

**Governance Structure Committee
Minutes – Approved
February 5, 2020 – 4:30 p.m.
Town of Ithaca**

Present: Judy Drake, Chuck Rankin, Lisa Holmes, Greg Pellicano (arrived at 4:44 p.m.), Jim Bower, Eric Snow
Phone: Kevin Williams, Steve Locey
Excused: Steve Thayer, Bud Shattuck
Absent: Olivia Hersey
Others: Elin Dowd, Executive Director; Michelle Cocco; Clerk of the Board; Don Barber, Consultant

Call to Order

Mr. Rankin, Chair, called the meeting to order at 4:32 p.m.

Changes to the Agenda

There were no changes to the agenda.

Approval of Minutes – January 8, 2020

It was MOVED by Ms. Holmes, seconded by Mr. Snow, and unanimously adopted by voice vote by members present, to approve the minutes of January 8, 2020 as presented. MINUTES APPROVED.

Review of Responses from Consortium Legal Counsel

Ms. Dowd walked the Committee through Mr. Powers' responses to questions that were presented to him as a result of conversations at the last meeting: Below are the questions, responses from Mr. Powers, and direction given by the Committee.

Section C. Board of Directors

Question: Should the MCA clarify what type of document is being requested in writing?

RESPONSE: No. The governing principle in the drafting of our organizational governance document was to maintain maximum flexibility. Once we start including detail regarding specific forms and other minutiae in the cooperative agreement, we do make it more detailed, but we also make it harder to comply with and less adaptable to periodic changes in administrative practices. If the Consortium wants to require a specific or uniform *type* of written designation from its constituent Participants as part of its regular practices and procedures, that is perfectly fine—but that requirement need not be part of the MCA.

The Committee agreed with Mr. Powers' recommendation.

Section D. Weighted Voting

Question: Can Section D, paragraph 3 be revised to include the wording from the addendum, thereby deleting the addendum and outlining how voting works right in the document, rather than refer to the attached addendum? *If this change is accepted, Addendum "B" will need to be reordered.

RESPONSE: Yes. I agree the weighted voting description itself is somewhat confusing, although I think the example makes it clearer. You may want to think about clarifying Section D (2) (b) as well.

Mr. Barber provided an overview of the background and why this section was originally included in the MCA. He said at that time Tompkins County and the City of Ithaca had almost 80% of the covered lives but only had one vote each on the Board of Directors. This would typically involve premium because benefits are collectively bargained. This provides the larger municipalities a mechanism to exert their weight and have more voting power if a situation arose. He said it has never been put into place but recommended the language remain in the MCA.

Mr. Locey explained for 2020 there are 43 municipalities in the Consortium, three of which have more than 500 employees and 40 with less than 500 employees. The mechanism provides that those three large municipalities would equally share the equivalent of 40 votes (13 votes each), each of the smaller municipalities would each get one vote, and each labor representative would get one vote each. In order for anything to be adopted it would require a two-thirds vote. Under the current membership there would be a total of 85 votes with 56 being needed to pass anything.

There was consensus that the concept should remain in the MCA but directed Ms. Dowd to speak with Mr. Powers and try to develop language to clarify the current language.

Mr. Locey gave an example of e beginning there were efforts to try to make sure that

Section V 3b: Alternative Dispute Resolution: Should this section clarify who pays the cost of the American Arbitration Association of member challenges made to Board decisions.

Question: Whether language for the ADR should be clarified.

RESPONSE OF HANCOCK ESTABROOK: The default rule in American litigation, where it is not otherwise specified by agreement, is that each side to a dispute pays their own attorney fees and litigation costs. That being said, some arbitrators, in their discretion, will order the payment of attorney fees by one side as part of their award. If you want to guarantee a specific procedure with respect to fee shifting, you could add language to the Alternative Dispute Resolution section specifying that result.

The Committee recommended no change for the reason stated by Mr. Powers. Ms. Dowd will communicate this back to municipalities.

Section B3: MCA outlines liability of municipalities to cover asset shortfalls of the Consortium. The Town of Ulysses recommends language be added to make clear that all state-mandated reserves and the unencumbered fund balance are used before assessing municipalities for a pro-rata share of the shortfall.

RESPONSE OF HANCOCK ESTABROOK: The funds earmarked for statutorily required reserves—*i.e.*, those reserves required under Article 47 of the Insurance law or other statutory requirements—may not be invaded to remedy routine budgeting shortfalls; but rather may only be invaded if the triggering conditions under their stated purpose have occurred. That being said, unencumbered fund balance—which is not associated with any of the defined reserve accounts—may be used to satisfy any shortfall created by higher-than-budgeted claims activity. Arguably, it is one of the purposes of maintaining a fund balance to protect against such situations. Whether or not this is mandated as a first step before additional assessments are levied or otherwise remains up to the discretion of the Board when such an event occurs, is a question of policy for the Board.

The Committee recommended no change for the reason stated by Mr. Powers. Ms. Dowd will communicate this back to municipalities.

Following discussion there was consensus to send the draft MCA to the Department of Financial Services for review as soon as practicable. Ideally, the Department would provide comments before municipalities are asked to sign off on the document.

Review of Bylaws

Ms. Dowd said minor clarifications have been made to the document since the last meeting and provided the revised document to Mr. Powers for review. She reviewed those changes and the responses from Mr. Powers.

She referenced Article V – Section 2 “Provided a quorum is present, the Executive Committee shall act by an affirmative vote of a majority of the fully-constituted Executive Committee.” She said Mr. Powers feels the way that it is currently written would mean if the minimum quorum number is present, the vote must be unanimous.

Ms. Cocco explained the following: If quorum is set at the majority of the “fully-constituted” Committee, it would equal half plus one of the total number of members. (For an 11-member Committee, quorum would be 6.). This language requires 6 for quorum and 6 votes in favor of any action. In the event only six members were in attendance it would require a unanimous vote of all present to pass. If this were not the requirement, 6 members would need to be present for quorum and actions would require only 4 ayes out of a Committee of 11 to pass. In the event the Committee grew to 15 members the quorum would be 8. The language would require 8 votes for actions to pass. In the event only 8 members were in attendance actions would require a unanimous vote of all present to pass. If this were not the requirement, 8 members would need to be present for quorum and any action would require only 5 ayes out of a Committee of 15 to pass.

There was consensus that actions should require a majority of the fully-constituted committee voting in favor.

Article VII – Section 4.

Mr. Powers felt that the Consortium should review prior budgets to see if a 10% deviation on any given line item is a material change to the organization’s finances.

There was consensus that the 10% deviation is acceptable as this would apply to discretionary expenses.

Ms. Drake asked if the Committee would feel comfortable in a situation where only six people out of 11 were present that only four votes would be required for something to pass.

Next Meeting

The next meeting will be February 5th at 4:30 p.m.

Adjournment

The meeting adjourned at 5:54 p.m.