



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

EXECUTIVE COMMITTEE TASK FORCE TO STREAMLINE AND SIMPLIFY INSURANCE REGULATION

JULY 23, 2002
WESTIN TABOR CENTER
DENVER, COLORADO

PRELIMINARY MEETING MINUTES

Task Force Members

Senator Hannon (NY), Co-chair
Representative Counts (TX), Co-Chair
Senator Larkin (NY)
Delegate Morgan (VA)
Senator Owen (CO)
Senator Rauschenberger (IL)

Commissioners

Commissioner Vaughan (IA), NAIC President
Director Covington (OH)
Commissioner Pickens (AR)

Staff

Andrew Beal, NAIC
Cheye Calvo, NCSL
Erica Knievel, NCSL
David Lawson, NCSL
Robert Mackin, NCOIL
Susan Nolan, NCOIL
Neal Osten, NCSL
David Wetmore, NAIC

OPENING AND INTRODUCTION

Senator Hannon opened the meeting on Tuesday, July 23, 2002 at 9:25 a.m. Introductions were made. Senator Hannon reviewed the agenda and objectives for the meeting.

Senator Hannon announced the need to revisit the provisions for legislative involvement in the compact, to clarify the Management Committee options and to address the future of the task force, including its involvement with P/C insurance.

Representative Counts began by expressing appreciation for the many people in attendance. He praised the NAIC for their diligent work on the draft, and drew the Task Force's attention to the revised version. Representative Counts also cited the importance of NCOIL, the NAIC and NCSL arriving at a point where they could go to Congress in a unified manner. While he praised the progress of the Task Force, Representative Counts also acknowledged that time was running out if the compact was to be presented in the next legislative cycle.

Senator Hannon added that NCSL is the umbrella group, but he reiterated that the Task Force would be unable to accomplish its work without the NAIC and NCOIL. Senator Hannon asked Neal Osten to report on the Streamlined Sales Tax Project during the meeting. Then, he commented that the restructuring of financial services is a reflection of NCSL paying more attention to such issues. Senator Hannon concluded the opening remarks by asking Commissioner Terri Vaughan to highlight the major changes in the July 19th draft.

NAIC PRESENTATION ON INTERSTATE INSURANCE COMPACT DRAFT

Commissioner Vaughan announced that there were four significant changes in the July 19th draft. First, the new draft resolved confusion as to whether the compact applied to individual and group coverage, making it clear that the compact pertained to both. Second, the July 19th version of the compact included a clarification of article 3, page 2 to make more clear that the Commission is an option. Page 3 contained the third major change to the draft—the elimination of two management committee options. Third, the draft revises language that previously directed NCSL and NCOIL to appoint legislators to the advisory committee to have the method of appointment determined in the bylaws. Finally, the second item under article 7, page 9 was changed to state that, before the commission develops uniform standard, it shall give written notice of its intentions to those responsible for insurance issues.

Senator Hannon commented that this last change to the compact could be viewed as great progress for legislators.

STREAMLINED SALES TAX PROJECT DISCUSSION

Neal Osten began to discuss the progress of the Streamlined Sales Tax Project. Mr. Osten explained that the group had hoped that its last meeting would be the final one, but it hit a major snag when discussing the issue of compliance. Three proposals were introduced. A state could be considered compliant if 1) the state had consistent policies that didn't substantially deviate from expressed requirements, 2) the state was substantially compliant, or 3) the state was substantially compliant, defined as meeting all qualifications.

Mr. Osten reported that the group voted in favor of Option 1, 17 to 14, but Senator Emmons of Michigan objected that such a narrow margin was not sufficient. Mr. Osten said that this standard would affect how burdensome the process would be for states—for example, whether states will be required to change their laws—but it would also determine the chance of changes with which the industry must cope. He added that, while all states will be represented on the governing board, the standard for compliance is an area of disagreement which the group will likely revisit in September.

Senator Hannon asked why the Streamlined Sales Tax group thought it needed this extent of involvement and what other options the group considered.

Mr. Osten explained that some legislators felt it was important to be able to bring an issue before the governing board without depending on the intervention of tax administrators. Mr. Osten clarified that the governing board was the Streamlined Sales Tax Project's equivalent of the insurance compact's management committee and explained that Senator Finan of Ohio originally wanted each state to be represented by a gubernatorial appointee and a legislative representative, but he eventually scaled back to say one legislator.

Senator Hannon explained that the Executive Committee would also be dealing with the Streamlined Sales Tax Project in addition to the Task Force, so the project's progress was relevant.

Next, Mr. Osten discussed the issue of congressional approval. He expressed hope that industry advocates would go to Congress and ask for preemption in order to achieve certainty.

Referring to Mr. Osten's discussion of the Streamlined Sales Tax Project, Senator Hannon suggested that the same extent of legislative involvement does not seem necessary for the insurance compact.

Commissioner Vaughan asked Mr. Osten to explain his statement that some states were seeking ways to participate without changing laws. In response, Mr. Osten explained that changing state laws could bear side effects. For example, Washington could not change its sales tax structure without affecting other areas like agriculture, so state statutes related to these other areas would also have to be changed. Commissioner Vaughan asked if, in essence, compliance without altering state laws would amount to the state expressing its compliance and asking the commissioner to create rules to override statutes deemed incompliant. Mr. Osten said that it did not and that state laws would need to comply with major project rules.

At this time, Commissioner Vaughan inquired about the provision for arbitration. Mr. Osten explained that the group would be more likely to discuss monetary penalties if a state falls out of compliance, such as paying the compliance costs industry experienced. He also pointed out that there are degrees to compliance. In some cases, expulsion might even be an issue. Commissioner Vaughan asked if an opt out provision existed. Mr. Osten said that it did and that there was a 90 day period, but states are bound by any contractual agreements made while in the compact. These remain in force until the compact expires. Commissioner Vaughan asked if this provision applied to opting out of the whole compact or just parts. Mr. Osten answered that that was an issue of how much compliance is necessary.

Senator Larkin commented that this issue raises a ton of questions for specific states. He asked if, for example, New York would be free to raise its sales tax on garages if it so wished. Mr. Osten explained that a local community could raise the tax, but it couldn't establish a tax on all food while the state says that it does not tax food. The state must deal with this issue, Mr. Osten said, but the problem with New York is that the state put a gas and electric tax in the base but put it as zero in the model and allowed to tax it. Senator Larkin observed that the Streamlined Sales Tax group had a long way to go. In response, Mr. Osten said that, when they get there, there would be one million dollars in state revenue for New York.

DISCUSSION OF THE INTERSTATE COMPACT

Senator Owen inquired why the charter was advantageous and questioned the credibility of the threat of federal intervention.

Senator Hannon explained that Neal's discussion is applicable in that the Task Force is trying to avoid federal regulation with financial products through the establishment of the compact. Senator Hannon characterized the debate as a choice between sharing decision-making via the compact or losing all authority to the federal government.

Director Covington interjected to say that Senator Owen's had raised the question that people would be asking. He explained that the compact would free up resources because, in many states, regulations are similar. Thus, central regulation via the compact would add efficiency. The compact arrangement also would improve speed to market, allowing the life insurance industry to compete. Director Covington pointed out that this is an advantage for the industry and the consumers. Each state likely has residents that have life insurance policies issued in all fifty states, he said.

Senator Owen observed that the compact seemed to add another layer of government. Because of this, Senator Owen warned that some may have related philosophical problems with the compact, and others will find the surrender of legislative sovereignty to be problematic.

Senator Hannon explained that the current system requires some insurers to file in all fifty states while the compact would create one place for these companies to file, resulting in less work and more efficiency. He said that the issue of legislative decision making intrigued the Task Force, and that was the reason for the substantial discussion of the Streamlined Sales Tax Project.

Commissioner Vaughan stated that the insurance industry deals with local, state, national and global issues. Although Commissioner Vaughan identified herself as a proponent of state regulation, she pointed out that the states do not deal as effectively on national issues. Life insurance must deal with issues that vary from state to state and compete with federally regulated banks at the same time. She said that the NAIC acknowledges the need to preserve state regulation and protection, and federal action will not happen overnight. However, Commissioner Vaughan told the Task Force that Chairman Oxley had expressed to her the intent of the federal government to act if states do not do so in a timely fashion.

Senator Owen continued to express skepticism regarding a federal threat and reservations about obtaining approval of the compact in state legislatures. Senator Owen pressed the Task Force to site consumer benefits. In response, Director Covington noted that, ultimately, the Task Force should pursue the compact because it was right for the consumers and not because of the federal threat. The compact system would allow products to get to consumers faster, he said, and it would allow for more innovative products.

Representative Counts emphasized that Oxley's threat was serious and that Gramm-Leach-Bliley had set the precedent for federal intervention. Also, Representative Counts added that federal regulation would deprive states of the premium taxes they currently receive at a time when state budgets are already tight. The compact would lessen bureaucracy and free up staff members so states could use them for other areas. Senator Larkin cautioned that federal regulators do not fully understand the issues pertinent to insurance regulation. Senator Owen remarked that these advantages must be stressed before the state legislatures to "sell" the compact.

Senator Hannon suggested that the Task Force eliminate the use of the term "advisory committee," and instead say "legislators." Also, he suggested that they emphasize the strong opt out ability. In addition, Senator Hannon underscored the importance of Representative Counts's point that some states do not meet every year. Next, he directed the Task Force's attention to the management committee options, suggesting that the group make a recommendation in the future.

Representative Counts acknowledged the reservations that large states might have about Option 2, but he said that it might be the only way for the compact to gain overall acceptance. However, Task Force members from large states can convey to other legislators that the compact is a trade-off, and states will have to give up some control, but they have much more to lose. The compact will reduce bureaucracy. Representative Counts suggested that the Task Force recommend Option 2.

Senator Larkin reminded the Task Force that the option was evaluated in Boston and agreed it was an excellent compromise.

Commissioner Vaughan expressed appreciation for the recommendation and said that it would be helpful at the August meeting of the NAIC. Commissioner Vaughan then asked whether the Management Committee's decisions would require a supermajority or simple majority.

Senator Hannon responded that he liked the concept of a supermajority—which would require nine votes out of 14 rather than eight—because it would give veto power to the six big states

Representative Counts agreed and asked what the support was for Option 2 among members of the NAIC. Commissioner Vaughan replied that she had not spoken with many of the members about it, but those that she had spoken with were unanimously supportive of Option 2. She said that some were dissatisfied with Option 1. Commissioner Vaughan said that she could better gauge opinion after the Chicago meeting. She said that the issues to be discussed were the structure of the management committee, inclusion of long term care and degree legislative involvement, and she expressed hope that the NAIC would vote in September.

Representative Counts reminded the Task Force that time was of the essence for the Texas Legislature and encouraged the Task Force to get the core issues into a model. He expressed concern that Chairman Oxley's intentions were clear, but concern for details might prevent the Task Force from acting.

At this time, Senator Hannon noted that the Task Force had minutes from the Boston meeting and asked for additions or corrections. Seeing none, he noted that he would be recommending a one year extension for the Task Force so that the Task Force could properly address P/C insurance lines.

Senator Owens asked if the Task Force planned to address health insurance. Senator Hannon replied that they would not because the Task Force's charge did not include health insurance and that there were too many different issues involved. However, Senator Hannon made clear that this was not to say that there were not substantial problems in health insurance.

At this time, Senator Hannon invited public comment. Brian Cox with ACLI said that he would offer a brief comment at the AFI Commerce and Communications Committee meeting to occur on July 24 and would make the draft available. Senator Larkin requested that this information be sent to NCOIL as well.

Roger Schmelzer with NAMIC reported that his organization felt speed to market was needed for P/C and said that he was currently working with industry and agent groups. Mr. Schmelzer said that he supported the continuation of the committee but hoped for action on P/C sooner rather than later.

He acknowledged the importance of NCSL support and said January was the target date they had in mind. Mr. Schmelzer announced three reasons for this target. First, the marketplace needs reform now. Second, there is a need to move forward for legislators in budget years. Third, Mr. Schmelzer said that he thought Congress was ready to act and, assuming a Republican control of the House after the November elections, he predicted the Task Force would soon see a federal minimum standards bill. Thus, Mr. Schmelzer said that there was a need to show that Congress does not need to introduce regulation. He also commented that the fact that free market Republicans are asking for federal regulation is indicative of the seriousness of the matter.

Senator Hannon stated the importance of educating others. In response to a question from Senator Owen regarding industry lobbying efforts, Mr. Schmelzer explained that the NAMIC has a congressional contact program and is creating a white paper that states reform should come through the state capitols. He also said that AIA is working on this as well. Mr. Schmelzer added that if the compact included P/C lines, there would not be a room large enough to hold all of the people who would come out to support it.

John Lobert with the Alliance of American Insurers said that the industry simply cannot ask Chairman Oxley to drop the issue because state regulation is not great across the board.

Senator Hannon pointed out that the Task Force was working on communicating with constituents and forging a consensus. He reminded them that two issues—legislative involvement and governance—had occupied hours and hours of discussion, and said that both the substance of the compact and the process used to achieve it is noteworthy.

Mr. Lobert added that Mr. Schmelzer seemed to agree with Senator Hannon about the importance of a consensus, and stated that the industry was moving quickly to get something to the Task Force.

Mr. Schmelzer said that the industry also had worked hours and hours with NCOIL and the NAIC in a fragmented fashion. He also stated that he understood and agreed with Senator Hannon's point, adding that they just need to bring all of these fragments together.

Representative Counts said that Task Force needs interested parties to encourage Congress to give states enough time to work through each legislative process. He explained that the compact is a vehicle to work out problems, and it will have some growing problems. Representative Counts suggested that the Task Force could return to the compact and add P/C and other items at a later date. In the mean time, Representative Counts stated that the Task Force would need the help of interested parties in individual states. Mr. Schmelzer responded that he didn't know if assistance in individual states would be possible.

Representative Counts then asked for other comments. Ann Histrum with MetLife commended the Task Force for including a discussion of market conduct issues in its report to the NCSL Executive Committee and asked that more attention be given to the issue, which also is of importance to consumers. Representative Counts replied that he wanted market conduct included.

JoAnne Kron with Allstate asked if the Task Force was going to make a P/C recommendation to the NCSL Executive Committee. Representative Counts answered that the Task Force would present

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Life, Long-term Care and Annuities that day. However, Representative Counts also stated his hope that the Task Force would explain that this is just the first issue and that this is the last best chance to keep insurance regulation in the states. Also, he said that the Task Force felt an immediate need to act now, and it could add P/C after the compact is adopted. He promised that the Task Force would not "leave P/C out in the cold" but said that he needed the industry's help to pass the compact as it is with the intention to add P/C later.

The task force adjourned at 11:32 a.m.