

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
ARTICLES OF ORGANIZATION & BYLAWS REVISION COMMITTEE
INTERIM COMMITTEE CONFERENCE CALL MEETING
JUNE 11, 2020
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Articles of Organization & Bylaws Revision Committee held an interim meeting via conference call on Thursday, June 11, 2020 at 12:00 p.m.

Senator David Livingston of Arizona, Chair of the Committee, presided.

Other members of the Committees present were:

Rep. Martin Carbaugh (IN)	Asw. Ellen Spiegel (NV)
Rep. Matt Lehman (IN)	Asm. Kevin Cahill (NY)
Rep. Joe Fischer (KY)	

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO
Will Melofchik, NCOIL General Counsel
Cara Zimmermann, Assistant Director of Administration, NCOIL Support Services, LLC

QUORUM

Upon a motion made by Asw. Ellen Spiegel (NV), Vice Chair of the Committee, and seconded by Rep. Matt Lehman (IN), NCOIL President, the Committee waived the quorum requirement without objection by way of a voice vote.

INTRODUCTORY REMARKS

Sen. David Livingston (AZ), Chair of the Committee, stated that because of concerns of being disconnected from the call due to bad cellular service and a lack of internet connection, Vice Chair Spiegel will handle some of the discussion and review of the proposed amendments to the NCOIL Articles of Organization (Articles) and Bylaws. Sen. Livingston noted that he and Vice Chair Spiegel have been working on those proposed amendments with NCOIL staff the past several weeks and the purpose of the call today is to discuss, review, and vote on them. Sen. Livingston also noted that he has some sponsor's amendments to offer during the call in addition to the proposed amendments that were distributed prior to the call.

DISCUSSION ON PROPOSED AMENDMENTS TO NCOIL ARTICLES OF ORGANIZATION & BYLAWS

Vice Chair Spiegel stated that the first amendment is one of the sponsor's amendments just referenced by Chair Livingston – on page 1. After the proposed amendments were sent out, differences were noted in the Preamble and Section 3(A) of the Articles regarding membership. Section 3A states that "General Membership shall be afforded to all States and territories of the United States, the District of Columbia, and the Commonwealth of Puerto Rico."

However, the Preamble does not mention territories, the District of Columbia, or Puerto Rico. Accordingly, in an effort to simply reconcile those provisions it is proposed that the first sentence of the Preamble read “We, duly elected representatives of the People to the Legislatures of the 50 sovereign States and territories of the United States, the District of Columbia, and the Commonwealth of Puerto Rico...” and the rest of the provision would remain as-is.

No questions or comments from either legislators or interested parties were offered regarding the proposed amendment.

Vice Chair Spiegel stated that the next amendment is on page 4 and is again one of the sponsor’s amendments just referenced. In Section 7 of the Articles the citation to the 30-day rule needs to be changed from Section 4G to Section 3G. The same change also needs to be made in the corresponding Amendments Section of the Bylaws on page 9.

No questions or comments from either legislators or interested parties were offered regarding the proposed amendment.

Vice Chair Spiegel stated that the next amendment is on page 4 - a new section is proposed to be added to the Articles as Section 8 titled “Reasonable Departure from the Articles of Organization.” The reasoning behind this proposed amendment is fairly straightforward. Vice Chair Spiegel stated that she believes it is proper to allow for reasonable departure from the Articles and Bylaws in the event of an emergency such as the one in which we currently find ourselves. A large, national organization such as NCOIL should not be constrained when trying to operate during an emergency. Vice Chair Spiegel also noted that the same language is proposed to be included as an amendment to the Bylaws as new Section 7 on page 9.

Chair Livingston noted that this amendment is essentially the heart of why this interim meeting was called as NCOIL needs to be able to function no matter what is going on in the world and in each of the respective states. Therefore, it is critical and appropriate to do this at this time.

Wes Bissett, Senior Counsel, Gov’t Affairs at the Independent Insurance Agents & Brokers of America (IIABA), stated that he appreciates that the proposed amendment has limits and triggers applied to it but noted that he and his colleagues have scratched their heads as to the openness and subjective nature of it. Mr. Bissett stated that as he reads the Articles and Bylaws he sees a significant amount of flexibility and asked if some examples could be provided where there would be a need for invoking the reasonable departure authority.

Chair Livingston stated that generally, the Articles and Bylaws are somewhat open-ended so as to account for how the respective states each operate differently. Chair Livingston asked the Hon. Tom Considine, NCOIL CEO, and Will Melofchik, NCOIL General Counsel, to offer examples in response to Mr. Bissett’s question. Cmsr. Considine stated that there are specific things in the Bylaws such as the requirement for officers to be elected at the Annual Meeting and noted that, unfortunately we may be looking at a year where there is no Annual Meeting. There is also a requirement that there be three NCOIL conferences annually. In the next week or so we may find ourselves down to two and there could be a chance where we could end up with one

meeting in 2020. Cmsr. Considine further stated that in discussions with Chair Livingston, Vice Chair Spiegel and Mr. Melofchik leading up to this call, it did not make sense to specifically edit the Articles and Bylaws to account for every possible contingency. Chair Livingston stated that is correct.

Mr. Melofchik stated that there are also provisions in the Articles and Bylaws that relate to the adoption of budgets and audits of the organization within certain timeframes. Those are examples of how this proposed amendment would allow reasonable departure from those requirements.

Paul Martin, VP of State Relations at the Reinsurance Association of America (RAA), stated that RAA, the American Property Casualty Insurance Association (APCIA) and the National Association of Mutual Insurance Companies (NAMIC) submitted a comment letter yesterday regarding the proposed amendments. There is certainly no objection to the idea that NCOIL needs flexibility given what we have seen the past few months and it can be appreciated that there may be times where there needs to be meetings held on an expedited basis. However, the language that is in the current proposed amendment permits for a fair amount of flexibility that RAA, NAMIC and APCIA would like to see some more details as to what would be a better trigger perhaps for when the flexibility is authorized.

One of the specific concerns focuses on notice to interested parties especially since it is noted in the Preamble that part of the purpose of NCOIL is to share information and a lot of that information is from the industry. When discussions start regarding reasonable diversions away from the Articles and Bylaws, that raises a lot of questions as to how interested parties can provide information in a timely fashion and have meaningful conversation. It is encouraged that the Committee reviews the comment letter submitted and the associations are more than happy to work with Committee. It is understood that interested parties do not get a vote on matters that are before NCOIL but at the same time the value that interested parties see in NCOIL in part is the ability to share information in a timely manner and it is believed that throughout the pandemic industry has shown its ability to be flexible and gather in order to answer questions and provide feedback on certain issues and industry welcomes the opportunity to do that with NCOIL going forward.

Chair Livingston stated that he also values the presence of interested parties at NCOIL greatly and believes that transparency and a collaborative working effort are critical for NCOIL to be successful on an ongoing basis. That has been a key to success in the past. Chair Livingston stated that he and Vice Chair Spiegel did receive a copy of the comment letter noted by Mr. Martin and asked Mr. Melofchik if it was sent out to the other Committee members. Mr. Melofchik stated that the letter was sent to the other Committee members as well as everyone else who registered for this call. Chair Livingston stated that on an ongoing basis NCOIL of course wants to hear from legislators and also interested parties. Together, that is what makes NCOIL successful.

Lauren Pachman, Counsel and Director of Regulatory Affairs at the National Association of Professional Insurance Agents (PIA), stated that in response to the comments made by Cmsr. Considine and Mr. Melofchik regarding officer appointments, budgets, and audits, all of those provisions seem to be in the Bylaws – none seem to be in the Articles. Accordingly, Ms. Pachman stated that she is still unclear as to why the Articles need the amendment to allow for reasonable departure. Ms. Pachman further stated

that she agreed with the previous comments made by previous commenters regarding vagueness, broadness, and necessity.

Cmsr. Considine stated that as noted earlier, it did not seem necessary to edit for every potential circumstance. Further, the Articles do require each Executive Committee member to attend in person at least one Executive Committee meeting annually, or else they would be removed from said Committee. Ms. Pachman stated that she was going to bring that provision up and recommended that in the spirit of making these adjustments the words "in person" be struck from that provision in the Articles (Section 5.1.).

Cmsr. Considine stated that even if "in person" was deleted, the provision still requires three meetings of the Executive Committee and if circumstances such as those we are in are such that there are not full Executive Committee meetings, there would need to be a reasonable departure under the circumstances limited declared by both the Executive Committee and officers. Accordingly, this is not meant to allow for a President of NCOIL to simply throw out the Articles and Bylaws to allow she or he to do whatever they want. Chair Livingston stated that he is not worried about that. Ms. Pachman stated that is not a concern under the current circumstances but the Articles are meant to live beyond the current administration. It is much easier to remove the words "in person" and the Articles do not need the reasonable departure amendment.

Karen Melchert, Regional VP of State Relations at the American Council of Life Insurers (ACLI) stated that she agreed with the comments made by other interested parties regarding the broadness of the reasonable departure amendment and noted that the Committee may want to consider narrowly tailoring the reasons and scope to which Articles may be departed from. The word "reasonable" is an interesting word that can be interpreted in many ways. For something as dramatic as departing from the Articles, it may be prudent to list specific circumstances which can trigger a departure such as procedural measures other than the adoption of Models and Resolutions.

Chair Livingston stated that there is a fine line between how specific the amendment should be and how broad it should be and noted that the current language strikes a good balance. Cmsr. Considine stated that NCOIL has been around for 50 years and in his experience with NCOIL for close to 20 years prior to becoming NCOIL CEO there have always been different people leading NCOIL but they are people of good faith. Cmsr. Considine stated that he is scratching his head as to some of the concerns raised because even if there was an NCOIL President who wanted to depart from the Articles or Bylaws, it is hard to imagine that the rest of the officers would allow that to happen. Chair Livingston stated that he agreed with Cmsr. Considine and stated that he believes the Executive Committee members would not allow for that either.

Andrew Kirkner, Regional VP of State Affairs at NAMIC, stated that he believes there are some suggestions in the comment letter referenced earlier that may address some of the concerns raised during this call and also align with the comments made by Cmsr. Considine. One of the suggestions in the letter is to require a unanimous Executive Committee vote for a reasonable departure. That speaks to what Cmsr. Considine just said regarding the members of NCOIL keeping checks and balances in place. Another suggestion is to tighten the language regarding states of emergency by replacing it with nationwide states of emergency as opposed to a single state of emergency. Chair Livingston stated that Mr. Kirkner's last point was previously discussed prior to this call

but it was ultimately decided that it was important to have flexibility and the hope and intent is obviously that the provision would not be used very often.

Vice Chair Spiegel stated that the next amendment is on page 4 and deals with Section 2 of the Bylaws - Voting. The section is proposed to be split into subsections A and B, with subsection A dealing with the procedure regarding voice votes. The current section states that all voting shall be by voice vote except that a roll call vote shall be taken at the direction of the Chair or upon the request of two members of that Committee. The thought is that given the possibility of NCOIL Committees meeting and voting on measures via conference call or Zoom more often in the future, it makes sense to lower the threshold needed for a roll call vote. So, the section is proposed to now read that a roll call vote shall be taken at the direction of the Chair or upon the request of "a member of that committee in instances where there are dissenting votes."

No questions or comments from either legislators or interested parties were offered regarding the proposed amendment.

Vice Char Spiegel stated that the next amendment is the proposed new subsection B titled "Written Consent in Lieu of Meeting." The language is proposed to deal with situations like that which occurred with the Rebate Reform Model Law at the Spring Meeting in Charlotte this past March. During the meeting of the Financial Services & Multi-Lines Issues Committee in Charlotte, the Committee voted to adopt the Model as amended by the Committee. Staff then made those changes to the Model upon arriving home and then sent the Model via e-mail to the members of the Executive Committee saying "the version of the Model, which we attach to this e-mail, is the approved version with the changes incorporated. Unless we hear to the contrary, we will post the Model as final by ____".

It is here that an additional Sponsor's Amendment referenced earlier is offered which would clarify that "Written Consent in Lieu of A Meeting" can be used only for matters on which there has been previous discussion and an opportunity for public comment. So, subsection 1 would now read "A decision on any matter previously discussed with an opportunity for public comment and evidenced by..." and the rest of the subsection remains as-is. Similar language would also be added to subsection 2 so it would now read "Unanimous consent on a matter previously discussed with an opportunity for public comment as achieved..." and the rest of the subsection remains as-is. Chair Livingston thanked the interested parties that reached out with suggestions regarding this amendment.

Brendan Peppard, Regional Director of State Affairs at America's Health Insurance Plans (AHIP), stated that AHIP did not join the comment letter referenced earlier, but supports many of the issues raised in it. AHIP did not submit formal comments but did reach out to NCOIL staff to raise concerns about this amendment which the sponsor's amendment is intended to address. The sponsor's amendment largely addresses AHIP's concerns but Mr. Peppard suggested that given the direction this is headed and its intent, it would be helpful for transparency purposes that if this action was taken, then at the next meeting it would need to be confirmed and ratified so that publicly everyone sees that has happened. Understanding that there are many discussions at meetings and changes to certain things are written afterwards, it is still important for interested parties to actually see what has been agreed upon.

Mr. Martin stated that he believes the sponsor's amendment helps but noted that it appears that this amendment to the bylaws is not supported by the Articles as outlined in the comment letter referenced earlier. Mr. Martin stated that even with the sponsor's amendment he is still scratching his head as to how it would function since it was disclosed. The sponsor's amendment helps with transparency, but he stated that he is not sure it gets RAA to where it wants to be.

Cmsr. Considine stated that he was surprised to hear any comments that the sponsor's amendment was just disclosed today because anyone that had reached out about this amendment, including the RAA, was reached out to by Mr. Melofchik to explain the sponsor's amendment. With regard to the suggestion from Mr. Peppard, it is not uncommon, although infrequent, in situations where the officers have meetings to take certain action in between the national meetings where there was no executive committee meeting – this may have happened twice in the past five years – the executive committee at its next meeting has ratified those actions. Accordingly, that is a matter of NCOIL practice, but that may not be something that needs to be detailed in Articles or bylaws – that is up to the members of the Committee, but nowhere in the Articles or Bylaws is it said that if the officers take action in between meetings then it needs to be ratified by the executive committee. As a matter of practice, and policy, that is the way NCOIL operates.

Dennis Burke, VP of State Relations at RAA, stated that he spoke to Mr. Melofchik about this proposed amendment but had not seen it in writing. Mr. Burke stated that the comment letter referenced earlier can be distilled to say that interested parties are interested in as much transparency and as much opportunity to inject views before a vote is taken. The word "notice" is used more in the letter besides "a" and "the." There have been instances in the past, before Cmsr. Considine's arrival as CEO, where just as it happens in state legislatures, there is a committee vote and then you want to have a challenge on the floor and the executive committee is essentially that.

So, when there is a written consent in lieu of a meeting, even if it is ratification of something that was passed by a committee in the absence of notice to all legislators and interested parties in some way, that level of interaction is important because the executive committee is comprised of different people and perhaps different views than the policy committee. Interested parties look for some opportunity in the rare circumstances where they would attempt to educate non-committee members on some of the issues to avoid unintended consequences. Those are the issues that the comment letter seeks to address. Clearly, interested parties do not need the notice to be part of the governing documents. They would like to see it be a formal practice of NCOIL that has been adopted and if there is a recommendation for that to be part of the amendments to the Bylaws it would be very much appreciated. Chair Livingston stated that transparency and making sure that objections are heard has always been critical and it is important that such practice continues.

Mr. Bissett stated that the sponsor's amendment improves upon the language and offered a way to further improve it. The example made by Mr. Burke entailed a substantive committee taking action on a matter and then the executive committee taking action on it without ever having discussed it before so perhaps language should be included to make clear that the discussion/comment requirements apply to the committee that is taking the measure up so that there would not be new issues

addressed by a committee that never discussed them before that had been previously discussed by another committee.

Mr. Bissett further suggested that the ability to do this be restricted to cases where there is unanimous consent. There is quite a bit of statutory law that relates to the ability of organizations to take action without a formal meeting, both for private corporations and non-profit entities. Many state laws restrict the ability of organizations to do that and many of those laws require that there be unanimous consent. Given NCOIL's nature, there is a heightened interest in having transparency and openness and you wouldn't want a situation where there is action taken outside of meetings and that having the effect of stifling debate and opposition. At the same time, if there are issues where all members agree upon, it is conceded that there is no need to go through the formality of having an in-person or telephonic meeting. Accordingly, the best spot to land on this to balance everything is to limit this to cases, as many state laws do and as the National Association of Insurance Commissioners (NAIC) does, to cases where only there is unanimous consent.

Mr. Melofchik stated that with regard to Mr. Bissett's first point, that suggestion was previously discussed in conversations leading up to this call and it was thought that could be addressed by adding the words "by the Committee voting" so section 1 would now read: "A decision on any matter previously discussed by the Committee voting, with an opportunity for public comment, and...." The same language would also be added to section 2.

Chair Livingston stated that he is comfortable with that language since it strikes a good balance between ensuring transparency and not restricting the ability to function. Hearing no further questions or comments, Chair Livingston moved on to the next amendment.

Vice Chair Spiegel stated that the next amendments are to Section 3 of the bylaws on page 5. These amendments are simply technical in nature and are proposed for clarity. Instead of having the title of the Section read as "Executive Meetings" it is proposed to be changed to "Committees." Also, in subsection A, language is proposed to be added to the first sentence so it reads "There shall be an Executive Committee which shall meet..." and the rest of the subsection remains as-is.

No questions or comments from either legislators or interested parties were offered regarding the proposed amendment.

Vice Chair Spiegel stated that the last amendment is again technical in nature. A re-numbering of the sections of the bylaws is proposed - starting with now Section 4, Finances, at the bottom of page 7, and ending with the new Section 7 on page 9, Reasonable Departure from Bylaws.

No questions or comments from either legislators or interested parties were offered regarding the proposed amendment.

Rep. Matt Lehman (IN), NCOIL President, stated that he appreciates all of the comments made today and noted that we are currently in the middle of unprecedented times. When the NCOIL Articles and Bylaws were established, it is hard to believe that anyone anticipated not meeting in-person. There could be weather issues and other

things that require moving meetings, but the issue of a national shutdown most likely never came to light. Accordingly, while these amendments are probably not perfect – just like anything else – it is important for NCOIL to be in a position where it can function appropriately if these events occur again. NCOIL has always been focused on transparency and hearing from all interested parties and there are checks and balances within NCOIL's own members that act as safeguards. These amendments do not serve to solve all possible problems but are appropriate to have in place. Rep. Lehman thanked everyone for their work on the amendments.

Upon a Motion made by Rep. Lehman and seconded by Rep. Martin Carbaugh (IN), the Committee voted without opposition to adopt the amendments by way of a voice vote.

Cmsr. Considine noted that despite the Committee waiving the quorum requirement at the beginning of the call, there was in fact a quorum present.

ADJOURNMENT

There being no further business, the Committee adjourned at 12:45 p.m.