

DRAFT

INFRASTRUCTURE AND PUBLIC DEPOSITORY TASK FORCE

Meeting Minutes

November 21, 2017

John A. Cherberg Building, Capitol Campus

Senate Hearing Room A/B/C

MEMBERS PRESENT:

Brad Hendrickson, Chair, Office of the State Treasurer
Scott Merriman, Vice-chair, Office of Financial Management
Scott Nelson, Office of the State Auditor
Darwin Roberts, Deputy Attorney General
Sen. Patty Kuderer
Rep. Mike Volz (via phone)
Jennifer Lawson, US Bank (via phone)
Denise Portmann, Bank of the Pacific
Commissioner Kate Dean, Jefferson County
John Comerford (via phone)
Yona Makowski
Becky Thompson, Washington Student Achievement Council
Alan Crain, Kitsap Bank

MEMBERS NOT IN ATTENDANCE:

Sen. Jan Angel
Rep. Steve Kirby
Bill Longbrake

GUESTS PRESENT:

Stacia Hollar, Deputy Attorney General
Eric Hardmeyer, Bank of North Dakota (via phone)
H.S. Berglund
Dennis Ortblad, Seattle Public Bank Coalition
Alicia Eyler, Senate Republican Caucus
Catherine Mele-Hetter, Department of Financial Institutions
Sen. Bob Hasegawa
Emily Fitzgerald, Department of Financial Institutions
Shawn Myers, Office of the State Treasurer
Anthony Hemstad, Office of the State Treasurer
Brenda Snyder, Office of the State Treasurer

ANNOUNCEMENTS/INTRODUCTIONS

Chairman Brad Hendrickson announced his election as Secretary of Senate Elect. He will be leaving the State Treasurer's Office at the end of November. Vice-chair Scott Merriman will step in to complete the task force after Hendrickson's departure.

Present task force members introduced themselves either at the table or on the phone.

APPROVAL OF MINUTES

Senator Kuderer moved to approve the minutes from the November 9, 2017 meeting. Commissioner Kate Dean seconded.

Alan Crain noted that the minutes were an accurate reflection of what was shared at the last meeting, but the information that was presented as fact was not accurate information. There is a need to discuss what was stated at the last meeting further.

There was no further discussion of the minutes and they were approved unanimously.

REPORT FROM ATTORNEY GENERAL'S OFFICE

Stacia Hollar, Division Chief, Government Compliance & Enforcement

(Full presentations materials available separately)

- A. Relevant Constitutional Provisions
 - a. Determine the purpose of the bank in order to set up the analysis of Constitutional issues.
 - i. Use of money determines issues: is government money being used to fund local government projects or to guarantee debts of a private structure?
 - ii. Money cannot be used for any sort of private debt or private projects
- B. Lending of State Credit-Article VIII, Section 5
 - a. Prohibits lending of state funds to private entities
- C. Gift of Public Funds-Article VIII, Section 7
 - a. Prohibits gifting of state funds to private entities
 - b. Additional restrictions
 - c. Does not apply to transfers between governmental entities
- D. Contrast between North Dakota and Washington Constitutions
 - a. North Dakota amended in 1919 which allowed private lending due to farmer's needs
 - i. State and local government is allowed to engage in any business other than liquor trafficking
 - ii. North Dakota enacted several statutes to allow for a state bank
 - iii. Constitutional changes were made at the same time the state bank was authorized

Questions and discussion:

Questions arose regarding the allowance of gifts for low income housing and student loans. Stacia Hollar explained that the gift of funds provision may allow for student loans if they qualify under the "poor and infirm" designation in the eyes of the court. The poor and infirm allowance could apply for low income housing as well but there is not enough case law to predict how the courts would decide. A city could choose to purchase land with the intention of developing for low income housing as long as the city has the authority to build in the first place. The gift provision applies between government and private entities, not between two governments. Private entities include private 501(c)3s, not just corporations.

Further detailed discussion arose regarding gifting money to universities for the purpose of student loans. Hollar expressed that giving money to another government entity does not implicate the gift provision but the use of the money would fall under the loan provision in Article 8, section 5. The university could not loan the money directly to a private student.

Becky Thompson shared that Washington Student Achievement Council has a small loan program for aerospace students. Hollar explained that most loan programs come from federal funds which are not implicated in the State Constitutional provisions as they retain the federal character even if routed through the state.

Members requested more detail regarding the Constitutional provisions. Local government can loan to state or vice versa. Neither provision is implicated when it is between two government entities. Hollar explained that Article 5, Section 7 regarding gifting of public funds came into the constitution at the beginning when the railroad industry was booming. It was intended to ensure that the state could not purchase stock in railroad companies so the corporations would not have any sort of control over the state.

Sen. Kuderer asked if the state could be a shareholder in a publicly owned bank. Hollar explained the state could be shareholder as the bank is a public corporation. It would depend on how it is set up. Funds that appropriated from the general fund as part of capitalization all fall under the constitutional provisions.

Discussion turned to the difference between North Dakota and Washington. There are similarities in language in the constitutions but North Dakota has a series of legislation that allows the state to get involved in various industries. The Washington Constitution does not authorize the legislature to dictate what entities the state can be involved in. The constitutional issues apply to the money even after it is passed to a local government.

Questions were raised regarding constitutional issues with capitalization. Certain funds such as highway funds are constitutionally restricted for certain use. When capitalization funds are determined, it is advisable to do a further specific analysis. John Comerford asked about using proceeds from bond issuance as bank capital. The purpose of the bond issuance would first need to be analyzed and more study would be needed to determine if it is feasible including review of federal regulations, tax implications, and other statutory rules.

Private funds for capitalization would become state money and fall under constitutional provisions. If funds are donated for a specific purpose, the structure of use would need to be analyzed. Washington State is allowed under law to receive donations. Ownership of the bank would depend on how the statute is written. Specific donations could be viewed like grants that are owned by a program, not by the state.

SUMMARY OF RECENT PUBLIC DEPOSITORY LEGISLATION

Merriman invited Sen. Hasegawa to share. Sen. Hasegawa shared a brief history of public depository bills that were introduced in Washington starting in 2010. The main focus is on the benefits a state bank could bring if able to leverage the state funds better.

Sen. Kuderer asked about the fiscal notes attached to each version of the bill throughout the years. Fiscal notes varied depending on scope of bill with last sessions SB 5464 totaling \$3M for the first biennium for operational costs. Hendrickson indicated all of the fiscal notes are on the Infrastructure and Public Depository page on the Treasurer's office website.

Commissioner Dean brought up the idea of a small pilot project to look at utilizing interested corporate partners for specific projects. Discussion followed looking at the constitutional issues raised earlier. Funds can be received by the state, but not lent or gifted to private parties.

Merriman referred back to the handout of a complete inventory of all infrastructure programs in the state. There are twelve agencies with eighty-five different programs, each with different sources of funds and authorizing requirements. The task force needs to conclude if legislation should be put on the table.

PUBLIC DEPOSITORY EFFORTS IN OTHER STATES AND CITIES

Hendrickson shared that at this time, none of the related bills have moved out of committee in Washington legislature. During interim, Hendrickson has been researching what other states have done.

Examples:

- A. Santa Fe:
 - a. Heard more about it at the last meeting
 - b. Feasibility study resulted in recommendation of task force. The task force will continue to meet for the next 4-5 months.
- B. 2011 Massachusetts Commission
 - a. 21 member commission, 18 month run
 - i. Representatives from Treasurer's office, statewide elected officials, banking industry, citizen groups, and government agencies that deal with infrastructure
 - b. Task force members should read the executive summary at the beginning of the study prior to next meeting
 - c. Recommended to not form a public depository but instead enhance some of their current programs
- C. New Jersey
 - a. New Governor Murphy made a public bank one of his main campaign themes
 - b. No specific proposal at this point
- D. City of Seattle
 - a. Recently included \$100,000 in budget for feasibility study of a city bank

Guest: Dennis Ortblad, Seattle Public Bank Coalition

- a. Worked with Sen. Hasegawa in the past and worked with former City Council-member Dick Makata in 2014 on a proposal for a city bank.

- a. There has been more support for a city bank in the last few months. Majority of the city council voted in favor
 - b. Council requested five points of study:
 - i. Actual feasibility of a public bank
 - ii. Possibility or likelihood of participation by surrounding municipalities (King County)
 - iii. How would it meet banking requirements? DFI regulations
 - iv. Actual ability of public bank to provide community benefit loans
 - v. Ability to handle cannabis related business transactions
- E. Spokane County
- a. Rep. Volz:
 - i. Lend money to local participants in local pool
 - ii. Get preferable rate
 - iii. Savings on closing costs/attorney fees
 - iv. Limited by term—range from \$85k to \$8.5M
 - v. Required to be a member of investment pool
 - b. Statutory changes required:
 - i. Would need to look at the term
 - ii. Helpful if there was a way to partner with county treasurers and state treasurer for some of the projects
 - iii. Capacity is smaller than state, which provides an opportunity for partnership amongst government entities.

Questions/Discussion:

Discussion ensued regarding Spokane County's involvement in LGIP. Spokane County uses LGIP as overnight and liquid money. 10% of pool is in LGIP. The rest of the Spokane County pool is made up of voluntary agreements of school districts, fire districts, irrigation districts, almost all junior taxing districts except cities. The fund is limited to 5 years so only a few capital projects work under the fund.

Denise Portmann asked if there are unmet needs or if the issue is just the need for lowered costs. Discussion followed regarding need to maximize efficiencies, not just fund certain programs. Vice-chair Merriman advised to wait for discussion of recommendations.

- F. Other efforts around the nation:
 - a. DC has started a feasibility study
 - b. California passed a public bank study bill out of legislature that was vetoed by Governor Brown
 - c. California State Treasurer looking into idea due to cannabis sales

DISCUSSION OF REPORT AND RECOMMENDATION PLANS

Vice-chair Scott Merriman led a discussion asking if the state should create a public depository and how should the state finance infrastructure at the local government level.

Hendrickson shared that the Office of the State Treasurer is working on a draft proposal to bring to the task force soon, which addresses the infrastructure needs at the local level.

Several members were in favor of the idea of a public depository but felt that many questions remained unanswered that were pivotal to determining the feasibility. The scope of a public depository is not yet fully decided but there is a strong desire to see state money utilized more efficiently. Several voiced a desire for a more detailed study by professionals in the field to address the questions. Unanswered questions include asset-liability mismatch, funding, lending, liquidity, interest rate mismatch, risk factors, regulations, cyber-security, ownership, governance structure, eligibility issues, business plans, insurance, impact on state's credit rating, and what RCWs would need to be amended or written to allow the institution.

Members also expressed a concern with a state bank taking on personal accounts of individuals. There should not be a conflict between a public depository and the work of private banking institutions.

BANK OF NORTH DAKOTA

Eric Hardmeyer, President of Bank of North Dakota

Hardmeyer shared a brief history of the Bank of North Dakota (BND). It was created as part of an agrarian movement due to the agricultural nature of the state at the time.

A. Basics:

- a. \$7B in assets currently, has been as high as \$8B
 - i. Deposit base shrinking due to agriculture and energy downturn
 - ii. Income, sales and MVFT tax all received by State Treasurer and deposited into BND
 - iii. BND has ability to take private deposits but does not compete with private sector
 - iv. Partners with private sector

B. Assets:

- a. Funds used then turned around and invested back into state
- b. Primary mission is financing economic development
- c. Four main categories of the loan portfolio: student lending, secondary mortgage market, agricultural lending, commercial activity with correspondent banks

Hardmeyer explained the Bank of North Dakota has a strong relationship with local banks across the state. BND acts as a banker's bank including bank stock loans, letters of credit, and an active federal funds department. The bank is currently in its 14th year of record profits. This year the bank will make a little over \$140M with a dividend deposited back into the state. On average, 50% of profits go back to the state to support programs. The rest is to support capital.

The Bank of North Dakota houses the Public Finance Authority, an agency that manages infrastructure financing for political subdivisions. There are other separate infrastructure programs as well including a revolving fund for repair/replace, medical infrastructure programs and school construction programs.

Questions/Discussion:

Questions arose regarding capitalization costs in today's market. Hardmeyer stated a 5% minimum to be well capitalized but it depends on state's De Novo regulation requirements. BND's own benchmark is 10-12%.

Discussion turned to more details regarding the dividend returned to the state. The figure is negotiated between Hardmeyer and the legislature each session, with no dividend in some years due to capital needs. The bank is subject to legislative appropriation like any other state agency and earnings could be appropriated.

Members asked about interest rates. Hardmeyer shared that the BND manages interest rate risks just like any other bank with backings from Federal Home Loan Bank as well as interest rate swaps.

FDIC does not insure the Bank of North Dakota. The bank is a member of the Federal Reserve. There have not been any regulatory issues and it's possible that the bank was "grandfathered" into the federal reserve from the beginning

Questions arose around the creation of infrastructure loans. The money comes from capital and a specific strategic improvement fund. Revenue is generated and put back into the strategic improvement fund. Projects are decided based on analysis of set criteria with funding seen as serving a gap in the market, not as a replacement of existing markets.

PUBLIC COMMENT

Dennis Ortblad, representing the Public Banking Coalition, is in strong favor of the need for a public bank based on successful models seen around the world. Many countries use a public bank to support infrastructure and economic development. He believes the US is behind in this regard.

Sen. Hasegawa agreed that the US is behind and recently visited Denmark and Sweden on sustainability tour. They both use a public bank to finance their sustainability efforts.

GOOD OF THE ORDER

Sen. Kuderer is working to set up a conference call with the New Jersey Governor-elect. She will share the time/date of the call with the task force once determined.

ADJOURNMENT

Yona Makowski moved to adjourn the meeting. Sen. Kuderer seconded. The meeting unanimously adjourned at 2:09 pm.

Respectfully submitted by:



Brenda Snyder, Recorder, Infrastructure and Public Depository Task Force
Office of the State Treasurer

Approved by:

Scott Merriman, Chair, Infrastructure and Public Depository Task Force
Office of the State Treasurer