



Independent Insurance Agents  
& Brokers of America.

June 11, 2020

The Honorable David Livingston  
The Honorable Ellen Spiegel  
Articles of Organization and Bylaws Revision Committee  
National Council of Insurance Legislators  
2317 Route 34 S, Suite 2B  
Manasquan, New Jersey 08736

Dear Senator Livingston and Assemblywoman Spiegel:

On behalf of the Independent Insurance Agents and Brokers of America (IIABA), I write to express our organization's thoughts on the proposed revisions to NCOIL's governing documents.

### **Exemptions/Reasonable Departures from the Articles of Organization and Bylaws**

The proposed revisions would add new sections to NCOIL's governing documents (on pages 4 and 9) that would permit "reasonable departures" from their requirements in certain instances, and IIABA is concerned by the broad and subjective nature of these provisions and questions why such changes are necessary. The experience through the COVID-19 pandemic seems to suggest that NCOIL has been able to operate effectively in challenging times, and we are not aware of any examples in which NCOIL has been unreasonably hindered by its governing documents or of any precedent for this particular proposal. The Articles of Organization and Bylaws already provide considerable flexibility to the organization. There may be instances where narrow and targeted revisions are needed (such as the issue addressed immediately below), and we respectfully suggest that members of the committee not move forward with this particular change unless there is a clear and compelling justification for it.

### **Permitting Virtual and Telephonic Meetings**

IIABA does not object to clarifying that NCOIL committee meetings may be held virtually or by telephone. To the extent there is uncertainty about NCOIL's ability to operate in this way, these are helpful changes and meaningful improvements.

### **Action Without Meeting**

The proposed revisions include a provision ("Written Consent in Lieu of Meeting", pages 4-5) that would allow NCOIL committees to take action without meeting, and IIABA is most focused

on these particular items. Given NCOIL's unique public interest mission, its composition of elected state legislators, and its longstanding commitment to transparency and conducting open meetings, allowing actions on measures to occur outside of meeting is something that should be carefully considered. As you evaluate this proposed revision, we urge you to also consider the following:

- Our understanding is that the proposed revisions to NCOIL's Bylaws are a response to the COVID-19 pandemic and are designed to "account for any future emergencies," but this particular suggestion does not have a link to the current situation or similar events.
- Given the other proposed changes to the governing documents – which enable NCOIL committees to meet virtually or by telephone – it is unclear under what circumstances an NCOIL committee would need to take action without convening. This item seems unnecessary.
- Authorizing action to be taken by committees outside of actual meetings without restriction has the troubling potential to stifle debate and opposition.
- State laws often restrict the ability of nonprofit entities to take action outside of meetings, and one of the most common requirements is that any such action only be taken if there is unanimous consent. This is the default position, for example, of the Model Nonprofit Corporation Act, and it is also the approach employed by the National Association of Insurance Commissioners and many other organizations in their Bylaws. The NAIC's [Bylaws](#), which may serve as a guide for NCOIL on this particular point, state that "any action required or permitted to be taken at any meeting of the Executive Committee or any committee thereof may be taken without a meeting if all members of the Executive Committee or such committee, as the case may be, consent thereto in writing in accordance with applicable law."

As the committee considers this particular revision, IIABA recommends that it, at a minimum, restrict the ability of NCOIL committees to take action without meeting to instances where there is unanimous consent. The outcome can be achieved with the revisions outlined below.

#### B. Written Consent in Lieu of Meeting

1. A decision on any matter evidenced by the unanimous consent in writing (including electronic) ~~of a two-thirds super-majority vote~~ of any Committee shall be as valid as if it had been decided at a duly called and held meeting of that Committee. Each decision consented to in writing may be in counterparts, which together shall be deemed to constitute one decision.

2. Unanimous Consent as achieved by the lack of objection to a duly valid notice to all Committee members shall also be as valid as if it had been decided at a duly called and held meeting of that Committee.

#### Other Issues

In our review of NCOIL's governing documents, we have spotted a couple of instances in which references to NCOIL's 30-day are inaccurately cited. The Amendments sections of both the Articles of Organization and the Bylaws indicate that the 30-day rule is outlined in Section IV.G

of the Bylaws, but the rule is actually set forth in Section III.G of the Bylaws. This is a minor issue, but the committee may wish to consider an amendment if it moves forward with other revisions.

**Conclusion**

IIABA sincerely thanks you for the opportunity to submit these comments, and we are happy to assist your committee's consideration of these issues in any way you deem appropriate.

Very truly yours,

A handwritten signature in black ink that reads "Wesley Bissett". The signature is written in a cursive style with a large, prominent 'W' and 'B'.

Wesley Bissett  
Senior Counsel, Government Affairs