



May 7, 2020

Bradford E. Cook, Esq., Chairman
Select Committee on 2020 Election Support
c/o Sheehan Phinney
1000 Elm Street
Manchester, NH 03101

Via Electronic Delivery Only

Dear Chairman Cook and Committee Members:

Thank you for the opportunity to address your committee, and thank you for the hard work you are doing under difficult circumstances.

The New Hampshire Municipal Association is a nonprofit, nonpartisan, voluntary membership organization representing municipalities in New Hampshire. Currently all of the state's 234 towns and cities are members of NHMA.

In the current crisis, NHMA's concerns related to elections focus on the health and safety of voters and election workers, and the integrity, security, and efficiency of elections. My comments will address those concerns.

Although NHMA provides advocacy and support for all local officials, we do not purport to speak with the same level of knowledge and expertise as the many local officials who manage election processes. I personally have some election experience as the Henniker town moderator, but I have only served in that capacity for two years. I know your committee is hearing from individual clerks, moderators, and checklist supervisors, and my comments are not a substitute for theirs. My goal is to summarize in an organized manner the concerns and issues NHMA has heard about from various election officials and to offer some possible solutions.

I understand that the committee's task is to advise the Department of State on the use of CARES Act funds that are designated for election support. You have made clear that the committee has no authority to change election laws; rather, it will consider ways to work within existing laws to provide support for election processes. I will try to focus my comments on how the CARES Act money can be spent to address election issues.

However, there are some laws that we believe will need to be changed or suspended, and inevitably it will be necessary to discuss those. We understand that those changes will require action by the legislature or the governor, but we still want to call them to your attention. To be clear, any changes or suspensions of the law that we advocate would be only for this year; we are not seeking any permanent changes.

Allocation and Distribution of Funds

We do not have detailed suggestions about the allocation and distribution of the CARES Act funds, but we do have some basic requests.

Allocation of funds among municipalities. The secretary of state's office has indicated that most of the \$3.2 million in CARES Act money will be available for distribution to municipalities. We do not have a suggestion for a distribution formula. Because we represent all municipalities, we will not advocate for anything that would benefit some over others.

However, we do believe that all municipalities will need some funding. The state's largest cities and its smallest towns, and every place in between, will face significant challenges in holding elections this year.

Further—and this is one of our most important points—we believe the choice of how to spend the funds should be left to each municipality. We understand that the CARES Act limits how the funds may be spent, and the state must provide an accounting of the expenditures; but subject to those limitations, each municipality should be able to allocate its distribution as it deems necessary. Different municipalities will have different needs: some may need to spend more for staffing, others for protective equipment, and others for technology or security. The state should not tell municipalities how much they may spend for each item.

Application and distribution process. We also will not recommend a specific process for making funds available to municipalities. We only request that this process be as simple as possible, and that very clear guidelines on the process for obtaining grants be provided to municipalities.

Municipal Election Needs.

Outlined below are what we believe are the most significant and widely shared needs that cities and towns will face in the coming election season. Some of these will require changes or suspension of existing laws; others will not. Some will require additional expenditures, and others will not. Again, I realize that the committee's focus is on the money, but many of these issues are intertwined. Please understand that these are only the highlights, and this letter is not a substitute for what I expect will be the more detailed suggestions from individual clerks, supervisors, and moderators.

For the sake of organization, I will try to address these issues chronologically, beginning with pre-election registration procedures, continuing through the absentee voting process, and then election day.

Absentee voter registration. The committee has already had significant discussion about absentee voter registration. This process is governed by RSA 654:16 through :19. I believe it is not commonly used, but it should be promoted for this election cycle. The more common methods of registering are all in person—at the clerk’s office, at a supervisors of the checklist session, or at the polls on election day. In a presidential election year, many towns have hundreds or even thousands of people registering on election day. Minimizing the number of these in-person contacts is going to be critical, and promoting absentee registration will help.

One easy and obvious step is for the attorney general and the secretary of state to supplement their April 10 memorandum in which they stated that any voter may request an absentee ballot for the September and November elections “based on concerns regarding COVID-19.” This could be done without action by this committee and without any change in the law. The April 10 memorandum interpreted the term “physical disability” for absentee *voting* purposes to include a concern, based on general medical advice, about the safety of voting in person. As the absentee *registration* statute, RSA 654:16, uses the same “physical disability” standard, it is reasonable to conclude that any person should also be able to use the absentee registration process this year.

Shifting the registration process to absentee registration will also shift labor and expenses. Municipalities will spend more money on postage, and clerks and supervisors will spend more time processing registrations in the months before the election. This may require an increase in staff expense.

One problem with absentee registration is that there is no process for “fixing” a registration form that is incomplete or improperly executed. I am not sure what the supervisors do when they receive a defective registration; I believe that question should be addressed.

Ballot size. There is no uniform size for election ballots. Some are 8.5” x 11”, and some are larger. The Accu-Vote ballot counting machines have trouble with ballots larger than 8.5” x 11”—the ballots go through the counter without trouble, but they do not stack well within the machine, and this can cause the machine to jam.

With all the other problems election officials will need to worry about on election day, it would be good if they did not have to deal with jammed machines. Our request is that all ballots for September and November be printed on 8.5” x 11” paper, printed on both sides if necessary. This should be an easy accommodation, and it does not require any change in the law.

Absentee voting/voting by mail. The determination that any voter may request an absentee ballot will help to reduce significantly the number of voters at the polls on election day, and this is extremely helpful. However, it will significantly *increase* the amount of work for city and town clerks *before* election day. Although we have no way of knowing how many more people will use absentee ballots than in a typical election year, all indications are that the number will be several times what is typical.

This will put an enormous strain on clerks, who are responsible for receiving absentee ballot applications, confirming that the applicant is registered, mailing the absentee ballot, receiving the

completed absentee ballot, and retaining it with the application until election day. If the applicant is not registered, the clerk must complete a separate process.

Expanding the number of absentee ballot applications severalfold will require the hiring or reassignment of staff in many municipalities. There will also be a significant increase in postage required for the mailing of absentee ballots.

Several people have advocated for the mailing of ballots to all registered voters. NHMA has no position on this; it seems to have some advantages, but also to create several potential problems.

On the positive side, it would avoid the need for anyone to request an absentee ballot and thus streamline the administrative process. On the negative side, it would cost that much more, and would result in wasting a significant number of ballots and significant postage expense. Because there has not been a routine purge of voter checklists since 2011, most towns have many voters listed who no longer live in town. At best, ballots mailed to these former residents would be discarded or returned unopened; at worst, an unregistered voter living at the old address of the former resident would vote illegally by returning the ballot (or a registered voter might cast his or her own ballot, plus the ballots of former residents sent to the same address).

Perhaps there are answers to these problems. At the least, this seems like a change that should not be undertaken lightly; and in any event, it would require a change in the law.

Absentee ballot envelopes. Absentee ballots must be folded to fit into the envelopes in which they are delivered. If I remember correctly, they are folded in thirds or in quarters, depending on the size of the ballot. Once they are processed on election day, in those municipalities that use a ballot-counting machine, they must be flattened to go through the machine. It is impossible to flatten them perfectly, and they sometimes jam the machine.

We suggest that absentee ballot envelopes be large enough that the ballots do not need to be folded. It is possible that this will involve increased cost, either for the envelope or for the postage—I am not sure—but we believe it is still worth considering. This will not require a change in the law.

Processing absentee ballots. This is one area where we believe a suspension of current law is imperative. Under the existing law (RSA 659:49-:55), the processing of completed absentee ballots may not begin earlier than two hours after the polls open on election day. At that time each envelope is opened, the moderator or assistant moderator examines the affidavit to ensure that it is signed, the voter's name is read, and a ballot clerk checks off the voter's name on the checklist. This is done using the same checklist that is used to check in voters, meaning the ballot clerks have to split their attention between the two processes simultaneously.

This is an extremely tedious process that, in a normal presidential election year, takes several hours in most municipalities. In some larger towns it is not unusual for election officials to be processing absentee ballots past midnight. Using the same process this year, it will simply be impossible for some towns to complete the process on election day or even the next morning. We believe election officials will need to be able to process absentee ballots before election day.

Depending on the municipality, processing absentee ballots before election day may involve additional expenditures to compensate election workers. This change would also require suspending the current limitations in RSA 659:49 and establishing different guidelines for the process.

Protection for ballot clerks and supervisors. Even with reduced in-person voting, ballot clerks and supervisors will come into relatively close contact with many voters on election day. Protective shields, most likely similar to the plexiglass shields used in many stores, would be helpful for both clerks and supervisors. This may be a significant expense. I do not believe allowing these shields would require any changes to the law.

Sanitizing facilities and equipment. Municipalities will take different approaches to keeping their facilities and equipment safe. They will likely want to spend some money for disinfectant spray and wipes and for hand sanitizer. Some have talked about using “golf” pencils instead of pens to mark ballots, with each voter taking a pencil and then discarding it after use. That may be effective, if a bit wasteful. I do not think there is any uniform approach to keeping the equipment clean.

One practice that has been suggested, but will not work, is to wipe down voting booths with disinfectant after each use. As town election officials discovered in March, this results in wet ballots that jam the ballot-counting machines. Similarly, voters should not be encouraged to use hand sanitizer before or after marking their ballots. Hand sanitizer should be made available only after the ballot has been deposited. At our town election in Henniker, one voter’s ballot, wet from hand sanitizer, jammed our machine so badly that it had to be replaced.

Photo identification. RSA 659:13 requires that every voter present a photo ID to the ballot clerk when checking in to vote. The most common form of ID used is a New Hampshire driver’s license. This presents two problems: (1) I believe few people can read the printing on a New Hampshire driver’s license from six feet away, the recommended minimum distance for social interactions; and (2) in many, if not most, cases, a photograph will not help to verify the identity of a voter whose face is more than half covered by a mask. The photo ID requirement will be effective only if voters remove their masks and approach to within six feet of the ballot clerks, and that should not be encouraged.

We suggest that consideration be given to suspending the photo ID requirement for the September and November elections. The requirement has existed only since 2012, and, while there is some disagreement about the prevalence of voter fraud in New Hampshire, all evidence indicates that incidents of identity fraud are, and always have been, extremely rare or non-existent. Enforcing this requirement at potential risk to the health of election workers and voters seems an unnecessary gamble. Suspending the requirement would cost no money.

Number of voting booths. Under current law (RSA 658:9), municipalities would be required to have one voting booth for every 150 registered voters at the September primary, and one for every 100 registered voters at the November general election.

Most voting booths are attached in a row, so that voters in adjacent booths are standing about two feet apart. To allow for reasonable distance between voters, and given expectations that the number of election day voters will be greatly reduced, we believe the voting booth requirements

should be at least cut in half—*i.e.*, one for every 300 registered voters in September and one for every 200 in November. A polling place may still have to erect the same number of booths, but it could then close off every other booth to allow for more distance between voters.

This change would require a suspension of the existing law, but we believe it is important. It should not require any increased expense.

Return to undeclared status. Undeclared voters may vote in either party’s primary in September. When they do, they are automatically registered as a member of that party. After they vote, they may return to undeclared status by signing a card or a list that the supervisors of the checklist make available. (RSA 654:34, V.)

Undeclared voters are the largest voting group in New Hampshire, and many of them take advantage of the option of returning to undeclared status immediately after voting. This creates another line at the polling place, increasing the risk of virus transmission and taking up needed space. Having hundreds of people handle the same list to find their names and sign the list creates a further risk. This also creates another occasion for interaction with the supervisors.

An easy solution to this problem is a temporary change in the law to provide that every undeclared voter who votes in this September’s primary will be returned to undeclared status automatically, without signing anything. This is a simple change that would cost nothing and significantly reduce the risk of transmission at the polling place.

Working group. Some of the changes we are recommending may lead to their own complications. The processing of absentee ballots, for example, is particularly tricky, and any changes to the process will require careful thought. These changes are probably beyond the jurisdiction of this committee. We therefore suggest that a small group of clerks, moderators, and supervisors of the checklist be formed to work with the secretary of state’s office and the attorney general’s office on the details of any changes.

Thank you very much for your consideration. I would be happy to answer any questions the committee may have.

Sincerely,


Cordell Johnston
Government Affairs Counsel