lynch and former Bedford Moderator Eugene Van Loan, III, as members. Three of the members are Democrats, and three are Republicans.

The Committee began its work with an organizational meeting on April 30, and had public meetings on May 5-6-7-12-13-14-19-20-21-26-27-28 and June 3 and 4, all held virtually. Agenda and minutes, as well as recordings of the sessions and “chat room” comments, can be found on the web page of the Secretary of State at [NHSOS.com](https://www.nhsos.com).

The Committee invited and received testimony from the staff of the Secretary of State and Attorney General, local election officials, interest groups, political parties, groups representing people with disabilities, marginalized people, business and labor, educational institutions, the United State Postal Service, and the Department of Safety and Division of Public Health. It also received and considered written submissions from many citizens and groups.

Committee work was supported by staff of the Secretary of State and counsel from the New Hampshire Department of Justice, and the Committee is grateful for all of the assistance they provided, while performing their regular jobs.

II. MISSION AND CONTEXT FOR DECISIONS

At the beginning of its work, the Committee received information on the rules governing the expenditure of the federal funds. Assistant Secretary of State Orville Fitch described to the Committee the purposes for which funds can be expended. They are:

1. Funds are to be used to cover costs state and local officials are incurring as a result of the pandemic.

2. Elections in which funds can be used must be federal elections. Both the state primary and November general election involve candidates for federal office, Congress, Senate and President.
3. Funds can only be used to supplement, not supplant, state and local expenditures on elections. This means, for example, if, historically, 10% of voters use absentee ballots, and in 2020, 50% vote absentee, only the cost of the increased number of absentee ballots could be covered by federal funds.
4. The federal fund allocation requires a 20% match from state and local funds, which match can be satisfied in various ways. The committee is making no recommendations on how to accomplish the match, although to the extent its recommendations do not fully fund needed expenditures, funding them on the state or local level assumedly would qualify as for the match.
5. Finally, the fact that an audit of the expenditure of federal funds is required to be submitted in a short time after the elections, caused the Secretary of State to issue a request for proposals to retain a private accounting firm to account for the use and expenditure of funds, and the Committee recognizes that the cost of the accounting firm needs to be paid from the federal funds.

(A full description of the sources and uses of Cares Act Funds is attached as Exhibit B.)

As a basis for performing its job, the Committee followed several operating principles for its work. They are as follows:

1. Our mission. Our mission in light of the Covid-19 pandemic is to encourage that reasonably possible steps be made to safeguard the health and safety of all those who wish to vote in the Fall federal and state elections and of those election officials who will be conducting those elections. Our mission is not to get out the vote. Our mission is to facilitate safe voting by those who wish to vote and for those whose role it is to assist them in that process.
2. Our charge. In furtherance of our aforesaid mission, our charge is to recommend priorities for the funding of appropriate measures to those who have the authority for the expenditure of funds.
3. Our responsibility. We do not have the authority to, nor are we charged with, writing new election law procedures or changing existing election law procedures. Nevertheless, we accept the responsibility of making recommendations to those who have such authority for new procedures or changes in existing procedures which are responsive to the challenges presented by the Covid-19 pandemic and which are consistent with our mission.

After hearing testimony about options for this year's state primary and general elections, and the need for safety for voters and poll workers, and considering whether there is any basis for eliminating in-person voting, the Committee made certain basic operating assumptions which framed its work. These assumptions also were based on the legal interpretation issued by the Attorney General that concern about the Corona virus was a factor preventing in-person voting and allows use of an absentee ballot under existing New Hampshire law, which has been reinforced by Executive Orders issued by the Governor. These are the basis for allowing and expecting significant increased use of absentee voting in 2020 elections. The assumptions are:

1. The Fall Primary will be held on September 8, 2020 and the Fall General Election will be held on November 3, 2020, i.e., they will not be cancelled or moved.
2. With the understanding that the COVID-19 pandemic will remain a factor impacting the process of voter registration and casting ballots in both 2020 elections, absentee registration and voting represents the lowest health risk to municipal officials, election workers and voters.
3. Both elections will include in-person voting.
4. Both elections will include the availability of in-person, Election Day registration of new voters.
5. Notwithstanding the existence of in-person voting at both elections, there will be a significant – perhaps massive - increase in absentee voting.
6. Notwithstanding the existence of in-person, same-day registration at both elections, there will be a significant increase in absentee registrations by mail.

In the course of its public hearings, and in hundreds of e-mails received from the public, many suggestions were made regarding changes in basic law of elections, purposes for which the funds should be spent, and many other matters. The Committee, consistent with its principles, consistently reminded those making such suggestions that it is not its role or charge to suggest changes to New Hampshire’s basic system of election laws, regardless of individual members’ personal opinions, and that it is bound by the rules set by the Congress in appropriating the funds. However, as stated in Section V below, certain changes will require and Executive Order, legislative action affecting 2020 elections only, or additional guidance from the Attorney General and Secretary of State.

III. RECOMMENDATIONS FOR EXPENDITURE OF FEDERAL CARES ACT FUNDS

Without assigning dollar amounts to the various election-related expenses, the Committee set its priorities for funding, recognizing that there are many things which would be nice to fund if there were unlimited funds, but that the federal funds are limited. It is not the Committee’s function to request the expenditure of additional funds, but should the priority items not be fully funded from the \$3.2 million available, the Secretary of State, Governor and legislature could do so, should they find such expenditures warranted. The priorities, listed from highest to lowest, are as follows:

- Accounting Firm
- Personal Protective Equipment for Poll Workers
- Prepaid Postage for Absentee Ballots
- Publicizing Election Procedures for Absentee Action 2020
- Additional Polling Place Costs—Safety, Relocation and Expansion
- Additional Envelopes and Printing Costs
- Secretary of State Hot Line
- Leasing of Additional Ballot-Counting Machines

Our recommendations to Secretary Gardner on spending follow:

- A. **Accounting Firm Expenses.** These should be paid from the federal funds.
- B. **Personal Protective Equipment.** The Committee believes that a high priority item for funding from the federal funds is the provision of Personal Protective Equipment (PPE) to local election workers and voters, to keep same-day voting in person as safe as possible, in conjunction with physical layout and space measures. The goal of this section of the report is to lay out the timeline of pre-election day and election day processes and any associated safety measures and needs based on the testimony and information provided to the Committee. The recommendations in this section are based on conditions the first week in June. The Committee recognizes that the health conditions and advice on dealing it will change, and recommends that the Secretary of State continue to monitor conditions and adjust the means to deal with it, in consultation with local election officials, and issue directions accordingly. For specific information on polling place safety and disinfection, Tricia Tilley of the NH Department of Health and Human Services has directed the Committee to the Center for Disease Control website found at <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>. The Committee recommends that Personal Protective Equipment (PPE) be purchased by the Secretary of State's Office (SOS) in amounts as determined by the number of voters in the 2016 Primary and General Elections or another formula that they deem appropriate for an equitable distribution of available funds. Distribution of requested PPE to the polling places may be accomplished by various methods, including, but not limited to:

- National Guard delivery
- Pick-up by City/Town at regional designated locations

It is also recommended that instructions on proper PPE usage and reuse be made available to town clerk staff and election workers.

Pre-election Day

Town Offices

As town clerk offices reopen, basic precautions outlined in NH DHHS and CDC guidance should be followed. Sneeze guards with pass through capacity or the equivalent is recommended to protect staff. All staff and customers should wear face coverings and social distancing with a six foot radius should be accommodated. Any materials received directly from customers should be handled with non-vinyl gloves which are changed periodically or upon failure. The outer envelope of mail received from the postal service or other carrier also should be handled with non-vinyl gloves. Staff should avoid touching their face with their hands.

PPE Supplies needed:

Non-vinyl gloves changed periodically, after soiling or on failure
Droplet/surgical face masks changed weekly or on failure
Sneeze Guards

Absentee Ballot Processing

Pre-election day processing of absentee ballots has been considered by the Committee. Anyone attending a meeting to process absentee ballots must wear a face covering. Members of the public and witnesses will be required to bring their own PPE. Handling of the absentee materials requires non-vinyl gloves, changed periodically. Social distancing with a six-foot radius should be accommodated. Staff should avoid touching their face with their hands.

PPE Supplies needed:

Non-vinyl gloves changed periodically, after soiling or on failure
Droplet/surgical face masks changed weekly or on failure
Sneeze Guards

Election Day Procedures

On arrival at the polling place, voters may have several options. The goal is to minimize contact between voters and election staff, but any such contact must only occur under safe conditions with adequate PPE.

Manned absentee ballot drop-off

There was discussion about this concept whereby an election official would accept absentee ballots from voters on election day using a socially distanced manned drop box, allowing voters to participate on election day but avoiding direct contact with staff.

PPE Supplies needed:

Non-vinyl gloves changed periodically, after soiling or on failure
KN 95 face masks stored in paper bag with staff name for reuse over the course of election work and changed on failure

Accommodation to complete the voting process in their car for voters with a disability or concern about COVID-19 that precludes them entering the polling place.

This would follow existing process outlined in RSA 659:20-a Assistance in Voting; Disabled Voter, whereby the moderator or official designee would assist the voter with checklist and voting process outside the polling place. Safer option could exist whereby the voter is handed an absentee ballot to complete, which they would then do in their car, and drop off as above.

PPE Supplies needed:

Non-vinyl gloves changed periodically, after soiling or on failure
KN 95 face masks stored in paper bag with staff name for reuse over the course of election work and changed on failure
Gown and face shield for staff if working within 6 feet of voter. (Face shield can be wiped with germicidal wipe and reused by same staff member. Gown is disposed of after each shift.

A voter who accepts social distancing requirements and not wearing their own PPE is given a mask and gloves and allowed into the main voting area. All entering the facility/voting area must wear gloves & a mask and remain 6 feet apart. All staff wear KN95 or N95 masks and face shields if sneeze guards not available or unable to social distance to radius of six feet.

PPE Supplies needed:

Droplet/surgical masks (for voters who do not bring their own)

Non-vinyl gloves disposed on exiting the polling place (for voters)

Disposable pens/pencils

Non-vinyl gloves changed periodically, after soiling or on failure (for staff)

KN 95 face masks stored in paper bag with staff name for reuse over the course of election work and changed on failure

Gown and face shield for staff if working within 6 feet of voter. (Face shield can be wiped with germicidal wipe and reused by same staff member. Gown is disposed of after each shift.

Germicidal wipes and spray

Purell or equivalent

Cleaning materials

Floor markers

Sneeze guards (Should there be sufficient funds available)

Additional Considerations

Physical Design of Polling Place

- 1) Everything separated by 6 feet. Marks on the floor.
- 2) For protection of the workers, every table will have a plastic/plexiglass shield (sneeze guard) with a document opening at the base.
- 3) Checklist Social Distancing
 - (a) separate lanes going into each table. Separated by alphabet.
 - (b) At least 6 feet between lanes and hatch marks on floor for voters
- 4) A voter will hold up the ID on the other side of a plexiglass shield. If the voter can be identified with a mask or face shield, the voter may keep it. The poll worker may request the voter drop the facemask briefly if necessary to positively identify the voter. Ideally the plexiglass has sides

- (a) If the poll worker cannot see the ID well enough through the plexiglass, the voter will slide it through the slot.
 - (b) After examining the ID, the poll worker will hand it back to the voter.
 - (c) Any ID exchange requires that the poll worker then change gloves.
- 5) Same Day Registration with tables each 6 feet apart. Photography booth with shield, camera and plastic sides for protection when a voter lowers the mask to have a picture taken.
- 6) Ballot Tables for Picking Up Ballot:
 - (a) Two lines - separated by 6 feet. Hatch marks on floors.
 - (b) Booths: separate, 6 feet apart, everyone using them has a mask and gloves.
 - 1. Surface – cleaned or disposable surface changed between voters.
 - 2. Appropriateness of curtain v. other barrier for privacy to be determined per DPH recommendations.
 - (c) Once voted, wait in line (6 feet apart) to feed ballots into the machine.
- 7) Undeclared Table Eliminated
 - (a) Undeclared voters will return to undeclared by default unless they complete a card to remain with party which they will drop in a box on exiting the polling place.
 - (b) These cards will be processed on another day by the clerk’s office. (See additional recommendation in Section IV H below.)
- 8) PPE Supplies Needed for Polling Places:
 - Droplet/surgical masks (for voters who do not bring their own)
 - Non-vinyl gloves disposed on exiting the polling place (for voters)
 - Disposable pens/pencils
 - Non-vinyl gloves changed periodically, after soiling or on failure (for staff)
 - KN 95 face masks stored in paper bag with staff name for reuse over the course of election work and changed on failure
 - Gown and face shield for staff if working within 6 feet of voter. (Face shield can be wiped with germicidal wipe and reused by same staff member. Gown is disposed of after each shift).
 - Germicidal wipes and spray
 - Purell or equivalent
 - Cleaning materials
 - Floor markers
 - Sneeze guards (Should there be sufficient funds available)
- 9) Dealing with Voters Not Using PPE. The Committee believes face guards or masks should be worn by all voters coming to the polls. The Secretary of State and Attorney General should develop protocols to deal with those who refuse.

C. **Prepaid Postage.** The Committee recommends that certain postage costs be paid from federal funds for an every-household mailing, costs of mailing the increased number of ballots, and return of all absentee ballots. This section reviews each option for mailings and postage. Pricing details are outlined in the cost grid that is attached as Exhibit C.

- (i) **Initial Informational Mailing.** A mailing to all of New Hampshire's households, called every household mailing (Every Door Direct Mail). This would be very helpful and should be sent out as early as possible to get voters ready for an election the safety of which would be highly dependent on a robust use of absentee registration and voting. Earlier engagement would translate into a smoother process in the clerks' offices and Supervisor meetings and would specifically reduce in-person voting, avoiding long lines, particularly in same day voter registration.

The Subcommittee recommends that the SOS adopt one of the following three options:

- (a) The Committee's favored option is a mailing in an envelope that includes a page with simply stated information and an absentee registration/ballot request. The informational piece would include the purpose of the mailing which would briefly outline the goal of encouraging absentee voting in order to protect voters and poll workers. It would also include the web address/URL for the Secretary of State (SOS) website as well as the direct link to access the voter registration inquiry, absentee registration, and for town clerks contact information. It would also include an SOS election hotline number. Finally, it would give the timeline and deadlines for absentee materials. It was the consensus that the ballot request could be copied by a resident if there were more than one voter in the household. It was not felt by the majority of subcommittee members that a prepaid return envelope should be included in this mailing.
- (b) The second option discussed would be a postcard-style mailing. This could be a single sheet or a scored bifold with an absentee registration/ballot request. Voters would be able to request further materials from their clerk by mail or phone. Optimally, they could also make these requests through the hotline.
- (c) The third option is the same as above but with a scored tear-off half that could be dropped in the mail as an absentee registration/ballot request. The voter would have to fill in the clerk's address and apply postage.

Estimated cost of every household mailing is \$100,863. There may be an additional cost for graphic design production of up to \$100,000 based commercial rate information obtained by Representative Griffin.

The Committee recommends that the Secretary of State consider a second every household mailing after the Primary and before the general election, if conditions appear to require it, and if funding sources allow such a mailing.

(ii) Absentee Registration/Ballot Applications

Participation Estimates. The Subcommittee used two levels of absentee voter participation based on the 2016 elections in estimating cost. The higher participation estimate for the primary assumes a 21% voter participation minus the 5% absentee base rate with 2020 absentee participation calculated at 85%. The lower participation estimate for the primary assumes a 21% voter participation minus the 5% absentee base rate with 2020 absentee participation calculated at 60%. The higher participation estimate for the general election assumes a 75% voter participation minus the 5% absentee base rate with 2020 absentee participation calculated at 85%.

(a) Absentee Registration/Ballot Application. Requests to be filled out by voters may be sent to voters by the clerks. Outgoing postage is first class 2-ounce at \$0.70 and includes the form, instructions and a return envelope with label affixed by the clerk. The Committee does not recommend that prepaid return postage should be included with this mailing, but, for informational purposes, that return postage would be first class metered 1-ounce reply at \$0.50 for an estimated cost of \$89,509 if 85% of estimated primary voter participants and \$68,197 if participation is at 60% as outlined above.

(b) Absentee Registration/Ballot for Primary Election. These materials would be sent out by the clerks upon receiving the requests. Outgoing mail is sent on envelopes supplied by the SOS with preprinted 2-ounce metered postage (\$.65). Mailing includes absentee registration packet downloaded from ElectioNet, if required, as well as the primary ballot, the affidavit envelope and a return envelope supplied by the SOS with preprinted 2-ounce metered postage (\$.65) . All labels affixed by clerk. The cost of outgoing postage would be first class 2-ounce metered rate of \$0.65 for an estimated cost of \$116,362 if 85% of estimated primary voter participants and \$88,657 if participation is at 60%. The cost of return postage would be first class metered 2-ounce reply at \$0.65 for an estimated cost of \$116, 362 if 85% of estimated

primary voter participants and \$88,657 if participation is at 60%. However, it is difficult to estimate what the costs of using QBRM (Qualified Business Reply Mail) would be for both Primary Absentee Ballot Returns and General Election Absentee Ballot Returns, but the Committee strongly recommends that the Secretary of State consult with an Elections Mail Specialist, because significant savings could be found here. The Committee recommends that postage for the return of absentee ballots be paid from federal funds.

(c) Absentee Registration/Ballot for General Election. These materials would be sent out by the clerks upon receiving the requests. Outgoing mail is sent on envelopes supplied by the SOS with preprinted 2-ounce metered postage (\$.65). Mailing includes absentee registration packet downloaded from ElectioNet if required as well as the primary ballot, the affidavit envelope and a return envelope supplied by the SOS with preprinted 2-ounce metered postage (\$.65) . All labels affixed by clerk. Outgoing postage would be first class 2-ounce metered rate of \$0.65 for an estimated cost of \$415,578 if 85% of estimated primary voter participants and \$273,793 if participation is at 60%. Return postage would be first class metered 2-ounce reply at \$0.65 for an estimated cost of \$414,578 if 85% of estimated primary voter participants and \$273,793 if participation is at 60%. The Committee recommends paying return postage for these ballots.

(iii) Total Cost of Postage. Several factors were considered in the total cost of postage:

(a) The first was that outbound postage from the clerks' offices reimbursed through the CARES Act would only apply to the increased cost of absentee postage needed due to COVID as represented by the net additional cost due to absentee voters over that incurred in past elections. This would be determined using a formula designed by the SOS office. The numbers reflect our best estimate of the same. The amount paid would be for the incremental cost of mailing ballots in excess of the historic number only.

(b) The Committee recommends that the return of absentee ballot application postage should be the responsibility of the voter, as it is now.

(c) The Committee recommends that the cost of return postage for the filing of absentee registration materials and ballots should be the responsibility of the voter, as it is now.

(iv) Other Considerations.

- (a) Dropboxes. There was discussion of the use of dropboxes at the clerks' offices. The discussion included concerns about who would have access to the box and who would determine how the dropboxes might function. There was general agreement that there was no significant difference between dropping off the completed absentee ballots with the town clerk and dropping them in a post office box only then to be delivered to the town clerk other than the additional expense of the postage. Therefore, the Committee agreed that a dropbox would likely be beneficial as long as its function was under the supervision of the town clerk, it was secure, and its access was limited to the town clerk. The Committee recommends that payment for dropboxes should not be paid from federal funds.
- (b) Advice from SOS on turn-around time on absentee registration and/or ballot requests. Clear and concise advice needs to be given clerks in order to address the extra time that will be involved in processing absentee registration and/or ballot requests in a timely manner. Time is especially short between the Primary and General Election making turn-around time critical to enabling this effort to get people registered absentee and to encourage absentee balloting in greater numbers, thus allowing for a safer environment on election day at the polls.

D. Publicizing Election Procedures for 2020 Elections. The Committee recommends that one of the single most important elements of promoting a safe, secure and accessible election in the Fall in the face of the COVID pandemic is providing simple and widespread instructions to New Hampshire citizens about important changes to our election process during this unique crisis. The Governor, Secretary of State's Office, and Attorney General's Office have been working diligently to clarify our election laws to allow such safeguards as absentee voting and registration for those concerned about going to the polls during the pandemic and for the safest possible polling places for the Primary and General Election to protect poll workers and those people who choose to vote and/or register in person on Election Day. These noble steps will only be effective if New Hampshire citizens have easy access to information about these changes in procedure. We recommend the following steps to assure widespread and clear instructions to our citizens regarding these important changes, in addition to the mailing options set forth in C above.

- (i) Access to Clear On-line Instructions about Voting and Registering to Vote. The Committee recommends that a modest portion of the \$3.2M election monies be used to assist the Secretary of State's office in adding to its website

a simple and understandable section of Voting and Registering during COVID-19, if additional funds are needed to make such additions. (More Committee recommendations regarding web site and free means of communicating information appear in Sections IV F and K below.)

- (ii) Establishment of a Hot Line in the Secretary of State's Office. This dedicated line should be staffed by a knowledgeable and experienced staff member to provide easy and consistent advice and information to municipal officials and voter alike. It should be funded from federal funds if sufficient funds are available.

E. Leasing Additional Voting Machines. The Committee recommends that the Secretary of State consider spending up to \$50,000 of federal money to lease additional voting machines for the general election only, which could be made available to municipalities so they could use them to count absentee ballots, in addition to the machines which count ballots cast in person by voters on election day. The advantages of leasing rather than purchasing machines are a) they would qualify for CARES Act funding as only being used in 2020 elections; and b) more machines could be leased than purchased, which would eliminate the creation of "winner" and "loser" communities seeking them. Priority should be for polling places serving the most voters. This should be paid from federal funds if sufficient funds are available, and if a survey of municipalities by the Secretary of State indicates sufficient need for such machines.

IV. NON-SPENDING RECOMMENDATIONS (Or Minimal if Funds Permit—Note: some of these may properly be in III above after action on them)

In the course of its deliberations, and in accordance with C in its Operating Principles set forth above, the Committee had to examine current election procedures, which in ordinary times have resulted in New Hampshire having among the highest voter turn-out and most secure elections in the United States. Recognizing that 2020 is a unique situation, and that the goal of the Committee is to assure that all voters who otherwise would vote, can vote, the Committee considered a number of non-cost items which would help avoid lines and crowds at polling places, for those who choose not to vote by absentee ballot, to help handle the anticipated great increase in absentee ballots, and for facilitating increased use of absentee ballots (discussed in III above).

The Committee quickly learned that at each stage of the Political Calendar, which has already begun, actions which normally are taken in person, are impossible or imprudent, due to the effects of the virus. Voters registered in a party, who wish to change their party registration for the September Primary, had to do so by June 2, a matter addressed by Governor Sununu in his Executive Order 43. Filing for office by mail, already allowed, also was adjusted by the Executive Order. However, a host of other issues, raised by election officials or the public, were considered by the Committee. Its recommendations on those follow:

- A. Absentee Voting Issues. One way to facilitate absentee voting is to make the physical ballots easily available to persons choosing to vote absentee. Although some have advocated that an

absentee ballot should be automatically sent to every registered voter (and, indeed, some states have adopted the practice), the Committee did not agree. Among other things, the checklists contain the names of many people who no longer reside in the town/city in which they are registered and the names of some people who are not even now alive, which would mean that a general mailing of unrequested absentee ballots to everyone on the state's checklists would result in probably thousands of ballots lying around unclaimed. For obvious reasons, this would be problematic. In addition, the Primary Election would present a special challenge to such a proposal: Undeclared voters are allowed to vote in the NH Primary, but they must declare in which primary, Republican or Democrat, they wish to vote. So, without having received a request from the voter, how would the election officials know which primary ballot to send to an Undeclared voter? On the other hand, the Committee is of the belief that applications to vote by absentee ballot should be made readily available to all persons eligible¹ to vote.² The Committee understands that the application form is currently posted on the SOS website under "Election Forms" and is downloadable by anyone. However, the Committee recommends that any download of the application automatically includes a download of the instructions for completing the form. Additionally, the Committee recommends that the form (and its instructions) also be posted under a new, separate section of the website dealing exclusively with voting during the pandemic³ – and that it be prominently highlighted.⁴ [Although the Committee is not sufficiently informed about the technical challenges that might be involved in making the form fillable and signable online, if this could be reasonably accomplished by the SOS in time to be useful for the Fall elections, it should be seriously considered by the SOS. The Committee does not believe that doing so with this particular form presents any significant cybersecurity or invasion-of-privacy risks and assumes that allowing for a fillable online form could save SOS staff and local election officials countless man-hours.] For those voters without access to printing the downloadable form, a box could be included, requesting the form be sent to the voter.

Along the same line, the Committee recommends that the absentee ballot application form (and its instructions) be made generally available to the public in places that NH citizens frequent

¹ For purposes of this discussion "eligible" does not mean registered. It means that the person has the requisite qualifications to vote: he/she will be 18 by the date of the election in question, is a U.S. citizen and is a domiciliary of a NH voting precinct.

² The present form for the Fall elections is the "Application for State Election Absentee Ballot".

³ Committee recommendations concerning the creation of a separate section of the SOS website dealing with voting this Fall as affected by the pandemic are discussed in Part ____ of this Report.

⁴ Committee recommendations about certain revisions to the content and format of this form are discussed below in this Part ____ of this Report under "Absentee Forms".

such as the local landfill, town/city offices, police stations, grocery stores and supermarkets, etc. Likewise, the forms should be distributed to nursing homes, assisted living facilities and other congregate living facilities, and to colleges and senior high schools. Town/city clerks and/or supervisors of the checklist could presumably be tasked by the SOS to accomplish this.⁵

B. Absentee Ballot Form. The Committee engaged in a great deal of discussion about the content of the application form for an absentee ballot. Several members of the Committee proposed specific redrafts of the existing form. However, the Committee has concluded that designing forms is beyond our purview. Nevertheless, the Committee believes that its efforts have identified some critical features of the application form which the Committee believes should be addressed by the SOS in the form's update, especially with respect to its pandemic-response version:

(i) A voter should be able to request absentee ballots for the Primary and/or the General Election on one form.

(ii) An unregistered voter who wants to register by absentee should be able to request an absentee registration package on the same form.

(iii) A statement of the pandemic qualification for both should be on the form.

(iv) Delete the weather-emergency qualification – if necessary, create a new form just for this that can be used if and when needed.

C. Absentee Ballot Processing.⁶ Due to the fact that no ballots may be counted until all ballots have been deposited in a precinct's ballot boxes, the processing of absentee ballots at the polls on Election Day presents challenges at any election. Because of the anticipated increase of absentee voting at the Fall elections due to the pandemic, these challenges are expected to be significantly magnified, especially in high-population towns and cities. These challenges primarily concern the following issues:

(i) Under current law (RSA 659:49), the processing of absentee ballots may not commence until at least 2 hours after the polls have opened. These are two hours of "wasted" time which could be used to process absentee ballots. (ii) Before an absentee affidavit envelope (the so-called inner envelope) may be opened and the ballot cast in the ballot box, it must be determined that (a) the voter has signed the affidavit; (b) the voter's name is on the checklist, i.e., he/she is a registered voter; and (c) the voter's name on the checklist has not been checked off as having voted in person. If (a) and (b) are "yes" and (c) is "no", the voter's name on the checklist is marked with a red AV, the inner envelope is opened and the ballot is then cast. It is customary that steps (b) and (c) are done on Election Day while the election is being conducted. This means that the flow of in-person voters is interrupted because the checklist is being co-opted by the absentee processing team. In the pandemic environment,

⁵ Note- The Committee does not view this as a matter involving significant financial outlays and, therefore, does not recommend that any CARES money be allocated for it.

⁶ Note- The Committee does not view any of the matters discussed herein as matters involving significant financial outlays and, therefore, does not recommend that any CARES money be allocated for it.

not only would this involve an unnecessary point of contact between the processing team and the ballot clerks, but it also is likely to cause a back-up of voters waiting to go through the checklist - which is obviously a special problem if social distancing is in force.

(iii) Absentee ballots need to be folded to fit into the inner envelope, which has traditionally been the size of a standard first-class envelope. When the ballots are unfolded in order to be cast, the creases in the ballots remain.⁷ In those towns and cities that use the Accuvote voting machines to count their ballots, it is not uncommon that the creases in the absentee ballots jam the machine. Meanwhile, in-person voters who are awaiting the opportunity to cast their ballots are being required to wait until the jam has been cured. Besides delaying the process,⁸ sometimes significantly, this causes the queue of voters waiting for access to the machine to get longer and longer – which is obviously a special problem if social distancing is in force.⁹

The Committee is of the opinion that, in response to the pandemic, certain measures need to be taken with respect to the Fall elections to accelerate the processing of absentee ballots. In particular, the Committee recommends:

(i) The two-hour waiting period before which absentee ballots may be processed on Election Day be waived. (In addition, the associated provision of current law which allows 10 voters to negative a Moderator's decision to begin processing absentee ballots anytime before 1pm on Election Day, RSA 659:49II, should be suspended for the Fall elections.)

(ii) There is nothing in existing law which prevents the Clerks from taking step (b), above, (checking whether the voter's name is on the checklist) before Election Day.¹⁰ The Clerks should be authorized to take the additional step, before Election Day, to mark the voter's names on the checklist with the red AV.¹¹ (The Committee does not have a clear understanding whether, if

⁷ Moderators have adopted various methods of flattening the ballot, which not only differ in their success rate, but which may also threaten the integrity of the ballot.

⁸ Note that RSA 659:49I already provides that "The processing of absentee ballots shall not unnecessarily interfere with normal voting procedures".

⁹ A second problem that the folded ballot causes in machine-count precincts is that when the ballot is fed by the machine into the ballot box, it frequently re-folds itself, resulting in it taking up too much more space in the box and filling the box up unnecessarily, which, in turn, sometimes means that the box needs to be taken out of service for the remainder of the election.

¹⁰ In fact, the Clerks already do this. When an absentee packet is received, they update a list that they are required to prepare which identifies which voters who have requested absentee ballots have returned them. RSA 657:15 I. In addition, they attach the voter's application for an absentee ballot to the returned packet. RSA 657:18.

¹¹ If it is the view of the SOS that existing law does not permit this, a waiver should be obtained. On the other hand, the Committee does not propose that Clerks be required to do this before Election Day. It should be an option, which Clerks in towns/cities that receive a significant number of absentee ballots in one or both of the Fall elections may choose to take, whereas others who do not feel overwhelmed by the number they receive may choose not to take.

this were permitted, it would have to be done in an advertised public session that observers/challengers could attend. See RSA 659: 27 & 659:51.)

(iii)The SOS give some consideration to securing a waiver of existing law to permit the opening of the mailing envelope in which absentee inner envelopes are contained before Election Day.¹²

(The Committee understands that if this were permitted, this would have to be done in an advertised public session that observers/challengers could attend. See RSA 659: 27 & 659:51.)

(iv)The SOS recommend to those machine-counting precincts that they dedicate at least one of their machines/boxes to process absentee ballots. At the least, this will take the processing of absentees out of the flow of in-person regular voters, which will, in turn, accelerate the processing of both absentee and regular ballots.

D. Miscellaneous Absentee Ballot Recommendations. There are several other Committee recommendations which involve the facilitation of absentee voting which are covered in other sections of this Report:

(i)The use of “drop boxes” for absentee voters to return their ballots other than by mail. (For details, see discussion in Part ___ of this Report.)

(ii)“Remote registration” by clerks/supervisors outside their office. (For details, see discussion in D, below.)

(iii)Encouraging the Supervisors to have multiple meetings before their final 6-13 day-before-an-election meeting, especially to review absentee registrations and give people the opportunity to cure defective ones so that their registration (and absentee ballots) are not rejected - which

As for the reservations that some have expressed concerning the possibility that a voter whose name has been checked off with the red AV before Election Day may end up not having his/her absentee ballot accepted and cast (for example, because on Election Day, (a) it is determined that the affidavit envelope was not signed by the voter; (b) the voter comes in and votes in person before his/her absentee ballot has been cast, or (c) the voter’s absentee ballot is successfully challenged in the prescribed manner), the Committee does not believe that this is a serious impediment to allowing the checklist to be marked before Election Day. Suffice it to say that if it is so marked and any Election Day events result in the Moderator not casting the person’s absentee ballot, the red AV on the checklist can be “unmarked”.

¹² Opening the mailing envelope before Election Day is presently not permitted. RSA 659:49-b. Opening the mailing envelope before Election Day would accelerate the processing of absentee ballots in two ways: (a) simply eliminating the physical act of slicing open the mailing envelopes and (b) permitting the Moderator to determine whether the affidavit envelope was signed, and was signed with the name of the voter. (The Committee understands that the prior requirement of comparing signatures between the application and the affidavit envelope has been ruled by the Federal Court to be illegal. However, the Clerk still needs to determine that the affidavit envelope has been signed by someone and that the someone has signed the name of the voter.) The Committee does not recommend that the SOS necessarily seek a waiver to permit that this stage of the process be done before Election Day; our recommendation is only that it be considered.

would cause them to have to register at the polls. (For details, see discussion in Part ____ of this Report.)

D. Absentee Registration. NH is required by its exemption from certain provisions of the federal so-called “Motor Voter Law” to allow Election Day in-person registrations of unregistered voters in all federal elections. As a result, this option has been incorporated into NH’s domestic election statutes. While the Committee accepts that this is what the law requires, it recognizes the special challenges that same-day, in-person, at-the-polls registration (and then voting) present in the pandemic environment. To begin with, the process of registration is inherently not simple, which means that people may be queued up in long lines for long periods of time. Even in normal times, this can create problems with respect to the efficient conduct of the election and – especially if the long lines/long wait times occur at the end of the day – can significantly delay the process of counting (which cannot begin until everyone in line has voted). In the pandemic environment, these delays have the potential to have a materially adverse impact upon safety because of the extended time that registrants and election officials must interact with each other. Accordingly, as in the case of absentee voting, the Committee believes that, due to these special circumstances, absentee registration for this Fall’s elections should be encouraged and facilitated in order to minimize the number of people who assemble at the polls, thereby potentially exposing themselves, other voters and election officials to the risk of infection.

The current state of the law is that, before Election Day, people may register to vote by going in person to the clerk’s office and filling out the necessary forms and providing the necessary documents to establish their eligibility to vote. Ideally, if one wanted to encourage unregistered persons not to register at the polls on Election Day, one would attempt to devise incentives for them to register in-person with their clerk before Election Day. However, in the pandemic environment, it is important to avoid in-person contacts anywhere, not just at the polls.

The alternative – which exists today – is absentee registration. The forms that are currently required to absentee register are (1) the “Voter Registration Form” (which is a form that EVERY voter has to fill out, whether they register in-person or by absentee, before Election Day or on Election Day) and (2) an “Absentee Registration Form – Physically Disabled”. Under the current law, absentee registration is available to someone who is unable to appear before the clerk due to a disability. The SOS & Attorney General have ruled that concern over virus exposure qualifies as a “disability” for these purposes. Therefore, anyone who is willing to attest to the fact that he/she cannot appear before the clerk to register in person due to virus concerns is able to absentee register.

The problem is that, as mentioned above, registration to vote is inherently not a simple process. It involves more than just filling out some forms; one must produce evidence of one’s eligibility to vote (i.e., driver’s license, birth certificate, passport, etc. for age and citizenship and many alternatives for documents to prove domicile).

At the present time, no form exists or is required for an unregistered person to request the forms to absentee register. At a minimum, the Committee recommends that the two forms (see above) that would be required to absentee register be posted in the new, separate pandemic-related section of the SOS website, prominently highlighted. In addition, the Committee recommends that these forms be downloadable.¹³

¹³ Note- The Committee does not view this as a matter involving significant financial outlays and, therefore, does not recommend that any CARES money be allocated for it.

Also, the SOS has sent guidance to the election officials through its FAQ's that a person who seeks to register but who may not have a copier may take a photograph of his or her underlying evidence to register, e.g. driver's license, utility bill, etc. and email the same to the Clerk. We endorse this suggestion. (Guidance issued by Secretary of State and Attorney General- June 3, 2020.)

There are several other Committee recommendations which involve the facilitation of absentee registration which are covered in other sections of this Report:

(i) "Remote registration" by clerks/supervisors outside their office. (For details, see discussion in D below.)

(ii) Having the Secretary of State issue guidance to clerks that if a request for absentee registration is received prior to the printing of ballots, the registration materials be sent to the voter immediately, without waiting for the ballots to be printed.

(iii) Encouraging the Supervisors to have multiple meetings before their final 6-13 day-before-an-election mtg, especially to review absentee registrations and give people the opportunity to cure defective ones so that their registration (and absentee ballots) are not rejected, which would cause them to have to register at the polls). (For details, see discussion in D, immediately below.) The Secretary of State's Office should issue guidance to the Supervisors of the Checklists on having the additional meetings to process absentee registrations prior to election day.

D. Remote Sites, or Additional Opportunities for Voters to Register and/or Vote Absentee. As a partial solution to keeping crowds limited on election days, and to allow voters to avoid crowds, in those towns and cities which have the capacity to do so, the Committee recommends that Town and City Clerks establish remote sites where voters can come, safely and socially distanced, with appropriate cleaning between voters, if required, to apply for, fill out and deposit in person their absentee ballots with the clerk's office or registering to vote. This could be done for an extended period of time prior to each election, and the use of these remote sites would lower the cost of postage, allow assistance for voters in the absentee voting process, and assure delivery of ballots in a timely manner. In larger cities, these could be at various locations. This is different from the "early voting" allowed in many states, and is something which occurs now for those voters who go to the clerk's office to vote absentee prior to an election, but the remote sites and controlled conditions would keep crowds and lines in clerks' offices to a minimum, adding protection for staff and voters alike. For small towns, extended hours for voters to do this in clerk's offices, perhaps by appointment, would be a good alternative. If used, the availability of this option should be publicized by clerk's in local publications or by other means. While this may result in increased cost, the Committee does not believe there are sufficient funds from the funds it is recommending spending, and should be covered by local funds or other funds available to municipalities under separate provisions of the CARES Act.

(i) A special circumstance related to the remote sites and availability of registering and voting absentee, is that faced by college and university towns. The Committee recommends that administrators of these institutions publicize to all students that it is disruptive and potentially dangerous for long lines of students seeking to register on election day to form, and coordinate with

election officials in their municipalities to have opportunities, on-campus if necessary, for registration and obtaining and casting absentee ballots. The recent decision of the New Hampshire Supreme Court in *Casey v. Secretary of State* may have some effect on the numbers of students, but history shows that this is a potential bottleneck which needs to be avoided.

- E. Election Day Safe Procedures. In addition to provision and use of PPE, revised polling place logistics will be required, similar to those in grocery stores, office buildings, and other public places. Guidance from the Secretary of State and the federal and state health agencies are available and are updated regularly, and should be followed by all election officials. The Secretary of State does and should continue to work with local officials to update these procedures and seek suggestions and act as a clearing house for such ideas, along with organizations such as the New Hampshire Municipal Association. Those municipalities with cramped polling places should consider larger facilities for voting. Guidance on such things as taking ballots to voters in cars, etc., should be provided by the Secretary of State. As in C above, while these may result in additional costs, the Committee believes they should be paid from funds other than the funds it is charged with recommending spending. (See also Section III B above.)
- F. Added/Substitute Staffing. Towns and city moderators need to determine early how many regular poll workers will be unavailable due to Covid-19 concerns, and take action to replace them. Consideration should be made to allow workers who do not qualify under current residency rules to volunteer to help at polling places, if changes in law can be made for this year. Also, sufficient staff to handle the anticipated surge in absentee ballots need planning early. This should not be paid from federal funding. The Committee recommends that the Secretary of State issue clear guidance to municipalities on staffing levels and extra hours of work for staff, in order that consistency and controlled costs be assured.
- G. Free Publicity. The Committee reminded all groups appearing before it, that it is the job of all New Hampshire citizens and organizations to make safe election procedures known. All organizations, political parties, candidate organizations, employers, unions, colleges and schools and charitable organizations need to provide clear, concise notice to their constituencies, informing them how to apply for and register and/or vote by mail or other use of absentee ballots. The Secretary of State should dedicate staff and web site space to getting this information disseminated to all such organizations, and the Business and Industry Association and local chambers of commerce should send such information to their members to provide to employees. Radio, TV and printed media sources should be urged to run public service announcements. Town clerks should inform their local citizens of local arrangements and/or changes in polling places or logistics. Officials should appear on TV and radio programs, public access TV shows, to publicize voting opportunities this year.
- H. Switching Back. On Primary Day, the process for unaffiliated voters who chose a party ballot and wish to return to unaffiliated voter status should not involve getting in a line to do so. Providing each such voter with a card when the voter receives a ballot, which can be filled in and given to a poll worker when the ballot is turned in, or automatic, default restoration of unaffiliated status unless a voter indicates otherwise, are mechanisms to accomplish this.

Such a card should be designed and provided by the Secretary of State to local officials. Apparently, some communities do this already and have samples available.

- I. Ballot size/Counting Absentee Ballots by Machine. As indicated in the cost section, ballots should be two-sided, 8 1/2x 11 or whatever size is appropriate, to avoid or minimize jamming in ballot counting machines.
- J. Special Voter Needs. People with disabilities, such as blind or those with mobility issues, should be provided safe voting alternatives to which they are entitled by law, considering the health issues presented by the virus may be more acute for this population. Means for voting absentee or on election day, should be designed and made available. Such options as taking a ballot to such voters in an automobile, segregating the special voting machines for those with sight impairment, etc. should be provided. The Secretary of State should also consider providing publicity and explanatory materials in several languages, so that people for whom English is not their primary language can understand the processes clearly.
- K. Web Site. The Secretary of State's web site, continuously being improved, as the Committee observed during the time of its deliberations, should continue to be user-friendly, so forms and information are easily located. There should be a section on registering and voting by absentee means, during the COVID-19 pandemic. The SOS office has a wealth of information. We recommend that a modest portion of the \$3.2M election monies be used to assist the Secretary of State's office in adding to its website a section devoted entirely to Voting and Registering during COVID-19, if such money is available. The current absentee registration and voting processes are unfamiliar for most Granite Staters, who are experienced in the proud tradition of in-person voting. The SOS website has a wealth of information, but voters who are less sophisticated would benefit from a dedicated "Covid/Fall of 2020 Elections" section that educates them about absentee voting and education. We commend the SOS office for flagging COVID on its homepage, and suggest that this could be linked to a one-stop information page for all of the absentee forms. For example, within the last few weeks the SOS office posted the downloadable form for Change of Party on its homepage which is extremely helpful for voters. Also, currently the SOS website has a downloadable application for absentee ballot under its section on "Election Forms." We recommend that these forms be moved to a single section of the Website with a prominent link on the homepage that directs the voter to Voting and Registering during COVID-19. We believe that the SOS office should continue its excellent work of serving as the central and preeminent authority on providing uniform and consistent election forms for NH citizens. According to the census, 92.2% of New Hampshire households have a computer and 87.2% have broadband internet. These facts indicate that a central web resource that provides uniform absentee registration and voting information is also the most cost-effective method for informing the public, since most voters will be able to find the website through a google search, and a link may be shared and promoted across social media, print media, email, radio, and other means. For those election-related actions for which they would not pose a security risk, such as requesting applications or contacting election officials with questions, interactive portals which allow communicating such things on line, such as those demonstrated to the Committee by students from Dartmouth College, should be considered and implemented, as part of the web site.

- L. Independent candidates and Third Parties. Legal requirements for independent candidates and third parties to get petition signatures are complex in normal times. In this time of social distancing, stay-at-home orders, and the like, they may make those actions impossible on a practical basis. Consideration should be given to whether collecting e-mail “signatures” instead of actual voter signatures can be substituted, subject to the same verification requirements in law. This would require a change in the law.

V. CHANGES IN THE LAWS—2020 ONLY

As stated, the Committee’s task was not to recommend changes in state law. However, as noted several places in this report, improved processes recommended appear not to be allowed under present law. Governor Sununu and Attorney General MacDonald have enabled some changes either by executive order or legal interpretation, in order to facilitate matters in these unique times. However, if additional executive orders, or if legislation could be passed applicable to 2020 only, the provisions of which would sunset after the November election process is complete, some of the recommendations in this report, such as changed forms or applications, processing absentee ballots, third parties and independent candidate petition processes, would be easier to implement, and voting more streamlined.

VI. CONCLUSION

In conclusion, the Committee members appreciate the wisdom and vision of Secretary of State Gardner, and his desire to see elections proceed in this unique year safely and securely, with voters still able to participate in the democratic process. We thank David Scanlan, Bud Fitch, Eric Forcier, Patricia Piecuch and Jessica Eskeland of the Secretary of State’s Office for their tireless assistance, and Attorney General Gordon MacDonald for providing us with the counsel of Assistant Attorney General Nicholas Chong Yen.

The Committee thanks and salutes the many people who participated in our public sessions, often for most if not all of the sessions. We consistently were impressed by the dedication, creativity and intelligence of those who administer our elections on the local level, often virtually as volunteers, and make the system work. They truly are impressive. Once such local official, Vicky Turner of Bennington, volunteered to help from the very beginning, and her research and materials supplied to the Committee were very helpful.

The Committee members appreciate the opportunity to serve our state in this additional way, and the chance to meet and work together (albeit remotely), some of us for the first time.

Finally, we have come to realize the importance of the work we have been assigned, and the critical significance of making safe election procedures available to all who want to vote, and for those who help make it happen.

It is not overly dramatic to say that unless New Hampshire and all other states get this right this year, the future of our nation and world could be affected, forever.

Respectfully submitted,

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