



June 10, 2020

Sen. David Livingston, Chair
Asw. Ellen Spiegel, Vice-Chair
NCOIL Articles of Organization & Bylaws Revision Committee

Via email c/o NCOIL Staff

RE: Concerns regarding proposed changes to the NCOIL Articles of Organization and Bylaws

Sen. Livingston and Asw. Spiegel:

The undersigned trade associations appreciate the opportunity to share our comments and concerns regarding the proposed changes to the articles of organization and bylaws to NCOIL.

While we will outline our specific comments below, we believe these proposed changes unintentionally decrease the NCOIL requirement for transparency and opportunity for fair process because there are no provisions requiring reasonable notice in either standard or exigent meeting circumstances.

We note the existing NCOIL Articles of Organization seek to create a “more effective exchange of insurance information among the legislatures of the States.” The ability of the insurance representatives and other interested parties to help provide that information is largely a factor of how well the NCOIL process:

- a) Permits interested parties to share meaningful feedback on proposed NCOIL actions in a timely fashion before action is taken; and
- b) Enables NCOIL members to vet and discuss information in a forum conducive to discussion and debate.

As a result, as currently drafted, we believe some of the proposed changes are inadvertently incongruent with the goals of NCOIL.

While we recognize that NCOIL is seeking to have the ability to be nimble and responsive to time sensitive issues, the hallmark of NCOIL’s success and reputation has always been the result of thoughtful, open and transparent processes that permit interested parties from all sides to share their concerns and perspectives with decision makers. As proposed, we believe the changes to the governing documents may inadvertently harm NCOIL’s reputation for an open and transparent process and its reputation for a thoughtful work product, if they result in actions being taken without being aware of adverse consequences due to a lack of sufficient input.

Because NCOIL has historically acted at one of its three annual meetings, which were well advertised and for which 30-day materials were supplied and posted online, specific notice requirements in the governing documents was not an issue as notice was given to legislators and interested parties as a practical matter.

Because NCOIL is now considering changes that would permit NCOIL to take action without corresponding notice requirements, we believe legislators should pause and discuss what is appropriate notice before making changes to NCOIL's Articles and Bylaws.

Some thoughts:

- How should notice be given? Written? Electronic? How delivered?
- How much time should be given before a previously unscheduled interim meeting, conference call, consent document or other proposed action is taken?
- Should it depend upon the means of the meeting? On the type of action contemplated? (Internal v. public policy oriented)
- There is a failure to object provision. How much time are legislators to agree and or object before the failure to object provision is deemed to be acceptance?
- To whom should notice be given?
 - Which legislators? All legislators in the states, as all are members? Just those who have participated or attended recently?
 - What about interested parties? We are not members of NCOIL, but we believe the perspective of all interested parties is helpful to legislators and to the NCOIL process. While neither essential nor required to be in NCOIL's governing documents, we believe it would be appropriate for NCOIL to formally adopt a practice to provide direct, timely notice to CIP and IEC supporters. In addition to supporting persons and organizations, we believe NCOIL should consider providing notice to all recent NCOIL attendees and others to whom NCOIL regularly markets its meetings and materials.

In summation, the RAA/undersigned trade associations encourage NCOIL members to consider the general comments regarding notice and opportunity to be heard, and the specific comments noted in the attached addendum before acting. We believe that consideration of these provisions will lead legislators to conclude that additional changes are needed to retain the quality process for which NCOIL is known and to remain consistent with its stated goals and values.

We are open to and welcome a discussion on these issues with the membership and appreciate the opportunity to weigh in.

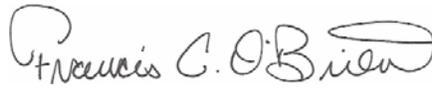
Sincerely,



Andrew Kirkner
Regional Vice President – State Affairs
NAMIC



Paul Martin
VP- State Relations
The RAA



Frank O'Brien
VP -State Government Relations
APCIA

**Addendum to June 10, 2020 letter entitled,
Concerns regarding proposed changes to the NCOIL Articles of Organization and Bylaws**

We start by readily conceding there are foreseeable situations in which NCOIL may wish to have some flexibility in its ability to quickly meet and make decisions on certain matters, especially in times of national crisis.

Notice and adequacy of notice

As currently drafted, we have an overriding concern because the proposed amendments do not specify provisions regarding appropriate and adequate notice. Such notice requirements are essential to maintain the open, accessible, transparent decision making for which NCOIL is respected.

Notice to voting members is essential, as is sufficient specificity regarding the proposed action, time of meeting or other mechanism for voting, and adequate notice to enable members to receive, review and deliberate such proposed action and to participate in the meeting and vote.

The RAA/undersigned are interested parties at NCOIL. We recognize that interested parties are not members. However, we like to believe that we are helpful to legislators by providing a perspective on matters of importance to the insurance industry. We are also only one subset of interested parties. Others have supporting or opposing positions.

NCOIL has historically been a venue that provides all such interested parties an opportunity to share their perspectives on matters of public policy with NCOIL members. We would like to see this continue and would encourage legislators to consider methods of providing adequate notice to NCOIL members and interested parties.

The “Reasonable Departure from Articles of Organization and Bylaws” amendments create large exceptions to the established rules and practices of the organization.

We note that by allowing a state declared emergency to act as the trigger for the Reasonable Departure clause, there is an ability to trigger amendment’s provisions on a regular basis. On any given day (even outside of the current emergencies our states are facing now), a wide spectrum of natural disasters affect the nation, resulting in states of emergency being declared. As drafted, any of these states of emergency would be sufficient to trigger the Reasonable Departure provision as written.

We do not oppose the existence of authority to permit an exception to the general provisions of the governing documents. However, we encourage members to consider the relatively low threshold that could permit an easy departure from NCOIL’s Articles and Bylaws. As such, we would encourage members to require a unanimous vote of the executive committee as a threshold for engaging the reasonable departure provisions.

While not a panacea for all issues associated with a relatively easy deviation trigger, notice provisions regarding a proposal to trigger the reasonable departure clauses, the reason, the types of action authorized, the length of the deviation, and notice regarding the implementation of the reasonable departure provision all seem warranted. With regard to the trigger, it may be more appropriate to tie the reasonable departure provision to those instances where a nationwide state of emergency has been declared.

The proposed amendments to Section II of the Bylaws conflict with Section IV of the Articles of Organization.

Subsections B, C and D of Section IV of the Articles state:

- B. At any meeting of NCOIL, each Committee member shall be entitled to vote on measures before their Committee.
- C. A majority vote of those Committee members present and voting shall constitute the requisite vote necessary on measures before their Committee.
- D. Voting by proxies shall not be permitted.

Arguably, the proposed Bylaw amendments would violate Section IV(B) of the Articles of Organization by not allowing a member the opportunity to vote on a matter pending before their

Committee. While Sections IV(C) and (D) require members to be present and voting at a meeting, the proposed amendment authorizes voting and action without presence at a meeting.

Because as a general rule, Bylaws cannot supersede Articles of Organization, a corresponding change to the Articles appears prudent to authorize the Bylaws provisions.

Unanimous consent achieved by the absence of objection to a “duly valid notice.”

We believe proposed Section II(B)(2) needs further clarification. This provision seems to decree actions may be taken by NCOIL or a Committee if they are taken by unanimous consent, which is deemed to have occurred so long as no member objects to the “duly valid notice.”

As previously mentioned, in the absence of notice standards, we are not clear what “duly valid notice” is, nor what is deemed to be authorized.

Limits on actions taken “In Lieu of Meetings”

Further, the proposed Section II of the Bylaws doesn’t specify a framework for how decisions are made “In Lieu of Meetings” or place any limitations on what can be done. Again, we return to the adequacy of notice.

We note a lack of instruction in terms of:

- What is required to be in the notice? How it is to be sent? And to whom?
- Will NCOIL provide notice to the public/interested parties? How? And is such notice a requirement?

In addition, while the proposed amendments may be necessary in pursuit of flexibility during times of crisis, we would encourage members to consider the traditional collaborative stakeholder process by which NCOIL model laws, amendments and resolutions are produced. This thorough process gives these products instant gravitas when they are considered in individual states, in part because state legislatures can rely on the expertise and thorough committee process at the NCOIL level. As such, we suggest members consider application of this section only where a model law, amendment to a model law or resolution are not being considered.