DELBERT HOSEMANN
Secretary of State

Mississippi Secretary of State
2011 Business Law Reform Study Groups
Minutes of the First Meeting of the Public Finance Laws Study Group
June 23, 2011

The first meeting of the Public Finance Laws Study Group was called to order on Thursday, June 23, 2011 at 11:04 A.M. at the Office of the Secretary of State, 700 North Street, Jackson, Mississippi. A list of the persons who were present in person or by telephone is attached as "Exhibit A".

Welcome and Introduction

Ryan Pratt, Assistant Secretary of State for the Division of Policy and Research, welcomed the members and allowed introductions for all of those present in person and by telephone. Secretary Hosemann then addressed the group, highlighting the past successes of previous years' study groups and expressing his goals for this group specifically. He announced his desire for Mississippi to have the most favorable business laws in the country, and that he believes the work of this study group, along with the others in existence, will play a vital role in achieving this goal. He wishes for this group to focus on charting laws which will have a standing impact well into the future, rather than working to provide a quick solution limited to today's concerns. He thanked everyone for their time and dedication to this group and to the State of Mississippi.

Public Improvement District Overview

Gerald McWhorter, Assistant Secretary of State for the Public Lands Division, provided a brief overview of the Public Improvement District Act of 2002, which was passed by the legislature and has been the statute governing Public Improvement Districts (hereafter PIDs) for the past 9 years. He then gave a detailed overview of the tax forfeiture system which is utilized by the PID Act. This provision of the statute is especially important to the Public Lands division, as assessed property within a PID will likely be forfeited to the State this coming August. Mr. McWhorter shared his concerns with the group about the current process and proposed that the group consider three things; 1) Whether the tax sale collection process is a realistic means of addressing the current issues; 2) If not, what new process can we implement; 3) If yes, what adjustments or improvements do we need to build into the law to address PIDs more specifically. The current law which addresses the tax sale process exists in Mississippi Code § 29-1-97; however, it only directly addresses "municipalities" and has no mention of "counties". The lack of distinction between the two bodies is a cause for confusion on how the State should address many pieces of forfeited land. Currently, there are two options for the land when the assessments are not paid; the land goes to a tax sale and is either 1) sold to a buyer or 2) struck off to the State. The process after the land is struck off to the State is where Mr. McWhorter finds there is little guidance in the current statute and asks for the group to consider making improvements to this process. Mr. McWhorter announced that there are currently about a dozen PID's in existence in the State, at least three are currently defaulting and one will likely be coming to the State within the next few months. Based on these numbers, the necessity for clear answers is very great.

Co-Chairs Address to the Group

Ryan Pratt introduced the two Co-Chairs of the Public Finance Laws Study group, Mr. Thad Varner and Mr. Stephen Edds. Mr. Edds addressed his goals for this group and some of the key points he hopes to hit through this process. Mr. Edds pointed out that since the PID statute was created over 9 years ago, there have been many successes along with several failures. Over He identified 6-7 issues over this time period, which he feels need to be revisited in the legislation. He then mentioned a few of the problems he sees with the current statute: the lack of distinction between commercial and residential PIDs, the possible need for State oversight, and the acknowledgement that Florida has made several changes to their statute since we used it as a basis for ours that we should consider. Mr. Edds asked for the group to send all of their issues/concerns/or questions to Mr. Pratt by July 6, 2011, so that a previously appointed subcommittee may review those comments and return to the group with a detailed agenda at the next meeting. Mr. Edds asked several previously selected members to serve on this first subcommittee and all accepted. Following Mr. Edds address, Mr. Pratt opened the floor for any other issues and concerns the group wished to address at this time.

Introduction of Ideas by the Group

Elections

Mr. Andy Dulaney, a representative of a residential PID in Tunica County, discussed the concerns he has with the current process for board elections. He finds that the statute is vague in addressing who is permitted to vote and that the current interpretation is resulting in unfair elections to developers and those outside of the community. He also referenced an Attorney General's opinion on the subject.

Valuation Process

Mr. Gerald Barber proposed addressing the current problems in the property valuating process. He has found through his work with several PIDs in Madison County that many of the successful PIDs are so because the value of the property far outweighs the value of the assessment. He finds that when the value on the assessment far outweighs the value of the property, as is the case in many of the failing PIDs, the ratio created is upside down to the intent of creating a PID to begin with. Another member of the group, Mr. Chris Gouras, raised the point that this problem may be cured within the process of underwriting, and that perhaps the group might want to look into creating a check and balance system for the PIDs that is similar to the one required of municipalities and counties, which only allows a PID to borrow up to a certain amount on the assessed valuation. Mr. Gouras also believes that perhaps we should be using the market value rather than the projected value in the valuation process and that we should distinguish between our discussion of regulating PIDs already in existence and those which will be created in the future. Secretary Hosemann agrees with the idea of using market value. He believes that there needs to be an understanding that not every property will be a Highland Colony (a PID-like special assessment district) and that we should valuate land with absorption rates in mind.

Tax Increment Financing

Mr. Arthur Johnston discussed his concerns with Tax Increment Financing (hereafter, TIF) and the need to clarify the muddled statute that currently deals with this area. He proposed the group consider the possibility of a subcommittee to address some of these concerns.

Failed Tax Sale

Secretary Hosemann then asked for the group to consider the prospects of what happens in the event of a failed PID. Mr. McWhorter gave some specifics to the group on the current statutory scheme for what happens in the event of a forced sale. He offered the following numbers: the land will be sold at 50% fair market value if it is to an unrelated buyer and will be sold at 25% of the fair market value if sold to the original buyer. The statute is flexible in that it allows for these rates to be altered with the approval of the Governor, however that is one of the few areas it allows leeway, something which Mr. McWhorter finds problematic. The State pays the back taxes on any forfeited land but they are not required to pay any of the assessments. Also, any money from the public sale is statutorily set to go to a special fund, meaning the State cannot return any excess money from a sale back to the county or entity which is still in debt from the outstanding assessments. This is a collective concern of the group. The statute does, however, allow for the Secretary of State to convey title to another government entity without cost. The group collectively agreed that this is a sound provision and should be retained. Mr. McWhorter was asked how assessments and ad valorem taxes are distinguished in the process, and he answered that the statute is currently inconsistent on this point and needs to be revised for clarity. Currently, the State does not take any assessments into account for the overall profile for sale, meaning the State could potentially be selling a liability. Secretary Hosemann spoke of his overall concerns with how limited his office is once they gain title to the land in a failed tax sale. He believes that PIDs are still a good idea overall, but that public support for them will wane if counties are forced to write million dollar checks in the near future for assessments on failed PIDs. He urged the group to be very thoughtful and conservative in addressing changes to the PID legislation, in an effort to avoid losing legislative support entirely.

State Oversight

Senator Hob Bryan asked the group if there were any provisions in the current statute which allowed for some sort of State oversight in the formation process for PIDs. The group collectively agreed that there were no such provisions currently in the statute. He then proposed that perhaps it would be beneficial to have a State entity serve as a check on the process, in an effort to avoid having counties be used as political pawns by self-interested parties. Several members of the group agreed that this sounded like a good idea, but that a distinction should be made between those PIDs whose bonds the county has backed and those which are not backed by the county. Someone proposed doing away with the possibility for the county to back PID's at all, but the group collectively agreed that the ability for the county to back a project is economically advantageous to growth and that this allowance should remain in the statute. The Mississippi Development Authority (MDA) was proposed as the possible entity to oversee the creation process for PID's. Mr. Arthur Johnston agreed that they would be a good entity to undertake the task, but that if they were to be given the authority to sign off on PID creation, they would need substantive guidelines for criteria rather than general discretion. Ms. Kathy Gelston, a representative from MDA, agreed with the need for specific requirements in the statute rather than an administrative guideline, so that overcoming them for political purposes will be less likely.

Review of other States and Summary of Business

Mr. Stephen Edds thanked everyone for their input and summarized the commentary of the day into four overall categories; 1) Method of defining an acceptable debt limit, 2) Mechanism for proper valuation of land, 3) Consequences of non-payments, and 4) Possible state oversight. A few members of the group proposed that we look at other State's laws dealing in these four areas to get a better idea on what direction we would like to go in Mississippi. The States mentioned by members were Florida, Illinois, Arizona, Tennessee, and Georgia. Mr. Edds again asked for group members to send their concerns and comments on these categories to Ryan Pratt by July 6th, so that he and the appointed subcommittee can prepare a detailed agenda for the next group meeting.

Closing Remarks

Mr. Pratt reminded members of the next meeting on July 21st at the Ladner Building on Mississippi Street. There being no other business, the meeting was adjourned at 12:19 P.M.

EXHIBIT A

Minutes of the Public Finance Laws Study Group, Meeting # 1

June 23, 2011

Members in Attendance:

1. Ben Aldridge
2. Sen. Hob Bryan
3. Sen. Eugene Clarke
4. Stephen Edds
5. Chris Waddell
6. Kathy Gelston
7. Chris G. Gouras, Jr.
8. EJ Gregory
9. Lee Hill
10. Arthur S. Johnston
11. James Troy Johnston
12. Randy Ladner
13. Richard J. Manning
14. James T. McCarthy
15. William P. Sullivan
16. Larry W. Swales
17. Susan Tsimortos
18. Randall Wall
19. Rick Wise

Members in Attendance by Telephone:

1. Gerald R. Barber
2. Toby Barker
3. Gerald Blessey
4. Sessions Brown
5. Andrew T. Dulaney
6. C.R. (Bob) Montgomery
7. Steve Pittman
8. Brian W. Sanderson
9. Thad W. Varner

Secretary of State's Staff:

1. Delbert Hosemann, Secretary of State
2. Ryan Pratt, Assistant Secretary of State, Division of Policy and Research
3. Gerald McWhorter, Assistant Secretary of State, Public Lands Division
4. Justin Fitch, Senior Attorney, Division of Policy and Research
5. Brian Bledsoe, Special Counsel
6. Paige Rogers, Legal Intern, Division of Policy and Research
7. Taylor Baronich, Intern, Division of Policy and Research