DELBERT HOSEMANN
Secretary of State

2016 PIDs Study Group Minutes

August 4, 2016

The PIDS Study Group was called to order on Thursday, August 4, 2016, at 11:20 a.m. at the Secretary of State's Office, 125 S. Congress Street, Jackson, Mississippi. A list of attendees is included as Exhibit A.

Welcome and Introduction

Delbert Hosemann, Secretary of State, welcomed everyone to the PIDs Study Group. Secretary Hosemann then began with a quick summary of all the Secretary of State's ongoing initiatives and programs. He summarized the topics and discussions from the previously-held Nonprofit Webinar and Business Law Study Group, and updated the attendees on the on-going audit of charities and the new self-reporting accounting rules. Secretary Hosemann then introduced Preston Goff, Assistant Secretary of State for Policy and Research.

Proposed Changes

Preston Goff summarized the current issues with public improvement districts (PIDs) such as lack of oversight and accountability. He then suggested three possible courses of action: (1) eliminate PIDs altogether, (2) adopt language similar to that of Florida, creating a state registry and state oversight, or (3) to leave the current statutes as is.

A group member briefly discussed his experiences with PIDs in the Madison county area. There were five total PIDs in the county. Two have been extremely successful: the Reunion neighborhood and the Renaissance shopping center. However, the three in distress have led to multiple lawsuits. The member expressed concern with the PID statutes because of its perceived vagueness. He noted specifically that one of the corrective measures the statute lays out is that a board of supervisors for a county must take "appropriate action," yet does not provide further guidance on what action is deemed appropriate under the law.

One member then gave background on the Florida statutes. Mississippi's current PID statutes are based on Florida's law. The member explained that Florida's "special assessment districts" operate like individual sovereign entities on par with counties or cities, and the boards that operate these districts are subject to all the same statutory duties and penalties as elected officials of counties or cities. He also explained there are few mechanisms for recovery should a PID default: one of particular interest to the study group was the direct collection method. The direct method operates like a foreclosure, to collect past due assessments. Another member mentioned that this would allow PIDs to seek default immediately rather than wait years for the land to be seized in a tax-forfeiture, which in turn allows for the property to be turned over quickly and become productive.

Secretary Hosemann asked the group what they thought would be the best option moving forward in terms of preventing these PID issues on the front end rather than seeking curative measures after the fact. He also asked what the biggest benefit of a PID over other types of commercial development. One group member replied that the biggest benefit to forming a PID is the elimination of the cost of infrastructure for either the county or the development, as all of those initial costs are passed on to the homeowner through their PID assessment fees. Another member added that the money and infrastructure is available immediately, rather than waiting for the slow payback of that money through annual tax collection. Secretary Hosemann then asked why not just sell the lots at a higher price to which a member responded that banks will only loan the amount the land has been appraised for and not the inflated price. Another member also said it might make it easier for the developers to get loans if they know the cost of infrastructure is paid for and not included in the overall cost of the development. One member said that Mississippi PIDs need to be expanded to leverage a wider array of statutory safeguards, like Florida. Another member offered his concerns that homeowners do not understand they are responsible for the PID assessments. A member responded that the proper way to handle this situation is to clearly show each homeowner the paragraph in the home's purchase contract that contains the provision providing how much each homeowner owes a year or similar language allowing the assessment to be prepaid by the purchaser.

It was suggested that a significant problem with the PID law is that it contains inherent contradictions. For instance, PIDs are supposed to be sovereign entities, yet counties have responsibilities to do whatever is "necessary" should they go under. A member also said that public property like roads and infrastructure might mean that in some instances the county should take responsibility and contribution agreements are a good thing. He further stated that for public policy reasons, the enforcement of the provision allowing the cost to be fully passed on to property holders would never be enforced. One member told the group that in the first few original PIDs, the statutes required an irrevocable line of credit from the developer. As far as contribution agreements, he could only recall two PIDs that included such agreements, both of which involved major thoroughfares. He agreed that in situations like those, contribution agreements do make sense. He said that commercial PIDs have been more successful than residential, and those commercial PIDs could be built under a TIF (Tax Increment Financing) law and then all the bonds would be sold on the back end after the development was completed. Ultimately, he said adopting some kind of direct collection method might be the most curative options for PIDs.

At this point, Secretary Hosemann again asked which of the three options the attendees felt was better: (1) eliminating PIDs altogether, (2) restructuring the PID law to include some of today's discussed changes, or (3) leaving the law as is. Secretary Hosemann stated he did not advocate the third option.

One member cautioned the group about proposed IRS regulatory changes for PIDs that will be finalized sometime this year. Another member said he does not think the entire elimination of PIDs is practicable or proper, because essentially the government would be stepping in and imposing a limit on private enterprise. He stated he supported structuring the laws to clarify duties and eliminate inconsistencies and he was of the opinion that the overall answers to the PID "problems" were accountability and elimination of county board of supervisor's liability. Another member agreed, saying that there is no way to statutorily prohibit a bad economy and he would suggest thinking long and hard before eliminating PIDs altogether. Another member added that not every project will be a success; the best thing to do is just make sure risk is allocated correctly. One member asked who assesses the value of a PID at the start. Another member responded that the bondholders do, but beyond that there is no oversight. Another member added that it actually depends on the credit of the county in which the PID sits.

Secretary Hosemann asked if there was anything else anyone wanted to discuss, any other comments or questions. There were none.

Conclusion

At the conclusion of scheduled discussion, Secretary Hosemann asked the group participants to contact the Secretary of State's Office if they had any suggestions related PIDs. He said his office would begin drafting some legislation, and would send that out to group participants, at which time they would collect feedback and hold another meeting or conference call if necessary. Secretary Hosemann thanked everyone for their helpful input and a great discussion.

With no further business, the Study Group was concluded at 1:00 p.m.

Exhibit A

Minutes of the PIDs Study Group

August 4, 2016

Attendees

1. Yamaiky Bacallao
2. Trey Bobinger
3. Debbie Brangenberg*
4. C. Phillip Buffington, Jr.
5. Norman Cannady
6. Brian Crumbaker
7. Andy Dulaney*
8. Stephen Edds
9. Mike Espy
10. Jessica Flood
11. Chris Gouras
12. Steve Gray
13. E.J. Gregory
14. Clarke Wise
15. John Hedglin
16. Troy Johnston
17. Ronny Lott
18. Neal McCoy
19. Wilson Montjoy
20. William Smith
21. Susan Tsimortos
22. Randy Wall
23. Rick Wise

*call in

Secretary of State's Staff

1. Delbert Hosemann
2. Nathan Upchurch
3. Anna Moak
4. Preston Goff
5. Curtis Anders

6. Leann Thompson
7. Matt Anthony
8. Meredith Pohl
9. Bill Cheney
10. Kelly McMullan
11. David Weems
12. Jim Ellington
13. Doug Davis