



DELBERT HOSEMANN
Secretary of State

Mississippi Secretary of State
2011 Public Finance Laws Study Group
Minutes of the Second Meeting of the Public Finance Laws Study Group
August 18, 2011

The second meeting of the Public Finance Study Group was called to order on Thursday, August 18, 2011 at 11:00 A.M. at the Office of the Secretary of State, 700 North Street, Jackson, Mississippi. A list of those in attendance is attached as "Exhibit A".

Mr. Ryan Pratt, Assistant Secretary of State for the Division of Policy and Research, called the meeting to order at 11:10 a.m. He welcomed the group and introduced all members in attendance. He thanked everyone for their attendance and their work on the existing act and previous drafts.

Copies of the minutes from the first meeting were provided. A motion was made for their approval. After a second to the motion, the minutes were unanimously adopted as read.

Before moving to reports from the chairpersons, Ryan directed the group to the revised draft of the Public Improvement District Act (Act). Some of the changes had already been discussed by the subgroup but other changes originated from the Secretary of State's Office. Ryan proposed the group discuss and vote on the changes today. Members of the group stated that they were not prepared to vote on the proposals in the Act because they did not have enough time to review it. Ryan responded by saying that there would be another meeting on September 15.

Ryan addressed the elections provision in the Act and stated that he spoke with the Elections Division about the section pertaining to a District Board (§ 19-31-9). Changes to this provision are subject to § 5 of the Voting Rights Act and subject to approval by the Department of Justice (DOJ). Ryan mentioned that there were several conflicting comments on the elections provision. One group proposed a more hybrid form of Public Improvement Districts (PID), while another group proposed voting provisions specific to counties and cities. Ryan addressed the concerns by saying that the Office would collaborate with Andy, Derrick, Leslie, Rick, Thad, and Steve to draft the elections provision. He asked if anyone else would like to be included. No one else volunteered. Ryan will circulate any comments he receives.

The discussion turned to the definition section. Because of the conflicting definitions of "infrastructure," Ryan said that the subgroup would look into the definition and provide feedback.

The group also discussed the definition of "market value" and how it is calculated. One method of calculating market value is the Discounted Cash Flow (DCF). Ryan asked Gerald to elaborate on the DCF. Gerald stated that total valuation should be the main concern. After calculating the DCF, determine the absorption rate for the entire project. Next, subtract all expenses (construction costs, interests, taxes). Use the

resulting number to go back to the discounted value, which is the present value of future sales and earnings. For example, if you were looking at a project lasting 7 years, you would want one value, not the value per parcel. While DCF is a method of valuation, it is not the only method of valuation. You would still want to consider both values, thinking of it in terms of marketability. There are three approaches to valuation: 1.) Income, 2.) Market Data, and 3.) Cost. The DCF is the “income” approach. There may be other language in the Code about the “income” approach that would be useful in drafting a definition.

Ryan clarified the definition of “improvements” for purposes of the appraisal to include ALL improvements – “All improvements including but not limited to infrastructure.”

In response to a question about the qualifications of the appraiser, a member stated that comparing the qualifications with those required by a bank appraiser is one way to ensure that the appraiser is qualified. Desktop Review could be done to give the appraisal a second look. A third option would be to give the tax assessors an option to review and comment on the appraisal.

Ryan asked for any comments on section 23 of the Act. Secretary Hosemann recommended that notice be given by sending certified mail, return receipt requested. The group was in general agreement that “public entity” should be used rather than “district” because the hearing would be held at a city hall or courthouse, not a district office. Ryan stated that “approval” pertains only to those districts that have a contribution agreement. The group also decided that, because subsection 4 refers to the “certificate of compliance” from subsection 3, subsection 4 should become (f) under subsection 3.

Secretary Hosemann posed a concern of entities that do not have a contribution agreement with the State. He and the group concluded that there would be no relationship between the State and the entity other than the bond validation process, which is a Chancery Court proceeding. The statute does not require validation, but all bonds have been and are expected to be validated. In response to a question of what is actually being validated, a member responded that the validation means the bond has been issued for a valid purpose and that all procedures for the bond have been validly followed. Essentially, the authority to issue is not longer subject to challenge. Secretary Hosemann also questioned the tax-exempt status of the bonds. The bonds will be exempt from Mississippi tax whether you validate them or not. Secretary Hosemann’s concern is that the State should not participate in a transaction from which it is excluded. A member commented that he could not think of any state statute that does not exempt the issuance of debt. He does not feel that deductibility alone is a strong enough tie for the State to be involved.

The group discussed the structure of the contribution agreement and the specifics required to prevent the agreement from violating §19-31-29. A member suggested reviewing the statutes of the Mississippi Development Authority (“MDA”) since they have a similar concept. The group decided on specific language to address the conflict.

Next, Ryan addressed section 19-31-33(5) and the issue that maintenance special assessments really cannot be prepaid because they are an ongoing assessment. Another member commented that if you come up short on any of the special assessment payments, you could come up short on the bond payment. Another member responded that the money should be held in escrow, and there should be enough paid into the escrow to cover the deficit.

The group also discussed giving the bond holder the ability to foreclose. This procedure follows commercial debt practices. The majority approved of this idea and requested more information. Florida and Alabama already do something similar. The group tabled the issue of assessments after foreclosure. Secretary Hosemann questioned whether the bondholders should have the right to elect the PID Board in the event of foreclosure. However, the group did not reach a solution on the issue.

One member questioned how to strengthen § 19-31-43, but the group did not reach a solution.

Rick questioned the consequences of a recorded instrument that does not have the required language of § 19-31-45. His concern was invalidating the assessment. The group also discussed notice in the land records. One member stated that the best solution would be to record the sectional and subdivision indices. To correct this problem a member suggested changing the first sentence of the section to read “Each contract and instrument of conveyance...”

Ryan informed the group that the next meeting is September 15th. Ideally, the group should have a draft a week before the 15th.

EXHIBIT A

Minutes of the Public Finance Laws Study Group, Meeting # 2

August 18, 2011

Members in Attendance:

1. Ben Aldridge
2. Rep. Toby Barker
3. C. Sessions Brown
4. Stephen Edds
5. Chris Waddell
6. Kathy Gelston
7. Courtney Baldwin
8. E.J. Gregory
9. Arthur Johnston
10. James Troy Johnston
11. Randy Ladner
12. James McCarthy
13. Jeffrey Nicholson
14. Steve Pittman
15. Leslie Scott
16. Derrick Surette
17. Susan Tsimortos
18. Thad Varner
19. Randall Wall
20. Rick Wise

Members in Attendance by Telephone:

1. Gerald Barber
2. Bill Barry
3. Gerald Blessey
4. Sen. Hob Bryan
5. Cindy Carter
6. Andrew Dulaney
7. Richard Manning
8. Brian Sanderson

Secretary of State's Staff:

1. Delbert Hosemann, Secretary of State
2. Lindell Floyd, Special Assistant to the Secretary
3. Ryan Pratt, Assistant Secretary of State, Division of Policy and Research
4. Justin Fitch, Senior Attorney, Division of Policy and Research
5. Brian Bledsoe, Special Counsel to the Secretary
6. Martin Hegwood, Senior Policy Counsel
7. Gerald McWhorter, Assistant Secretary of State, Public Lands Division
8. Frederick McKinley, Intern, Division of Policy and Research