



**MINUTES OF THE MAY 4, 2021
MEETING OF THE
NEW MEXICO SELF-INSURERS' FUND
BOARD OF TRUSTEES**

The regular meeting of the New Mexico Self-Insurers' Fund Board of Trustees was called to order by Chairperson Linda Calhoun at 2:00 p.m., May 4, 2021. Mr. AJ Forte was present at the offices of the New Mexico Municipal League in Santa Fe, New Mexico and many others attended via Zoom.

The following members were present: Ms. Linda Calhoun, Ms. Elise Larsen, Mr. Joe Neeb, Mr. Andy Nunez, Mr. Randall Ryti, and Mr. Neil Segotta. Staff members present on the call included: Mr. AJ Forte, Mr. Clinton Nicley, Ms. Glenda Sanchez, and Ms. Kathy Hennessy. Judy Stubbs was also present.

1. Approval of the Agenda.

Neeb moved to approve the agenda for the meeting. Larsen seconded the motion and upon a vote the motion carried unanimously.

2. Approval of Minutes of 2/17/21 Meeting.

Neeb moved to approve the minutes of the 02/17/21 meetings of the NMSIF Board of Trustees. Ryti seconded the motion and upon a vote the motion carried unanimously.

3. New Board Members

Calhoun mentioned that there were a couple of potential new Board members present at the meeting, and asked that introductions be done on the potential new members. Forte asked the potential new members to introduce themselves.

Mayor Hull indicated he is from the State of New Mexico and that he enjoys being part of the Board, appreciates the support, and will work hard to achieve the goals of the Fund. Hull indicated also that he is eager to learn and work.

Member White indicated that he had been through the MOLI program with Mayor Calhoun. He has been on the board for a long time and is past president of League, former Mayor of Eunice and now manager of Jal. Indicated he has a lot to learn.

Forte indicated that we have heavy lifting to do, and this meeting will establish the hard work done by staff over the last eleven months. Forte also discussed previous budget adjustment requests, revamping finance shop, adding staff to help navigate antiquated financial system.

Forte talked about Dannette Burch's extensive background, including having worked for her at the legislative finance committee some twenty years ago. Forte said learning from Dannette over past couple of decades had been rewarding and we all get to do that now.

Segotta moved to approve the new members of the NMSIF Board of Trustees. Larsen seconded the motion and upon a vote the motion carried unanimously. Calhoun welcomed the new members to the Board.

4. Legislative Summary

Forte mentioned that it had been a tough and unique session where the Fund adapted where it could. Forte said we had two major pieces of success, one complete and one marginal.

Forte talked about House Bill 4, and that he was getting many questions. The Fund just issued a memo to help insureds know that there is no personal liability under the new Civil Rights Act. There is now a different standard in place. House Bill 4 helped create a Section 1983 action in state court. The presentations made by opponents of the bill concentrated on the lack of holistic problem-solving in the legislation. Forte gave the example of the different standard a hypothetical might provide under the Tort Claims Act and the Civil Rights Act. We do have a concern, but not the same concern as other insurers because the Fund is unique in that is self-insured and its dual role as a reinsurer. No one else in the country has quite the setup that we do. Being a founding member of NLC-MIC helps. Director Fulginiti founded this in 1980 and his work allowed NMSIF to be the largest equity stakeholder in the country. If another municipality asked to join the Fund, it is difficult to let additional members in without an equity buy in.

There are things this helps with, such as navigating the need to own and use body-worn cameras. Buying the body-worn cameras is a big deal. House Bill 4 is now connected to this other bill; the new statute of limitations means that we'll have to retain footage for a longer period of time. I will be presenting on all of these matters to the Police Chiefs meeting. Staff will put together options on how the Fund would like to protect itself. We have coverage up to one million, reinsurance up to two and one-half, and members are bare after that reinsurance. This will be a severity issue on the go forward. We will work with actuaries to develop a methodology on the extent to which the Fund deals with claims. Reserve levels for the Fund means there is no cliff approaching, and there is no July 1 concern because claims will take time to materialize. Staff will have time to build a methodology that is equitable for all, but we need to work on how to protect the pool when municipalities get claims floods.

We have to be more cognizant of how we deal with claims, because they can run two million dollars apiece. That does not mean every claim is worth that amount, but we'll have to be thoughtful about the jury we argue to, and where we roll the dice on litigation. Some members will be very expensive, some we will be able to push further. Federal courts give us some comfort because of the different standard, and we do not have that same confidence within the state. When this bill came out of Judiciary Committee, it did not have a cap, and the reduction to two million was the most important of the successful amendments. We did not get everything we needed, and other opponents undertook efforts to define the cap at two million – not an ideal result, but it is workable. And the Fund will get to decide how to deal with these new claims based on a menu of options we provide to the Board. Our reserve levels thankfully give us the luxury of time. There is no profit motivation in our world, and the Board will get to decide how to handle those claims over time.

We've used dividend credits, self-insured retentions, but those mechanisms haven't worked historically, and it is not in the best financial interest of members to continue this practice. That's why staff has worked with the actuary, to develop a methodology that prevents harm. We'll need to answer how to handle high-frequency members. Staff will recommend unique treatment for members generating substantial claims.

The other is SB 375, and it is a success even though it did not get signed. This was a massive try at true reform. Every stakeholder who was a part of the process all showed up to support the bill in committee. What it did was implement twenty-first century policing – how do we prevent House Bill 4 type claims? SB 375 was the Fund's counter, to prevent victims in the first place instead of focusing on paying on the back end. Many of our folks showed up at these hearings, and because we were time limited per person, we tried to show up with as many individuals supporting our position as we could. We recognized that the state needed some balance. SB 375 redesigned LEA, redid curriculum, removed conflicts, and gave statutes teeth to help transition out bad officers.

SB 375 made it out of the senate and house unanimous, but at the last moment Reps. Rehm and Maestas amended the bill to take out governor-appointees. We knew this would be an issue and tried to work with the governor's office on changes to the bill for next year, but it was vetoed. This will be an opportunity to make the bill better next year. We will present to the executive that we will do it again. It was not a real loss because we put an extended effective date to allow for implementation. We'll run this item through our policy process, make the bill better, and attempt to get its next version on the call. It is de-escalation, peer intervention, mental health, and banning chokeholds.

Forte summarized HB 4 and SB 375 again briefly and noted that we're going to get to hear from officers soon on what items work and what items do not with the knowledge that there will always be room for improvement. Calhoun asked for clarification on coverage limits, and followed with whether the officers may be named in a civil suit.

Forte reiterated no personal liability for officers. Calhoun mentioned that the new bill may not be able to change behavior in law enforcement without personal liability.

5. Introduction of New Resolutions.

Forte noted that on body-worn cameras, it is important for the Fund to achieve equity. This was difficult because members only had ninety days to run RFPs. Forte sees many of the resultant contracts where there was a large time spread on equipment. The purpose of the program is to extend so members have access to the program on the go forward. We want to make sure everyone has the ability to participate.

The second resolution is about moving the reserve funds. With the level of reserves that the Fund has (at Wells Fargo), there is a sense that there is need for different investment staff, and the resolution would authorize a change over to the State Treasurer. This is an additional comfort for the members to have a more appropriate fiduciary. Calhoun asked how much this would be. Forte mentioned that Treasurer will hold some monies, and there will be another resolution at a later date for more long-term investments. Those will be at State Investment Council – Fund is prioritizing better returns over time. Calhoun asked to make sure no money had been moved yet. Forte said that the actuary will help with amounts, but he expects the initial move to be about \$158 million. Transition in banking relationships will help with the process. Total assets are around \$180 million. Calhoun asked to make sure that no money was being moved from NLC-MIC and Forte confirmed. Forte mentioned that no other organization he knows of has our level of reserves, and we have moved through the accumulation phase to have more opportunities on premiums, body-worn cameras, etc. Private insurance carriers would not be able to do the same. Calhoun asked about the time limit of the new resolution, and Forte mentioned that the program will be re-upped at the right time.

Forte mentioned on ridealongs there was a lot of value, but he gets many questions on what our policy looks like. Forte values ridealongs because of his previous experience with the program helping him understand certain budget requests. Forte mentioned that it was an eye-opening process for him to process what our law enforcement community goes through on a nightly basis. Forte wants to make sure we have a policy in place to make sure the process is safe. We don't want them in high-speed chases, carry weapons, take pictures for social media, and he's seen all those occurrences take place. Nicley mentioned that this resolution enables the process. We've received calls from insureds about how to run these programs. We get better law as a result of having persons in different communities going through ridealongs. Those guidelines are captured in the resolution along the lines that Forte mentioned. We are going to give the opportunity to craft those policies so long as they abide by the uniform guidelines.

Forte introduced Nicley for the benefit of those persons that were not yet familiar with his role in the organization and his background before joining the Fund. Calhoun asked for questions. Larsen asked about to whom the resolution referenced. Nicley mentioned that it is intended for municipal officials only, and that it would need to be

written differently for the public at large. Ryti asked about examples of forms to be provided to the member. Nicley mentioned that examples will be provided, but policy decisions will ultimately be made by insureds. Ryti mentioned it might be nice to change the title to cover employees. White asked about city council members – Forte considers this group covered by the resolution. Calhoun confirmed, and White mentioned that it may make sense to clarify further in that way as well even if he agreed with that interpretation. Forte mentioned it could be addressed in motion.

Calhoun said in the motion the title can be clarified. White made motion to adopt the resolutions with the adjustment on 21-8. Hull seconded and said on a point of order that motion should be approved and then a motion to amend, then back to the original motion. Calhoun asked if we could just use the motion as made. Nicley said that motions could be made separately. White mentioned as point of order that the Board needed to vote on the motions as made. White amended motion to only approve 21-6 and 21-7, and Hull seconded. After a roll call vote, the motion carried unanimously. Calhoun asked for a motion on 21-8 as amended. White said amendments can be included in motion, and did so to change title and include elected officials, and Hull seconded. After a roll call vote, the motion carried unanimously.

6. Joint Powers Agreement

Nicley said he didn't know if the document had always been in effect as most currently constituted, but the most recent document we found was from 1990.

Nicley said it makes sense to look at the document a couple of times each decade. Is it clear, equitable, and does it enforce accountability were the priorities of the Fund, and hierarchy of documents dictate that these are the most general dictates of the organization. Nicley suggested the creation of a subcommittee to include their ideas as well.

Recitals reflect more clear, accurate information, including references to the Joint Powers Agreement Act, as well as the pooling statute. The specificity is scaled back in some regard so that documents with more flexibility can be leveraged for good policy decisions. One example is dissolution, and we've changed it so that insureds cannot be kicked out onto the street without insurance.

We've also identified areas and opportunities for growth – who are the officers for the Fund, including size, roles. How often should other documents be reviewed, and what do the members owe one another generally? We can do more work on the document and Nicley evinced that he was happy to help with a subcommittee if that was their will.

Calhoun said she needed more time to review carefully. Hull said he'd like to have more time to review the document, including time to process. Hull would like to be able to compare the documents. Hull would support creation of committee or more time to review. Calhoun asked about what changes had been made. Nicley mentioned that

this is an accepted changes document, and that he would be able to share the old document.

Calhoun indicated desire to serve on committee and solicited volunteers. White, Hull, and Larsen volunteered to join. Calhoun confirmed that the next meeting would be in June on budget and indicated that the committee needed to meet within the next couple of weeks to change the document as appropriate.

7. Professional Services Agreement.

Nicley mentioned that a couple of times the subcommittee had met on this document, and that the new document pertains a little more clearly to purchasing rules under state statute. This document also has accepted changes in it.

Nicley mentioned that duties were bifurcated between the Fund and the League, and that it made for confusing reading. Nicley talked about how the document was now clear with references to the Procurement Code, the state auditor, etc.

We're requiring legal to own a larger share of responsibility for compliance, anyone in our shoes need to be held to high standards, including finance and leadership – making the enabling documents human-proof.

We're also subjecting both sides of the shop to a greater degree of transparency in behavior. We have to come back to the Board on sharing behavior. We're keeping front of mind the ability to help the Board make sound decisions on the go forward.

Calhoun invited a motion on the agreement. Neeb moved to approve, Ryti seconded, and on a roll call vote the motion carried unanimously.

8. Risk Program Update

Sanchez started with the ten-month overview of an assessment internal staff had taken to understand how to be better. One step is to professionalize the Fund by having adjusters obtain their licensure. We spent some time with the Superintendent of Insurance on this topic and we implemented a one-year study period to complete process. The Fund has not received negative feedback on that requirement. Staff have a clear roadmap on how to be successful.

Sanchez mentioned that the Fund also hired an in-house counsel, which has shown positive returns to far. We got a successful ruling on one motion-to-dismiss, and it might have otherwise been a six-figure cost for the Fund. It was a good success to have in place so early, and it is a positive sign for the initiative. We also have benefits in terms of having in-house counsel meet directly and at more length with named and affected persons.

We've also had opportunities to help navigate a greater degree of day-to-day concerns by being in the room for those conversational pivots. We've prioritized the proactive risk management discussion. We have chances to address issues now before the birth of the next claim. Getting ahead of these issues will create good results for the Fund. Forte added that on this item the Fund will need additional help from its membership with, for example, how to interact with constantly-exposed insureds. Forte noted that this direction will be critical. Sanchez seconded this need for additional guidance on how far they'd like to see the program operate.

Nicley added that this comes to the forefront on items like the liability policy, and he mentioned from his prior roles that it is important to push intellectual shifts to make insureds realize that they have a shared role in insurance. Shared roles are good opportunities to have shared discussions and create a comprehensive approach to risk management, where we talk about issues before they happen, we want a team game and a team approach, and when you can change the relationship between the insured and insurer, you can get some really nice results. Liability policies also include increased frequency care, legislative updates and summaries, more specific citations to law to help readership, policy-oriented discussions, all to achieve transparency in insurance.

On procurement, Nicley mentioned that a number of new contracts would stand up on July 1st, and it's been a real lift, but the team effort has been helpful to getting those items across the finish line. We are going to cover almost every vendor we interact with, and that we're getting the best deal we can to put our dollars to best and highest use.

Nicley also talked about training component of the Fund. Though we have a number of leadership and training opportunities on the League side of the shop, we want to provide a sister type of program on the Risk side of the shop. Though it may not be as sophisticated or built out, if we can find individuals interested in these subject areas, and grow that connective and communicative tissue, our industry becomes much better as a result. That is an opportunity for input from the Fund on what they'd like to see and we can bring more experts to the table to make difficult policy decisions.

Forte concluded with a couple of items, starting with MOLI and determining how best to leverage educational programs for the benefit of membership. House Bill 4 will push the organization to do more, and there is a great deal of interest generally in education. Any involvement we can get with organizations like the state ethics commission is an opportunity valued. Forte knows that his role, and what he talks about, can bring a reasonable degree of discomfort, but if he can get members to call on the front end, it will have been a successful effort. Forte will talk to police chiefs soon about what to do and what not to do. We will develop public safety component of our program.

Calhoun asked whether we will need a broker to oversee licensures and adjusters. Forte mentioned that Sanchez and Hennessy are both able to perform those legal functions, and that OSI indicated it could not support not having licenses in place.

Calhoun mentioned further that having safety training in place was a good incentive for membership, and wanted to know what else we'd put in place in its absence. Forte noted that the allocation methodology itself helps drive that conversation. Using exposure and experience will help that process, and Forte considers it a much better way to drive that conversation. Training is the next step for the organization, and since we are the subject matter experts, our intention is to build out that program internally.

Calhoun indicated she was concerned that we might be waiting for claims with this approach, and that she wants to prevent claims in the first place. Calhoun asked about what our loss ratio has done over the past year. Forte noted that claims had dropped off over the last year, and it has given the Fund time to assess claims and resolve them. Forte noted that the litigation shop had paid for itself and it will continue to be assessed to make sure that it appreciates a continued degree of success. We're going to hit the road, and will make sure that our folks are in person. We need a conference in place for the Fund, and we'll take advantage of those opportunities to bring membership up to speed. Calhoun noted that a Board retreat might be a nice experience as they'd done those events previously.

9. Executive Session on Pending Litigation.

Calhoun solicited a motion. Segotta made the motion, clarifying that the Board only mention items pertaining to the litigation. Ryti seconded, and upon a roll call vote the motion passed unanimously and moved into executive session. Stubbs thanked the group for having her at the meeting immediately prior to its entry into executive session.

The Board later exited the executive session, and Calhoun indicated that the matters discussed in executive session were limited only to those items made to enter it.

10. Finance Update.

Forte noted that though the Board had talked about some of these things for some time, and finance matters had changed significantly, including how the nature of public funds change the organizational obligations that attach to it. Come July 1, it has been staff's role to get engagements in place.

Burch noted that she was a NMSU graduate, went through state auditor, legislative finance committee, department of finance and administration in her career, and came to the League only very recently. She had spent some time studying the organization from the bottom up, and there was a real lack of documentation but has been able to track some items down despite the challenge.

Burch indicated that items were being accounted for by journal entries, but there was little detail in the accounting system for management purposes. Burch talked briefly about the change to the new accounting system, in which we intend to issue more frequent reports.

Burch indicated that the same auditor had performed its services for the Fund for seven years, which exceeds the time periods normally provided for in the auditor's rule. We decided it was time to get another auditor for the Fund. Burch noted the May 15th deadline for the new contractor to be in place in terms of approvals from the state auditor. It will be important to start meeting other deadlines, such as the December 15th submission deadline. We believe that the new audit will fall under the small purchase threshold and have proceeded as such.

Burch noted also that the process will start early next year, and that we will proceed to obtain multi-year quotes at that time. Burch noted that these processes are normally overseen by a group such as a budget committee. The auditor will contact the board to determine whether the Board understands the process for things such as fraud. Burch recommends that the Board appoint a committee to oversee the process for this year.

Forte noted that most of his time here has been spent on finance, and because of the substantive nature of the last audit, it is important for the organization to get a governance component from its Board to update accountability. We need a better model. We streamlined and fixed each piece of what our organization does as a group, setting structures up correctly. We're close, but we still have improvements to make as a group. For example, the organization paired with state printing to render services at cost. We establish savings and efficiencies that way very quickly. And the service is improving as a result. Every financial component of what we do for this group has been looked at and improved. We're building equity position in NLC-MIC continuously as well. We will make sure we structure rate layers to improve the practice to bring cost savings to the Board. Treasurer Stubbs also comes to the office more now to go through in significant detail and with our entire team all of the relationships we have in place, and Stubbs is not very involved in details.

Neeb offered to be a member of an audit committee, and Ryti, Calhoun, and Larsen followed with interest as well. Burch noted that audit committee would be shown price quotes and would help evaluate. Calhoun confirmed that they would meet as needed.

11. Public Comment

No public comment was made.

12. Other Business

White asked that Nicley send the old joint powers agreement to the Board.

13. Adjournment.

There being no further business or comments from the Board, White moved to adjourn the meeting. Segotta seconded the motion and upon a vote the motion carried unanimously. The meeting was adjourned at 4:28.