

DEPARTMENT OF INSURANCE
INSURANCE NOMINATING COMMITTEE

April 16, 2015
9:30 a.m.

CALL TO ORDER

A regular meeting of the Insurance Nominating Committee was called to order on the above date at approximately 9:30 a.m. by Mr. Chris Krahlung, Chair, at the State Capitol building, Room 321, Santa Fe, New Mexico.

Roll call indicated the presence of a quorum as follows:

Members Present

Chris Krahlung, Chair
Bill Kinyon
Gabriel Parra
Jason Marks
Babette Saenz
Scott Yurcic

Members Absent

Norm Becker [excused]
Zach Cook [excused]
Kevin Martínez [excused]

Staff Present

David Barton, Counsel to the Superintendent
John Franchini, Superintendent of Insurance
Jolene Gonzales, Chief Administration Officer
Lisa Reid, Director, Life and Health Division
Alan Seeley, Deputy Superintendent and Chief Actuary
Ana Kippenbrock, Law Clerk

Guests Present

A guest list is attached in the original minutes of this meeting.

Chairman Krahlung welcomed those in attendance to the meeting. He asked guests attending to introduce themselves to the Committee. Following their introductions, Superintendent Franchini introduced staff members from the Office of the Superintendent of Insurance.

APPROVAL OF THE AGENDA

The purpose of this meeting is to get caught up and review legislative activity for OSI.

Mr. Marks moved to approve the agenda as presented. Ms. Saenz seconded the motion and it passed by unanimous voice vote.

APPROVAL OF MINUTES

- **Minutes of October 23, 2014**

Mr. Marks moved to approve the minutes of October 23, 2014 as presented. Ms. Saenz seconded the motion and it passed by unanimous voice vote.

LEGISLATIVE SUB-COMMITTEE'S REPORT *(Jason Marks, Sub-Committee Chair)*

- **2015 Legislation**

Chair Krahling said the Committee approved a bill to be introduced to make our work more effective. Mr. Marks, Mr. Parra and he were on the sub-committee. They approached Senator Leavell and asked him to carry the bill and he agreed. He suggested Larry Larrañaga for the House sponsor. Chair Krahling and Mr. Marks met with them and they agreed to the language and asked it to be prefiled and we did that and got SB 3.

On behalf of committee, he recognized Mr. Marks for all of his work. We could not have picked a better chair for this committee, He worked hard on it and did an incredibly good job. Dr. Saenz also worked as a legislative analyst and was invaluable in shepherding it through the House. She did a terrific job. And Norm Becker and Mr. Parra did a great job with lobbying. Mr. Yurcic got the Senate Pro Tem on board. So it was a really good team effort. He also thanked Tom Herbert from the Insurance Association and Brent Moore who also helped. Dick Mason spoke eloquently on our behalf so thanks to him as well as the Superintendent, David Barton and all of their staff.

Mr. Marks commented that the legislation doesn't provide any personal benefit to any of us but it makes the operation of this committee better and help our successors' work more effective. It doesn't help the industry particularly or consumers particularly but the process is better. In honest modesty he said he did work intensively on it and Chris Krahling was always there and once we made it through Senate committees with a few problems, he got busy with his work and Mr. Krahling was here all the time. Everything helped make it work.

Mr. Marks highlighted the bill. On page 1, the LCS suggested that the original legislation was ambiguous on ethics legislation for Open Meetings Act. It appeared from the specific acts that committee members are covered under OMA, as committee

coverage but not as individuals and under Financial Disclosure the members were not covered. And on page 13, line 4, you can see the language got changed for us. Page 1 is the financial disclosure act. The members were added to the Financial Disclosure Act provisions. He repeatedly got questions from legislators about why they were doing this work so we acceded to that. It involves downloading a disclosure form from the Secretary of State web site. This will be done annually. And members have to remember to do it in January (p 4, line 18). He suggested that the Superintendent's office remind the members every January.

On page 10, the bill has assigned the Committee the responsibility for approving compensation instead of by legislature. DFA put out a fiscal analysis that raised a red flag on it that we were trying to set a salary without an appropriation. But the Committee pointed out that this is just the same as any other executive and needed an appropriation to cover it so we added that at line 12. Other than that, the legislature ultimately agreed that there was no other practical way to handle salary. So going forward, the Committee will set the salary within the range of cabinet officers.

Mr. Parra thought that doesn't mean they will specifically appropriate an amount for the Superintendent.

Ms. Gonzales said right now it sets \$114,000 specifically in the appropriation. Presumably if you make that recommendation then the legislature might qualify it.

Mr. Parra asked if that meant setting the salary would have to wait until the next legislative session to approve it.

Ms. Gonzales said probably not.

Mr. Marks believed this year the Committee could set a salary less than the appropriation and then next year, could put in a line item for salary. He had no idea it was \$114,000 so the legislature decided what they wanted.

Page 14, line 18 took out the residency requirement and on page 15 took out the relative prohibition. We had asked that language to be struck entirely and allow the Committee to determine it. But the legislature was not willing to abandon that language entirely. They agreed to take out the child and agreed to spouse in industry in other state. Maybe even at the federal level.

The last aspect (page 14) administratively attached to OSI. Section K at line 5 and was another sticking point. We requested when dealing with confidential information, that we set it up to protect the employee to not feel pressure to divulge anything. But the concern of legislators was that we would stifle whistle blowing. We explained we were not gagging any committee members and thought there were other laws that dealt with it. But the legislators wanted something that looked like it didn't take away the first amendment language. So we got compromise language. Whistle blower reporting

allows the Committee to hear it.

Mr. Marks said this positions this Committee to meet as necessary to keep members apprised of the performance of the Superintendent and the agency. It takes a majority of members to appoint a Superintendent.

Overall, the story we followed on the new form of OSI is positive and overall, very little needed to be change. All who testified on the bill were very positive. This was one of the first bills the Governor signed.

Chair Krahlung said the subcommittee members appeared before five committees and prefaced all statements that this is a success story. Secondly, this Committee, structurally, is sound and we have done our job.

SUPERINTENDENT'S REPORT (*John Franchini, Superintendent of Insurance*)

- **2015 Legislative Initiatives**

Mr. Franchini thanked all Committee members for taking this legislation. They made it logical and simple so there was no question about integrity of the Committee's work and has some correct controls to eliminate any appearance of impropriety. People asked him about it and he demurred and only read it last night.

Basically, they had five legislative initiatives. SB 663 (the conversion to modern high-tech for licensing) ran very well until it got to the House Business Committee. It is complicated and complex and it was late. And it took the bill writer from three weeks before the session to get all the stuff from SBS. The bill writer didn't finish it until 30 days into the session.

What we found was two mistakes in the bill that was misapplied in the statute and a mistake on bail bondsmen. We are already processing this and will have it done before the end of summer and present to several committees. It isn't good and we will do it correctly to be done before 2017 because SBS will be implementing it. We really want it to be passed. This will be a great asset. SBS (state based system) is the software. New Mexico will be the 43rd state to use it. We will be ready for it and confident for passage.

SB 577 is a bill he really liked and the way it will eliminate the 1950's and 1960's transaction system since it no longer fits. This will simplify tax collection. This bill passed even though it started late. We had heated discussions on how it should be worded. It sat on the Speaker's desk until close to the end of the session and did get passed. He is already using the procedure as a year of practice to see how it works.

SB 220 is prevention legislation. Especially in rural areas, people could not get credentials. This law will help carriers to understand that they have to respond within 45 days and if turned down, would have to give the reasons why. A cardiologist in Carlsbad worked two years without getting credentialed. It has teeth in it now and they have to justify why they are not credentialing.

The Vaccination bill - we will give information on it. The Department of Health will do the billing. It will ask how many children the company insures so the State can meet the costs of vaccinations. New Mexico is in the top five states to vaccinate children

SB 412 is the escrow company act which corrected mistakes in wording.

Another bill from two years ago allowed OSI to be regulator of pharmacy licensing and have a fair playing field. To do so, they needed a million dollars to manage this but haven't gotten that yet. But, OSI has registered managers in the state and is now reviewing complaints in the state. OSI is having trouble getting them to follow their own contracts.

Roberta Baca added that SB 644 was a bill to allow OSI to handle minor violations that would allow them to go from misdemeanors to felonies. She is very optimistic about it.

Mr. Parra saw the legislation for modernization as good. He asked about the timing on it and if it would jeopardize accreditation.

Mr. Franchini said it won't jeopardize it.

Mr. Parra agreed and said there are ways we can help with them.

Mr. Franchini said he expects both bills that were not passed to be passed next time. They will be able to use the SBS for the computers just the same as everyone else.

Chair Kraehling encouraged Roberta Baca to keep pressing.

- **State of OSI Transition**

Mr. Franchini said among the- new hires, Roberta Baca and Gloria Regensberg are here. He identified the nine new hires since July 1. They also have several contracted resources He anticipates 17 new hires, not including ACA and listed the positions.

For the ACA grant, they leased at a building at 6200 Uptown Blvd, Suite 100. Seventeen positions have been approved and eight have been posted. There is a two-way conferencing area between Santa Fe and Albuquerque. It is making it easier for the public to deal with OSI. It is all wireless networking, He is happy where they are going

with this. ACA requires more professional services and makes sure of the quality of care. They will be accountable to the Health Exchange. This Committee could have the next meeting in Albuquerque at our offices.

Regarding Budget he said OSI was blessed with a legislature that wants OSI to succeed with \$17 million; \$4 million from federal and \$7.8 million for operations. He felt they are budgeted correctly and have tools to do the job. When Ms. Baca came, we wanted to be certified to make sure it works right. It is like a hospital and following state and federal guidelines. Our evidence was not compliant. We will get a fraud bureau certified because insurance fraud is so technical and consequently, no counties want to do it. OSI got six convictions then and now has 10 and the investigations are going on right now. We have a dedicated prosecutor now and are going forward.

He listed the goals for the coming year:

Accreditation - the 5-year accreditation is up this year so we need to get it renewed. We've gotten tougher and more professional. We will know the outcome in August.

Industry Evaluation - They came up with a great list. We have come up in the ranks and now are 23rd. We should be proud of that.

Mr. Marks thanked him for a good report. This computer upgrade has needed to happen for ten years and has been a glaring risk for years. It was not compatible with the national system.

Mr. Franchini added that it took four years to get that confirmation that Mr. Marks was right.

Chair Krahlung asked if the LFC is concerned to get this done.

Mr. Clark agreed. They understand the needs and supports the Superintendent.

Chair Krahlung said he got the rating report from Mr. Turbett and related that we went up a whole letter grade two years in a row. It is very comprehensive how they come up with the letter grade. He gave kudos to everyone in the office for that accomplishment. Congratulations. We talked about that at the legislature.

Ms. Gonzales handed out the annual report.

Mr. Franchini said he is happy being the Superintendent. His work is not done and he would like to finish it.

Chair Krahlung asked if the Committee could move this report up to November 1 instead of December 1. The new committee is charged to meet once a year. If they are going to meet once, they should talk about the annual report and then approve a

compensation package. It would be a little more timely.

Mr. Franchini agreed.

Mr. Barton pointed out that there is usually an NAIC conference around that time but we can work it out.

CHAIRMAN'S REPORT (*Chris Krahlung*)

- **Committee Appointments**

Chair Krahlung reminded everyone that their appointments end on June 30, 2015. He discussed this with John Yeager who assured him that the LFC has this on their agenda to make the appointments.

He suggested that members respond to Mr. Yeager or legislative leaders - whoever appointed them. Tiffany Smyth is the person in charge of getting that ready. She understands her work and how to make it fair. So the Governor's appointments are due and if any wish to be reappointed, they need to talk to Ms. Smyth's representative or Ms. Smyth herself.

- **Time Frame for Next Superintendent Appointment**

Mr. Marks suggested in the matter of minutes that the Committee get a time frame to move forward on this. He asked what the Committee wanted to suggest. Going backward in time, we have to appoint a Superintendent 30 days before the Superintendent takes office. It seemed to him that it would be better to get it done before Thanksgiving - so the Thursday before Thanksgiving might make sense. There was general assent among the members.

Chair Krahlung said that would be November 19th.

Mr. Marks said that going back in time toward the present. The law says the Committee shall meet within 90 days of making the appointment and that would be in August. He looked back for the minutes two years ago. The new committee should do the better job with more time to do it and make sure the work gets done. So our recommendation might be that the new committee meet in August. He didn't know who would even call that meeting. It would seem that such a time frame would work best.

He made a list of things that would have to be done then. It included introducing themselves to each other, getting an orientation, and electing a chair. Ms. Kippenbrock is the staff person to coordinate.

The Committee suggested that a temporary chair could call the meeting to order and they could have the election at a subsequent meeting, if needed.

Mr. Parra pointed out that the relative rules still pertain to the Chair.

Chair Krahling agreed. He thought they could meet mid-August and then 30 days later meet to elect a chair.

Ms. Saenz said that fits the timeframe for Superintendent too.

Mr. Marks said if they wanted appoint someone by November 19th, the interviews would need to happen around Halloween so applications in by October 1. So by early September, publish the vacancy notice.

Chair Krahling agreed. He added that somehow, they need a new deal with the AG.

Mr. Barton agreed to follow up on that.

Mr. Parra noted the statute says the Committee shall meet 90 days before appointment.

Chair Krahling agreed and that is why they need legal counsel. They also have to adopt the OMA at the first meeting.

Mr. Kinyon asked who has that responsibility to set it up the first meeting.

Mr. Marks asked if Mr. Kinyon wanted to be reappointed.

Mr. Kinyon agreed but was not sure he wanted that responsibility.

Ms. Gonzales pointed out that the statute says 60 days, not 30 days. It is on page 13, subsection E.

Chair Krahling said once there is counsel on board, it can be worked out.

PUBLIC COMMENT

There were no public comments.

CALENDAR FOR NEXT MEETING

Chair Krahling said this is our last meeting. He thanked everyone for working together for two years and it was his pleasure to work with all.

Ms. Saenz thanked Chair Krahling for his leadership. The other members echoed the sentiment.

Mr. Parra also complimented the Superintendent for serving as a benchmark for the Committee. The agency has been trained and has grown. He has done a good job.

Mr. Kinyon encouraged all members to consider reappointment. It is a very diverse group with different opinions. He served on a lot of committees and this is one of the best he has served on. Nothing was being done behind the scenes. He anticipated it will be good going forward.

The Superintendent said his employees are very happy with this Committee. The Committee- helped stabilize us and help us get our work done and we appreciate that.

ADJOURN

Having completed the agenda and with no further business to come before the Committee, the meeting was adjourned at 11:23 a.m. on motion, second and unanimous vote.