

NEW MEXICO INSURANCE NOMINATING COMMITTEE

MEETING AGENDA

THURSDAY, SEPTEMBER 19, 2019

1:30 P.M.

State Capitol Building, Room 311

409 Old Santa Fe Trail, Santa Fe, New Mexico

1. CALL TO ORDER

Chairman Thompson called the meeting to order at approximately 1:35 pm.

Members Present:

R.E. Thompson, Chair [telephonically]

Allegra Carpenter

Jennifer Ford

Benny Hodges

David Hunton

Douglas Perkins

Geoffrey Romero

Patricia Green Williams

Scott Yurcic

Others Present

Melissa Martinez, Office of Superintendent of Insurance, Board Administrator

Marah deMeule, Office of the Attorney General, Board Counsel

Sally Malavé, Office of the Attorney General

John G. Franchini, Superintendent of Insurance

Bryan E. Brock, Deputy Superintendent of Insurance

A. INTRODUCTIONS

Chairman Thompson asked everyone to introduce themselves. Each of the members of the Committee introduced themselves. Staff members and other attendees also introduced themselves.

B. Swear in Members

Chairman Thompson asked each member to raise their right hand. He swore in the members with their hands raised.

C. Approval of the Agenda

Chairman Thompson asked for any corrections or additions to the Agenda.

There were no changes to the Agenda, and it was accepted as published.

D. Approval of Minutes

Regular Meeting Minutes of January 4, 2019

Chairman Thompson asked for any corrections or additions to the meeting minutes. He noted for the record that members who were not at the meeting could still vote on their approval.

Ms. deMeule pointed out that ten members were listed but, by statute, it is a Board of nine members. She explained that one outgoing member was counted in error as a current member.

Ms. Martínez said that was Bill Kinyon and she offered to make that change.

MOTION: Member Hunton moved, seconded by Member Romero, to approve the minutes of January 4, 2019 as amended.

VOTE: The motion was approved by unanimous voice vote.

3 ADOPTION OF OPEN MEETINGS ACT RESOLUTION (NMSA 1978, § 10-15-1(D))

Ms. deMeule explained that it must be adopted in a transparent manner and identified specific requirements of notice and dates. Advance notice for regular meetings is 10 days. Special meetings have a required 72-hour notice. Hopefully, no emergency meeting would ever be needed. Such meetings can only be held when a danger to public health and safety would occur and a meeting notice would be posted with a report to the New Mexico Attorney General right after the meeting to explain the reason that it is an emergency meeting and to report what took place at the meeting.

Paragraphs 4 and 5 regard publication through the website and notice to any publications of general circulation and email distribution to those who have requested notice. That also provides for how the Nominating Committee will provide assistance for those with a disability.

The Open Meetings Act also requires that an executive or closed meeting would only occur in limited circumstances such as discussing candidates for Superintendent of Insurance and after coming out of executive session, the determination is made publicly with members all voting publicly.

The Committee Meeting must be done in person. We are able to accommodate members when they are out of town but not for just a convenience to the member.

There were no questions or comments.

MOTION: Upon motion and second, the Open Meetings Act Resolution was adopted as presented by unanimous voice vote.

4 DISCUSSION OF PER DIEM AND MILEAGE RULES AND POLICIES FOR COMMITTEE MEMBERS

Ms. Martínez reported on the regulations and policies, including those on Per Diem and Mileage.

Chairman Thompson commented briefly on them.

No action was needed for this item.

5 RECRUITMENT PROCESS FOR THE NINTH MEMBER (NMSA 1978, § 59A-2-2.1(A)(3))

Ms. deMeule pointed out the advertisement did not include § 59A-2-2.1(A)(3)'s restrictions on who can be the Chair. It includes that the Chair cannot be someone who has a direct financial interest in insurance transactions in New Mexico. She recommended that the restriction should be included in the advertisement.

Chairman Thompson agreed.

Member Perkins asked if that language was included on the website.

Ms. deMeule was not certain if it was. She was referencing newspaper advertising and presumed the website notice would have the same language. Two blanks that must be filled in are the date to select, which is on October 11th, and secondly, at the end, the date that all applications must be received before. Also, the interviews would all be done in open session.

Member Carpenter stated a closing date of October 9th did not give the Committee enough time to review the candidates and suggested October 1st.

Chairman Thompson said he assumed those would be prepared for notice and circulated.

MOTION: Member Romero moved, seconded by Member Perkins to publish notice with the required statutory language and dates.

Discussion on the Motion:

Ms. Martínez clarified that the motion needs to specify the newspapers in which to publish and the dates for the notice to run. Staff prefers a once a week publication schedule.

Member Carpenter asked how much time it takes for the paper to publish the notice.

Ms. Martínez said 3 days are required for the New Mexican; two days for the Las Cruces paper and the Albuquerque Journal.

Member Carpenter saw that does not leave much time. She recommended publishing immediately. She recommended advertising every day for one week.

Member Romero added that it should be also on the website.

Ms. Martínez pointed out that the last time they ran it for one day and the cost was over \$500 just for the Journal. Las Cruces and Santa Fe newspapers are more expensive. So there is cost to do this. We had to choose the paper with the highest Sunday circulation.

Member Perkins asked them if she was saying they needed to contain the cost. He asked if \$500 was too much to spend.

Ms. Martínez didn't know but she understood that last time the budget was constrained.

Superintendent Franchini thought we could advertise it for three days.

Ms. Malavé suggested condensing the published ad and direct interested parties to the website for further details.

Member Carpenter asked if it is published as an ad.

Ms. Martínez said it runs under Legal Notices. She thought Ms. Malavé had a good point.

Member Hodges asked about publishing on Monday.

Member Romero was concerned with limited circulation and asked about TV announcements. He pointed out that many people do not read the newspapers these days. Perhaps those who would be interested would read traditional publications.

Member Carpenter wondered if there was time for that. The deadline is short, unless there is a message by email.

Ms. deMeule was not sure. But you could direct the administrator to follow your suggestions. October 1 would be the last date for publication.

Ms. Malavé pointed out that in her experience, publication in trade magazines, while that could be done, is more expensive.

Ms. Martínez added that with the October 1 deadline, publication in a trade journal would not work.

MOTION: Member Carpenter moved, seconded by Member Perkins, to appoint Member Romero run this project.

VOTE: The motion passed by unanimous voice vote.

6 RECRUITMENT PROCESS FOR SUPERINTENDENT (NMSA 1978, § 59A-2-2.1(G))

Chairman Thompson asked the members to look at the questions.

Member Ford said she did not receive questions.

Member Carpenter asked if it was necessary to have a pre-prepared list of questions. On other Commissions where she had served, the members just posed their own questions at the interview.

Chairman Thompson agreed the Committee could do that, but it might be helpful to have a list for comparison. All the questions should use common sense.

Ms. DeMeule related that previously, a subcommittee had prepared the questions and tendered them to the Committee for approval.

Chairman Thompson suggested maybe 2-3 should be done prior to the interview meeting.

Member Hodges thought that would not preclude any member from asking questions.

Chairman Thompson agreed.

Chairman Thompson had tentatively scheduled a meeting for Oct 11 at 1:30 pm.

Ms. deMeule suggested asking for best times of members for their travel time and schedules.

Chairman Thompson asked if meeting at 1:30 p.m. was a problem

Ms. deMeule asked if this is about meeting on October 11 or a November meeting. She pointed out that historically, there have not been a large number of applicant - two in a previous time and only one last time. The members have also helped with recruiting because they are well connected in the insurance industry. Regarding a meeting in the Round House, she pointed out that the building closes at 5:00.

Chairman Thompson suggested meeting on October 11 and asked if anyone wanted a different time or a different setting.

Member Hunton said he would be fine with a 10:00 a.m. time.

Member Hodges said that would be better for him also.

Chairman Thompson asked Ms. Martínez about something and she had trouble hearing him

Chairman Thompson was asking if the Committee could meet at PERA on Saturday.

Ms. Martínez said both PERA and Capitol would be closed on Saturday, but the Committee could meet in Albuquerque on a Saturday. The Independent Insurance Association has offered us to use their building in Albuquerque. She could get that moving forward as a future meeting site. They offered it for the meeting on November 16 at 10:00 am.

There were no other questions and no action was taken on this agenda item.

7 FY20 SUPERINTENDENT'S ANNUAL COMPENSATION (NMSA 1978, § 59A-2-2(D))

Chairman Thompson made a few comments about the Superintendent compensation.

Ms. deMeule said it would be proper to have the Superintendent address requests to the Committee, so they know what is coming to them.

Member Carpenter commented that this seems improper to deal with at our initial meeting.

Member Romero asked what the responsibility of the Committee is.

Ms. deMeule suggested the Committee could table this matter to the next meeting.

Member Hodges asked what is budgeted.

Ms. deMeule did not know. The duty is to set the salary upon appointment and annually thereafter, and that has not been set this year. But the Sunshine portal has that information. She added that it must be set as equivalent to a Cabinet Secretary salary. It is also subject to legislative appropriations. She quoted, "The Superintendent compensation is to be no lower than the lowest compensation of a cabinet member and not higher than highest." She clarified that the current Governor put them all at the same level. In the listing, they are now at \$156,000 per year.

Member Romero concluded that the Superintendent salary is set at \$156,000 per year.

MOTION: Member Romero moved, seconded by Member Hodges, to approve the Superintendent's compensation at \$156,000 per year.

VOTE: The motion was approved by unanimous voice vote.

Chairman Thompson said that will be communicated.

Ms. Martínez asked if she was understanding clearly that she was not publishing anything yet about the Superintendent.

Member Romero agreed but we could discuss the Superintendent notice.

Member Yurcic asked how long we want to advertise this.

Ms. Martínez pointed out the draft in your packet.

Ms. DeMeule asked the Committee to set a deadline for letters of interest.

Member Hodges said November 8 would give the Committee eight days to review them.

Member Carpenter suggested November 1. She was thinking about what was done last time with ads on four Sundays.

Member Yurcic noted that the definition of qualifications narrows down the possible field of applicants considerably.

Ms. Martínez said the Committee can come up with the job description and there is also application information to share.

Member Hodges understood it is a four-year term. He asked if the Chairman is also a four-year term.

Chairman Thompson said the selection of the Committee could be challenged in court. He asked if a candidate for the ninth member would help resolve that.

Member Romero said the job description of the Superintendent should be clear.

MOTION: Member Carpenter moved, seconded by Member Romero, to create a subcommittee to work out specific language for the Superintendent advertisement and prepare a basic application form.

Discussion on the Motion

Member Hodges asked about the form.

Ms. Martínez said- there is a form for the appointment but is not detailed with any questions. It is somewhat like a financial disclosure form. There are also resume-type questions but there is a draft.

Member Carpenter suggested the basic application used by the current administration uses is a good starting point to use and cover the basics.

Member Hodges agreed.

Member Yurcic asked what the deadline for the subcommittee would be.

Ms. Martínez asked if they wanted an ad before that.

Member Carpenter suggested advertising four Sundays in October for the Superintendent position.

Ms. Martínez agreed, as long as the subcommittee gets the application completed by then.

Member Yurcic asked if the work could be done by October 1.

Ms. Martínez said yes.

Member Carpenter asked how many could be on the subcommittee.

Ms. DeMeule said it must be less than a quorum so four or less.

Member Hodges agreed to serve along with Member Ford, Member Carpenter and Member Williams.

VOTE: The motion was approved on a unanimous voice vote.

Mr. Brock related that the former Nominating Committee reappointed the Superintendent and set the salary at \$125,000. That paperwork for was sent to DFA for approval and was never completed. In the interim, there were efforts to get approval. He reached out to the Governor's office and the Governor responded that DFA would respond. However, DFA wanted confirmation to support this level of compensation before they would sign off and to approve the salary level before July 1.

So his request was to place that item on the next agenda to ratify the action taken on March 15 by the former Nominating Committee. This was his attempt to comply with the law. He clarified that the original action was taken at the meeting on March 10, 2016.

Member Hodges asked if the Committee could have those minutes.

Mr. Brock said yes.

Member Carpenter wondered if this Committee has the authority to ratify an action taken over three years before.

Ms. deMeule said that was why she requested they provide the information to support the authority.

Member Williams asked what is it that put that motion into action.

Mr. Brock explained that after the vote, our office sent the matter to DFA and DFA did not take any action.

Member Williams asked if he would provide that documentation.

Mr. Brock said he would.

Chairman Thompson asked why DFA did not act on it.

Mr. Brock said he had received two conflicting notes from DFA. One communication sought approval by the new committee for what the old committee voted on and the other was about approving it beyond the fiscal year.

Chairman Thompson wanted the new Committee to approve the \$125,000 salary effective when it should have been effective.

Member Carpenter explained to him that the Committee wants to put this on the next agenda.

Chairman Thompson understood and said okay.

Member Williams said it was included when the 2016 FY was closed out so she would need information about financial procedures for that raise to have happened in 2016.

Member Ford asked if there is any provision for retroactive pay.

Mr. Brock said he could look at times when lawsuits are resolved, and the State goes back to retroactively pay those salaries. But Member Williams' question is important. This is different from a lawsuit.

Member Carpenter asked how that could be determined. She wondered if the Attorney General could help with it.

Ms. deMeule said she appreciated the opportunity to provide the analysis.

Member Williams appreciated the distinction that Mr. Brock brought up. Settling lawsuits is very different. If Ms. deMeule could help us with that distinction - obviously this is not a lawsuit and reserves would not be triggered.

Member Romero wanted to know what could be done.

Chairman Thompson agreed to put that on the next meeting agenda to request retroactive salary adjustment.

MOTION: Member Romero moved, seconded by Member Hodges, to put the retroactive salary adjustment on the next meeting agenda.

Ms. DeMeule pointed out that this needs enough time for a full analysis and asked if the information could be provided two weeks ahead of that meeting on October 11.

VOTE: The motion, as adjusted, was approved on a unanimous voice vote.

Member Carpenter asked about procedure for electing a chair if Mr. Thompson is a candidate. It would be inappropriate for the Chair to be part of the selection process. We should discuss it, but she proposed the applications received not go to Mr. Thompson and wondered how we could manage that.

Ms. deMeule said this has happened previously. The interviews were very informal by the Committee with questions from all. A vice chair was formally elected to stand in when the chair was not selected at that time and such a provision is available to this Committee also. And that person could do that.

She agreed with Member Carpenter that the Chair should be recused from selection of the ninth member and should be precluded from access of the application packet.

Chairman Thompson said he was fine with that.

Ms. deMeule asked if Ms. Martínez understood the restriction.

Ms. Martínez said she did understand.

Member Perkins asked if any member was willing to serve as Vice Chair.

Ms. DeMeule suggested an election of Vice Chair be placed on the next agenda.

MOTION: Member Hodges moved, seconded by Member Romero, to put Election of Vice Chair on the agenda for the next meeting.

VOTE: The motion was approved by unanimous voice vote.

Member Williams wanted an understanding of OMA restrictions on a subcommittee.

Ms. DeMeule said the membership must be less than quorum; and a subcommittee is not authorized to act but just to make recommendations back to the Committee. The subcommittee has four members to it is less than a quorum.

7. PUBLIC COMMENT

There were no public comments.

8. FUTURE MEETINGS AND LOCATION

Ms. Martínez had a draft agenda for the October 11 meeting and commented on it. She explained that the November 16 meeting would also be in Albuquerque and asked the members if they would also like to have the October 11 meeting in Albuquerque.

The Committee members generally agreed to have that meeting in Albuquerque. However, Member Carpenter was concerned about having the meeting at the Independent Insurance Association headquarters.

Member Perkins offered his office as the meeting place.

The Committee discussed whether to meet on a Saturday.

Ms. DeMeule appreciated their concern about appearance if they met at an industry office.

Chairman Thompson asked if anyone objected to having both meetings in Albuquerque.

There was no objection.

Chairman Thompson said they could try to find another neutral location.

9. ADJOURNMENT

MOTION: Member Romero moved, seconded by Member Perkins, to adjourn the meeting.

The meeting was adjourned at 2:53 p.m.