

Vermont Education Health Initiative (VEHI)

Board of Director's Meeting Minutes

December 15, 2016

**Present:** Joel Cook, Nicole Mace, Elizabeth Fitzgerald, Martha Gagner, Tracy Wrend, Mark Hage, Laura Soares and Chris Roberts.

**Members of the Public:** Jeff Fannon, VT-NEA, Martha Allen, VT-NEA, Rick Brigham, Sullivan & Powers

The meeting was called to order at 10:05 a.m., by Chair Tracy Wrend.

**Meet with Rick Brigham of Sullivan & Powers regarding FY 16 Audit**

Rick Brigham of Sullivan Powers reviewed the audit report for FY16 with the Board. Rick reported to the Board that the audit was considered clean, with no findings or deficiencies and no accounting adjustments necessary. Martha Gagner made a motion, seconded by Joel Cook to commend Chris Roberts and her staff and to accept the audit report. The motion passed.

**Public Comment** – None

**Amendment to the Agenda** – Joel Cool made a motion to amend the agenda so that item 7 reads “Discussion Petitions submitted by public school employees who currently obtain employer health benefits through VEHI.” The motion was seconded by Elizabeth Fitzgerald and passed.

**Review and Accept Financials 9-30-16**

Chris Roberts summarized for the Board the financial statements as of 9/30/16. Chris indicated that all financial targets are trending as expected. Martha Gagner made a motion, seconded by Joel Cook to accept the quarterly financial report as presented. The motion passed.

**Review Investment Policy and Performance (postponed from August meeting)**

Chris Roberts summarized the current investment policy and performance with the Board. Nicole Mace made a motion, seconded by Martha Gagner to affirm the current policy. The motion passed.

**Board Reorganization**

a. **Elect Board Officers and Officers of the Corporation**

Martha Gagner nominated Laura Soares as President. There were no other nominations and a motion to appoint Laura Soares President passed.

Elizabeth Fitzgerald nominated Martha Gagner as Secretary. There were no other nominations and a motion to appoint Martha Gagner Secretary passed.

Laura Soares solicited nominations for chair. Martha Gagner nominated Tracy Wrend as chair. There were no other nominations and a motion to elect Tracy Wrend as chair passed.

The nominations for vice-chair took place after discussion of the next agenda item. Martha Gagner nominated Joel Cook as vice chair. There were no other nominations and a motion to elect Joel Cook as vice chair passed.

**b. Fill upcoming opening VT-NEA Board of Director Seat**

Joel Cook is retiring his position with VT-NEA effective December 31, 2018. Joel informed the VEHI Board that the Board of the VT-NEA would meet in early January and put forth a VT-NEA Board or Staff member to fill the seat, understanding that Joel Cook must serve on the Vermont NEA staff or Board in order to remain eligible to serve on the VEHI Board.

**c. Complete Conflict of Interest Statements**

Joel Cook will complete his form at a later date and submit it to Laura Soares. All other Board members completed forms at the meeting.

**d. Confirm Mission and Decision Guidelines**

The Board took time to review the documents. A motion was made by Martha Gagner, seconded by Nicole Mace to affirm the Mission and Decision Guidelines. The motion passed.

**e. Review/Confirm Communication Protocols**

Nicole Mace inquired as to proper protocol and expectations of her when she provides information to members of VSBA regarding VEHI and/or health care issues. Tracy referenced the communication protocols all Board members should follow when speaking or acting in their role as a member of the VEHI Board. VEHI expects Nicole to be clear she is representing VSBA and not VEHI when communicating on behalf of VSBA. VSBA provides VEHI the service of forwarding VEHI communications to school board members at VEHI's request since VSBA keeps an updated email list. VT-NEA does the same in forwarding VEHI communications to local union leaders at VEHI's request. A motion was made by Elizabeth Fitzgerald, seconded by Martha Gagner, to affirm the communication protocols. The motion passed.

**f. Discuss Meeting Dates for Year.** The Board would like to set the meeting schedule for all of 2017. Lisa Locke of VSBIT will coordinate.

**g. Discuss Adoption of Rules**

Joel Cook requested this item on the agenda; therefore Tracy Wrend asked if he would like to speak to it. Joel expressed his concern that the Board does not have formal rules and then asked to table the item until after the discussion of the item regarding the petitions. The item was tabled.

**Approve Minutes of August 31, 2016 and November 3, 2016 meetings**

Martha Gagner made a motion, seconded by Elizabeth Fitzgerald, to approve the meeting minutes as presented. The motion passed, with Nicole Mace abstaining regarding the August minutes.

**VSTRS RFP**

The VSTRS Board is expected to go out to bid for health coverage for retirees as required under state law and put out an RFP in the near future. Joel Cook made a motion, seconded by Martha Gagner, to authorize the Trust Administrators to prepare a response to the RFP. The Board will be engaged prior to final submission of a response. The motion passed.

**Discuss Petitions Submitted by public school employees who currently obtain employer health benefits through VEHI**

The Board acknowledged the receipt of petitions signed by over 1700 individuals. Tracy asked Joel if he wanted to speak first on this agenda item. Joel began with a motion to obtain a legal opinion on the presentation of a document to the VEHI Board with comments added by a Trust Administrator. There was no second.

Joel Cook then made a statement regarding the petitions and asked his written statement be attached to the minutes. The Board consented to the attachment. Also attached to the minutes are a copy of petition, and the legal opinion by attorney Rob Halpert to inform the discussion.

The Board discussion took place, then Joel Cook asked for a legal opinion to be sought as to whether consensus decision making falls within state statute. Nicole Mace asked for a definition of consensus, is it a requirement that only unanimous votes constitute an action of the Board or is it an approach to the discussion ahead of a vote? The Trust Administrators were asked by the chair to follow up on these issues.

**Program Updates**

Laura Soares and Mark Hage provided updates on the following.

- a. **DFR approved the changes to the Bylaws and Operational Plan.** Members will be notified of the 24 month waiting period as reflected in the Operational Plan.

- b. **Transition to New Health Plans** – member education is ongoing and materials are continuing to be developed. Bobby-Jo Salls is an outstanding resource.

Elizabeth Fitzgerald expressed concern and disappointment at the article in the VT-NEA newsletter regarding VEHI. She indicated her impression that the article misrepresents the actions of the VEHI Board. Elizabeth recalls many areas of agreement among VEHI Board members including that: new plans would be developed and introduced consistent with VEHI's mission, the timeframe for introduction was extended 6 months to 1/1/18 to accommodate education of members and collective bargaining, the majority of Districts and SUs were expected to be able to meet that deadline but a default plan would be put in place to ensure no individual was without coverage on 1/1/18, all 4 plans would be offered, investments will be made to support the 2-year process. She asked this be considered when the VT-NEA Service Agreement is reviewed.

Joel Cook responded by confirming that the VT-NEA stands by its communications.

- c. **Pharmacy** – The FY 16 audit of the ESI contract has been complete by Remedy. The Trust Administrators have a meeting Monday to discuss the results. First quarter FY 17 savings are over 1.7 million dollars, greater than original estimates. A 30-day fill limit for certain new prescriptions has been instituted to reduce waste and a 6 month copay waiver program is in place to encourage members to move to a generic equivalent to see if it can meet their needs, reducing costs for the member and VEHI. Other costs saving initiatives are under consideration by VEHI with input from Remedy and BCBSVT.
- d. **Dental** – the rate filing was approved.
- e. **Health** – the rate filing is still in review.
- f. **LTD/Life** – program is continuing to grow slowly.

**Other** – Nicole Mace asked if the Board has or could benefit from a Code of Ethics and requested the Board have information and training on any legal duties of the VEHI Board. There are legal requirements of non-profit Boards, but whether they apply specifically to VEHI should be researched as VEHI is not a 501(c) (3). The Trust Administrators will follow up and provide information to the Board.

### **Adjournment**

There being no further business, the meeting adjourned at 12:20 p.m.

Respectfully submitted by: Laura Soares

Next Meeting: Will be held in early 2017.



November 29, 2016

Tracy Wrend, Chair, VEHI Board of Directors  
c/o Lamoille South Supervisory Union  
46 Copley Avenue  
Morrisville, VT 05661

Re: Petitions from VEHI subscribers

Dear Tracy:

As you probably have heard from Laura Soares, I received the enclosed petitions – I'm sending you the copies of the originals – from some 1000s of VEHI subscribers. They call for action on the part of both VEHI's and Vermont-NEA's Boards of Directors. I request discussion of them and what they request be incorporated in the agenda for VEHI's upcoming meeting.

Thank you. See you on the 15<sup>th</sup>.

Joel D. Cook  
Executive Director

C: Laura Soares  
Mark Hage



**From:** Rob Halpert [mailto:rhalpert@zclpc.com]  
**Sent:** Thursday, December 08, 2016 1:13 PM  
**To:** Laura Soares <laura@VSBIT.ORG>  
**Subject:** FW: petition sample and VEHI letter NEED LEGAL ADVICE

Laura,

I have reviewed Joel Cook's November 29 letter and a sample petition referenced in that letter.

The petition calls upon the VEHI Board of Directors to "restore to us a voice in [VEHI's] operation," either by reverting to the corporate governance structure that existed prior to members' approval of recent bylaw amendments which altered that structure, or by "decision being by the VEHI Board through consensus in all cases rather than on a vote of a majority on any issue." The petition closes with a plea to VT-NEA to "explore alternative ways of obtaining health care coverage" in the event the requested actions are not taken.

Here are my responses to the questions raised in your December 1 email:

1. Whether this petition requires any action by the VEHI Board

Short answer: no.

Absent evidence that the members' approval of these governance changes at the recent annual meeting was based on some invalid procedure, or that the meeting itself was not properly warned, the members' determination is binding on the Board and the Board cannot restore the prior board composition under the Board's sole authority. Neither can the Board decide on its own to proceed solely by way of consensus, rather than by majority voting, on questions that come before the Board.

With DFR's approval of those bylaw changes, as required under DFR's rules, the amendments now constitute legally binding changes to VEHI's board composition and governance structure. A petition requesting (or demanding), essentially, that the Board ignore these binding changes would run afoul of these legally binding changes, and the Board has no authority to defy the legal action of the corporation's members, other than by taking the steps outlined in my response to Question 2. Similarly, any decision by the Board to decide all issues "by consensus rather than by a vote of the majority" would also be without legal authority, and would violate another bylaw provision which provides that "the act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the directors."

2. Whether the VEHI Board can take any actions to reverse the recent bylaws amendments

Short answer: The Board has no independent authority to reverse the bylaw amendments, but can take action to call a special meeting of the members for another vote on the amendment, or to propose any different or additional amendments to the subject bylaw.

Under Vermont's nonprofit corporations statutes, any amendments to bylaws that would alter the composition of the Board of Directors require approval of a majority of the corporation's members. Accordingly, the Board cannot, on its own, reverse the recent amendments and restore the former bylaw provisions. However, the Board has the authority to call a special meeting of the members for any lawful corporate purpose, and could do so for the purpose of having the members consider a reversal of the recent vote to amend the bylaws. Such a meeting could also be initiated by way of a petition from at least 5% of the voting members of the corporation.

You also asked about any additional legal considerations that may come into play. This leads to the observation that there are additional constraints on the Board's ability to act on that part of the petition that calls for a restoration of an "equal voice in VEHI's operation." VEHI's operations are subject to the Department of Financial Regulation rules governing intermunicipal insurance associations. Under those rules, a majority of the governing board members must be elected or appointed officials of the corporation's members. Accordingly, we would not be permitted to implement any governance structure in which representatives of VT-NEA comprise more than a minority of the Board of Directors.

In summary, the petition presented by Mr. Cook does not require the VEHI board of directors to take any binding action regarding the recent bylaws changes. Nor is the board of directors authorized to amend any bylaw provisions relating to board member composition, absent approval of such amendments by a majority of the members at an annual or special meeting called for that purpose.

Please contact me with any additional questions or concerns on these issues.

Regards.

Rob



## MEMORANDUM

TO: Laura Soares, VEHI Trust Administrator

FROM: Joel D. Cook, Executive Director, Vermont-NEA and Vice Chair, VEHI Board of Directors

DATE: December 15, 2016

SUBJECT: My statement to the rest of the VEHI Board of Directors regarding the petitions from public school employees who currently receive health benefits through VEHI

---

*[This is the statement I requested be attached and incorporated by reference in the minutes of December 15's VEHI Board of Directors meeting. I think you may simply append this memo to the minutes.]*

When I saw these petitions, I immediately thought, "This is real."

The only time I've seen Vermont-NEA members step out like this was about the too onerous relicensing process – we got that addressed through legislative activity, and advocacy before the Professional Standards Board and Secretary of Education. Dozens of other matters have come and gone with substantial member involvement and direction, but this is almost unique. I believe I will be receiving additional petition signatures. This essentially spontaneous effort is one, I can just tell you, not to be ignored.

Also when I saw the petitions, I asked myself what we – the VEHI Board – could actually do directly. The answer quite obviously is very little. VEHI members are school boards and they write what rules there are. So, of course, the legal commentary, concluding this Board can't simply accede to the requests in the petition, is accurate, but obvious.

But, then, I realized, that is simply not the point. And it is here that, however easy and frequent it may be for you to disregard what I say or what Vermont-NEA's perspective is, I know what I know about my membership. I don't know, but I have no reason to believe this petition has been seen, much less passed around, most of the faculty rooms in the state, at least yet. I sit here certain that a concerted effort by Vermont-NEA members would result in a tripling of the 1700 petitions you have counted.

The point is this: passing on serious consideration of the message being delivered to you by the very people your decisions affect most will lead – eventually – to the demise of this organization. Their simple message is to restore to them a voice in our operation equal to that of their employers. One can't legitimately purport to be serving the interests of people who are telling you that you are not serving their interests.

Vermont-NEA's Board saw these petitions earlier this month. Rather than wait to see how we here address them, that Board directed Vermont-NEA staff to begin a process of exploring alternatives to VEHI for purposes of obtaining health benefits for their members.

The mood of Vermont-NEA's members regarding VEHI has been driven since the beginning of this venture in the mid-90s by the attitude toward them taken by this Board. That mood was favorable, until the attitude in this Board room shifted with VEHI's structural change. It would be wise to consider the potential consequences of continuing to act as though the vast majority of VEHI subscribers aren't paying attention.