

**Minority Counsel/Program Office**  
**Senator John J. Flanagan**  
**Minority Leader of the Senate**

**To:** Senators  
**From:** Ben Kosinski  
**Date:** April 9, 2020  
**Subject:** Absentee Ballots

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At Wednesday's Coronavirus Press Conference, the Governor stated he would issue an Executive Order imminently declaring that the risk of coronavirus infection constitutes an illness that would qualify for absentee voting under the New York State Constitution for the June 23rd Primary Election.

Under the NYS Constitution an individual may vote via absentee ballot if:

1. The individual will be out of the county on the day of the election; or
2. The individual is unable to appear in person because of an illness or physical disability.

The Legislature has expanded the qualifications to receive an absentee ballot in statute (Section 8-400 of the Election Law) to also include:

1. Primary caregivers of one or more individuals that are ill or physically disabled
2. A resident or patient of a Veterans Health Administration Hospital; or
3. An individual detained in jail awaiting Grand Jury action or confined in prison after conviction for an offense other than a felony.

The Governor is looking to expand the definition of "illness" under the Constitution to include the threat of potential spread of the Coronavirus (similar to S.8015A - Biaggi). In effect, any individual would be able to use this excuse to receive an absentee ballot.

If challenged in court, it is unclear whether the Governor's Executive Order to expand the definition of illness would be ruled constitutional as the Constitution states an individual must be sick or physically disabled and does not mention the mere threat of illness as a qualifying excuse to vote absentee.

Note: Last session, S.1049, a constitutional amendment to move to No-Excuse Absentee Voting made its first passage through the Legislature. The bill passed the Senate 56-5 (No Votes: Helming, Jordan, Ortt, Ranzenhofer, Young). The bill has not come up for a vote this session.

If fully implemented, it is important to note this is not a vote by mail program, which is much more ripe for abuse and more politically challenging than an expanded absentee ballot program.