

**Governance Structure Committee  
Minutes – Approved  
January 16, 2019 – 5:00 p.m.  
Old Jail Conference Room**

Present: Kevin Williams, Lisa Holmes, Bud Shattuck, Greg Pelicano, Jim Bower, Judy Drake, Ed Fairbrother, Chuck Rankin, Eric Snow, John Fracchia (arrived at 5:07 p.m.), Steve Thayer (via conference call; excused at 6:00 p.m.)

Excused: Olivia Hersey, Dave Schneck

Guests: Don Barber, Executive Director; Steve Locey, Locey and Cahill (via conference call)

**Call to Order**

Ms. Drake called the meeting to order at 5:02 p.m. and asked for introductions of all present.

**Changes to the Agenda**

There were no changes to the agenda.

Mr. Fracchia arrived at this time.

**Committee Organization**

**Membership**

Ms. Drake said the Committee's membership is intended to have broad representation with membership from each of the Counties as well as individuals representing labor, town, city, and village participants of the Consortium. She stressed this is not a closed group and other thoughts and viewpoints are welcome.

**Leadership**

It was MOVED by Mr. Shattuck, seconded by Mr. Fracchia, and unanimously adopted by voice vote by members present, to elect Chuck Rankin as Chair of the Committee. MOTION CARRIED.

It was MOVED by Mr. Shattuck, seconded by Ms. Drake, and unanimously adopted by voice vote by members present, to elect John Fracchia, as Vice Chair of the Committee. MOTION CARRIED.

**Meeting Schedule**

The Committee agreed to meet the 3<sup>rd</sup> Wednesday of each month at 5 p.m. through June.

**Actions and Scope of the Committee's Work**

The Committee agreed to take action based on consensus unless a need arises to vote. Mr. Shattuck commented that he found the survey used during the last process to be helpful and suggested that approach could be used again. Mr. Barber spoke of the previous Committee's work and said the end result was a reduction of one Board meeting and some responsibilities being transferred to the Audit and Finance Committee. Mr. Shattuck noted, however, that this process will be different than before as the Consortium will be bringing staff on and the Executive Committee has asked that the Committee recommend a different structure.

Mr. Barber said there are currently 45 Directors on the Board and it is very likely to move beyond 50 in 2020. From an Executive Director's point of view it is becoming very difficult to keep Directors informed and engaged in the Consortium to make good decisions. He said the Committee should present the Board with an option that provides some flexibility going forward as it will continue to grow.

### **Article 47 Governance Structure Requirements**

Mr. Barber reviewed a chart included in the agenda showing the structure of the Consortium, NYMIR (Article 61), and SWSCHP (Article 47) and presented the following list of issues that have been identified that need to be addressed:

- Labor Representation on Governing Board
- Compliance with Article 47
- Weighted Voting
- Decision making process
- Balancing partner ownership with ability/desire to participate in decision making
- Process to provide operation's information to partners
- Finding a balance for those partners that don't have time to get involved with those partners that do

Mr. Locey said there are two section of Article 47 that deal with what the Consortium is required to do:

4702 (c) "Governing board" means the group of persons designated in the municipal cooperation agreement establishing the municipal cooperative health benefit plan, to be responsible for administering the plan.

4705. Municipal cooperation agreements. (a) The municipal cooperation agreement, under which the municipal cooperative health benefit plan is established and maintained, and any amendment thereto, shall be approved by each participating municipal corporation by majority vote of each such corporation's governing body, and shall:

(8) establish a governing board to be responsible for the management, control and administration of the municipal cooperative health benefit plan, provided any municipal cooperative agreement to establish such a plan which is entered into after the effective date of this article shall provide that unions which are the exclusive collective bargaining representatives of employees who are covered by such health benefit plan shall be entitled to representation on such governing board.

Mr. Locey said this was one of the first hurdles the Consortium had to overcome with the Department of Financial Services (DFS) and noted that the representation labor is entitled to is not defined. The Consortium was instructed by DFS to come up with an agreement and if everyone agreed to it the Department would approve it. He explained labor represents 15% of the Board membership. This percentage was based on collective bargaining units on average paying 15% of the premium. The formula for labor representation on the Board is still 15% but there is a structure where another labor representative is added for every five municipalities that join. He noted any recommendation on membership of the Board must include representation from labor.

Mr. Locey called attention to the following provision that must be included in the MCA:

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(1) describing the composition, number and procedures under which governing board members are chosen, provided that, for those agreements entered into after the effective date of this article, the governing board shall include representation by unions which are the exclusive collective bargaining representatives of employees covered by the plan, and that such unions shall establish and agree to the procedures by which the member or members of the governing board which represent unions are selected;

Mr. Locey said the Law doesn't state who has to be on the Board, but it does outline the Board's responsibilities:

(2) designating one governing board member to have custody of all reports, statements and other documents of the plan; and

3) that the governing board shall meet at least annually at a time and place in this state designated in accordance with the agreement.

He spoke to the savings being realized by membership in the Consortium, particularly to small municipalities and said they are seeing approximately a 25% savings from what they could have purchased in the community-rated environment. In response to Ms. Holmes concerning weighted voting, Ms. Drake said although that is included in the MCA it has never been used. There have been discussions related to coming up with a formula based on region and Ms. Drake said Mr. Locey has frequently spoken about the potential for a change in demographics if membership were to be extended to an area beyond the 7-county region currently allowed.

Mr. Locey said at present the Consortium could potentially have 133 municipal participants: 7 counties, 4 cities, 85 towns, and 37 villages. At this time participants include 2 counties 2 cities, 26 towns, and 9 villages. Ms. Drake noted the outstanding issue of whether groups such as Soil and Water Conservation Districts can join. Mr. Fairbrother said he, too, has received inquiries, including whether the Soil and Water Conservation District in Chemung County can join. He suggested a structure be considered whereby a Director would go back and communicate and share information with other participants.

Mr. Barber said any change to the MCA will need to be approved by each of the participants and DFS. He explained the composition of NYMIR's 13-member Board of Governors which establishes its own bylaws and Ms. Drake questioned whether the MCA can be simplified in a way to make the structure similar to that of NYMIR. She spoke of the process required by DFS for each of the municipalities to approve the MCA each time changes are made and suggested substantive changes be made to the MCA that would allow for approval of bylaws by the Board. Mr. Locey said the MCA has to contain language that describes the composition, number, and procedures under which governing board members are chosen.

Mr. Shattuck raised the point that there are many small municipalities that are receiving a significant cost savings by being in the Consortium but do not have time to attend a lot of meetings. He questioned whether a look can be taken at each of the counties or grouped areas and select representatives of those areas, particularly as the Consortium is growing into other areas.

Mr. Locey said the MCA currently says that no one person can represent more than one municipality. He doesn't believe this is required language but something that has historically been language to make sure that each entity has a representative. If this language was

removed the possibility would exist for multiple towns of villages to elect the same representative.

There was discussion of other municipalities joining and what the potential impact on the structure could be. Mr. Shattuck suggested if a representative model were to be recommended, basing it by county might not work the best.

Mr. Thayer was excused at this time.

There was consensus that Mr. Locey and Mr. Barber should present John Powers, the Consortium's legal counsel, with the following questions:

- In the current MCA: Can "4. No Director may represent more than one Participant" under C. Board of Directors be removed?
- Can a person represent a municipality in an Article 47 Municipal Cooperative if they do not work for or are an elected official of a municipality?

Ms. Drake also suggested asking if a lot of the language in the MCA be simplified since it was initially drafted based on a much small number of participants.

Mr. Barber offered to provide members with information on SWSCHPS, a school district that is a large Article 47 and NYMIR which is an Article 67. He commented that NYMIR holds an annual meeting where everyone has an opportunity to attend or vote by proxy.

Ms. Drake asked that members think about the decisions that take place between meetings and what structure and responsibilities committees should have in addition to how members would be appointed. Mr. Shattuck said another important topic to discuss is labor.

Mr. Fairbrother commented that with technology there are a number of ways for people to be involved and stay informed. Mr. Pellicano said although having a connection is important he doesn't believe it is a necessity. He likes a representative structure and thinks municipalities in his County would support allowing him to represent them.

Mr. Barber will also explore the idea of a proxy with Mr. Powers. Mr. Williams said he doesn't support a proxy being permitted because of ways it could be used to influence an outcome. He suggested there be a structure that provides a designation and a term. He also thinks each municipality should come to at least an annual meeting to set rates. Mr. Bower questioned allowing someone who isn't engaged for most of the year to be allowed to vote on rates. Mr. Barber responded that NYMIR officers only vote on rates; the annual meeting is held at a different time of the year. Ms. Holmes said a representative model makes a lot of sense but seems like it is a moving target since the Consortium is growing. She suggested a model could include representation from counties, cities, towns, villages, and labor.

The Committee will be provided with the response from Mr. Powers prior to the next meeting on February 20th which will inform further discussion.

### **Adjournment**

The meeting adjourned at 6:30 p.m.