



Agenda

DATE 9/20/17 TIME 10:22a

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Public Bank Task Force

Wednesday, September 27, 2017, 4:30 p.m. – 6:30 p.m.
Roundhouse Room – Second Level, City offices Market Station
500 Market St #4, Santa Fe, NM 87501

1. CALL TO ORDER
2. ROLL CALL
3. APPROVAL OF AGENDA
4. APPROVAL OF MINUTES
 - a. September 6, 2017 (Item #1)
5. NEW BUSINESS (4:40-5:15)
 - a. Review of relevant legal issues (City Attorney Kelly Brennan)
 - b. Retention of pro bono counsel to assist the Public Bank Task Force
 - c. Public input session plan (Michele Lis)
6. PUBLIC BANK TASK FORCE SUBCOMMITTEE UPDATES (5:15-5:40)
7. NEXT STEPS (5:40-5:45)
8. CITIZEN COMMUNICATION FROM THE FLOOR (5:45-6:00)
9. ADJOURNMENT

Persons with disabilities in need of accommodations, contact the City Clerk's office at 955-6520 five (5) working days prior to meeting date

Public Bank Task Force
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New Business <ul style="list-style-type: none"> a. Review of relevant legal issues b. Retention of Pro Bono Counsel to assist the Public Bank Task Force c. Public Input Session Plan 	<i>Mr. Mang moved to accept the offer of the Arent Fox Law Firm to consider acting as our Pro Bono Counsel with a view towards having them available to answer questions or provide expertise as necessary, Elaine Sullivan, motion carried by unanimous vote.</i>	Page 1 - 8
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Public Bank Task Force
Tuesday, September 27, 2017
4:30 - 6:30 p.m.
City Market Square Offices – Conference Room

MINUTES

1. Call to Order
Meeting was called to order at 4:30 pm by the Chair Bucholtz, David Bucholtz. Roll call reflects a quorum.

2. Roll Call

Present

David Bucholtz, Chair Bucholtz
Brad Fluetsch for Adam Johnson, Finance Director
Randolph Hibben
Darla Brewer
Kelly Huddleston
Elaine Sullivan
Robert Mang

Not Present:

J. Wayne Miller
Judy Cormier

Others Present:

Katie Updike, Consultant and Report Author
Michelle Lis, Facilitator
Fran Lucero, Stenographer

Audience: No sign in sheet.

3. Approval of Agenda

Mr. Mang moved to approve the agenda as presented, second by Mr. Hibben, motion carried by unanimous voice vote.

4. Approval of Minutes - September 6, 2017 (Item #1)

Mr. Fluetsch moved to postpone approval of September 6, 2017 minutes until next meeting date, second by Mr. Hibben, motion carried by unanimous voice vote.

5. New Business

- a. Review of relevant legal issues (City Attorney Kelly Brennan)

The Chair Bucholtz had a productive meeting with the City Attorney and understands that she is working with outside counsel who she has retained to review legal issues. I requested a meeting with that legal counsel and I was advised that once the counsel

has a draft of their legal opinion ready that we will be able to review that legal opinion and discuss that with outside counsel and that it was the expectation of the City Attorney that she would attend our next meeting and have an opinion, if not completed, at least ready to discuss with us at our next meeting. She is not here today, as I understand because the City Council meeting is taking place at the same time of this meeting.

b. Retention of Pro Bono Counsel to assist the Public Bank Task Force

Ms. Brennan and the Chair Bucholtz had a conversation with a Lawyer named Mr. David Dubrow from the Arent Fox Law Firm out of New York City, That law firm is expert in banking matters and finance matters. Chair Bucholtz was impressed with the conversation that they had with Mr. Dubrow on the phone. Mr. David Dubrow volunteered his services on a pro bono basis for this board if we felt that it would be necessary. The Chair told Mr. Dubrow that he would bring the matter to the board today for discussion. The Chair said on one hand he was very pleased and honored that a firm of that reputation and a lawyer with those skills was willing to offer pro bono services to us. Chair Bucholtz said he is a little bit concerned about having dueling legal opinions or parallel work going on and not sure that that would necessarily be the most effective use of his time or helpful to the City Attorney or her counsel in regard to the work that they are doing. My preference, and I am not a trial lawyer and I am not someone who tends to deal with situations where there is that kind of competition or adversity would have been a preference to allow counsel with national expertise to visit with local special counsel to compare notes, to discuss issues and figure out how to go forward. That has not yet been offered to us by the city attorney's office. I am of a mixed mind on how to proceed at this point with the offer from the Arent Fox Law Firm. Ms. Brennan will provide more information at next month's meeting for the Task Force members.

Kelly Huddleston: In our conversation it was very clear that he or maybe another member of his law firm have done a lot of in depth specific work on creating something called an Economic Development Bank which is not chartered nationally or through the state and he is talking to several municipalities in the state of New York about this specific idea. He is very knowledgeable about this and has a roll out plan; I think he has investigated it pretty thoroughly in terms of this Economic Development model that he is talking about. I agree with Mr. Bucholtz that it might be premature to get him on board and do a lot of work before we are there yet.

Mr. Mang said it sounds like he is working on a classic alternative to chartered bank.

The Chair added, like the feasibility reporter that we heard from at our last meeting, his focus has been on what we might call the captured bank or the internal bank. That is a bank that might provide additional services for the city as a customer and that he has not focused on or expressed any conclusion reviews on what we might call the altruistic bank, if you will. That is the bank that would be more of a full service bank to the public at large. His concentration is the same concentration that we heard from the feasibility reporter. And in that regard, he did as Kelly indicated state that this entity that he is looking at might be some kind of a non chartered or non-bank bank with an expectation that it would not have a customer based and that it would not take deposits, is what I understand but might provide mechanisms for a local government to have different opportunities to work within its financial needs and we did not explore any further than that with him.

Mr. Hibbin asked if it was within our scope to gather that information.

The Chair stated, that is a good question; my sense is that it may go to the question of what is a public bank, what are we trying to do and what are the legalities. I'm not sure whether we should look at the Resolution more carefully to answer that question before we go forward with this counsel. I think that is a good point.

Mr. Mang stated that it sounds like a good resource to have. Mr. Mang suggested that we accept his pro bono offer and have him as a resource if we have questions that we would like him to specifically answer as well as perhaps providing us with background in terms of what work he is going to put together.

Mr. Mang moved to accept the offer of the Arent Fox Law Firm to consider acting as our Pro Bono Counsel with a view towards having them available to answer questions or provide expertise as necessary, second by Elaine Sullivan, motion carried by unanimous vote.

Discussion:

Me. Fluetsch: In my opinion, this is a New Mexico legal issue and that is what Kelly and outside counsel are looking at. We need to look at New Mexico Statutes; we need to look at what we can do within the realm. In that sense, this attorney adds really little value to us. The fact that he already has another bank product out there makes him, in my opinion less than arms length. He is a salesman now because he is pitching an idea. In that sense, I think that we need to look at what the voracity of the legal opinion that we get from Kelly, the city attorney and her outside counsel. It is pro bono so it is his time he's giving up. He brings little value until we know what New Mexico State Statutes allow to invest in and can New Mexico Statues create this bank. I see this as premature.

Mr. Mang said the intent of the motion is not that we immediately ask questions but to secure that his willingness to do this, that a gesture of acceptance is in order and if we never have any questions, then so be it. I think just to be polite and recognize that he has made an offer in order to say that we are happy with that and we would like to be able to call you if we need information.

Chair Bucholtz said his sense of the motion was not to assign a particular task but to have him available.

Chair Bucholtz stated that they did request to meet with the City's Counsel on this matter and that request was originally rejected under the explanation; that there were confidentiality issues between the city attorney and the special counsel and that it was their expectation that the members of this board would seek pro bono services in order to get advice in regards to the matters that it studied. Since that time I have had discussions with the city attorney and she has been gracious to allow us access through her counsel when we prepare a product ready for review. But in regards to the advice I got about the expectations that the board would seek pro bono services, I myself am a lawyer but I am not the lawyer for this board. I do have some expertise in my profession in this area. My sense is that while we are looking for assistance in areas of New Mexico law and every state is different that nevertheless there may be some parameters within the laws from different states that might be useful by way of comparison to what we do here. I would think in my view in the spirit of what our expectations are it would be useful to have someone on board that we could consult if we thought that would be necessary. I don't want to have a circumstance where we have competing or dueling legal opinions. I want to give the City Attorney the opportunity to work with her special counsel and to hear from them and hear what their concerns may be. But at the same time in order to

allow us to explore as much opportunities as we may need to and in the absence of a great deal of expertise in this area beyond the city's special counsel, the city's regular finance counsel, my own firm, there are very few lawyers yet available to help on this that I think I am likely to vote in favor of this motion.

Mr. Fluetsch: A long those lines and in addition to this we should seek pro bono counsel with New Mexico specialties and that we solicit pro bono counsel that is an expert in New Mexico Statutes and banking.

Ms. Sullivan said she felt that the City has already done that. I am baffled at why it is not easy for you, Mr. Chair to be in collaboration with the pro bono attorneys, or maybe they are not pro bono and the city is paying them. In that case for certain, I don't understand why we aren't maximizing the communication and collaboration between this body and those two attorneys and then add more attorneys who are pro bono providing help. It seems like duplication of efforts.

Chair Bucholtz asked Mr. Fluetsch if he had any suggestions on who we might solicit in New Mexico.

Mr. Fluetsch said he did not have any bond counsel or banking counsel at this time, he could research in the next weeks with the bankers to see if they know of any bank counsel who specialize in banking for New Mexico or even New Mexico State Statutes. Not knowing the voracity of the city attorney and their counsel and what their product is going to say, I think it is all premature.

Mr. Mang asked if we had any access to the Legislative Council Office as a resource on New Mexico Banking Law?

The Chair said he did not believe we have any formal access to the Legislative Council Service. Legislative Council Service serves as the drafting arm on to the legislature. I don't think that either they or the Attorney General's office for that matter would have services available for us to inquire of these kinds of questions.

How did the NY Attorney come to us? New York Attorney was recommended to us from people in the community who are active in the public banking process and came to as we reached out to a variety of people trying to determine resources.

c. Public Input Session Plan (Michele Lis)

In the Resolution the Task Force is required to have at least 2 sessions where the public can participate. This Task Force at its first meeting decided that at every meeting we have 15 minutes of public comment. The purpose of a special public meeting is to have more input and time available. We talked about a couple of different options for doing this; we could go to Finance Committee and use that venue to do a presentation from the Task Force and follow it up with public comment and we also had the option of having a specially scheduled session for public input that would happen prior to the November Finance Committee meeting. The opportunity is to gather information from the public first to be presented back to the Finance Committee as part of its presentation.

There are two options and what I reflected on, as a Facilitator is I thought it would be helpful if I could ask the board a couple of questions. When I facilitate I always say the “what” and the “why” should come before the “how”.

1. At that point, in another month where do you think we will be in terms of what you would like the public to know? Is there a component of information sharing that should be part of that?
2. What input do we want to receive from public input?

By knowing the answer to those two questions that will help us decide whether we should design a separate meeting and think about how we can get feedback from people before Finance Committee or is it better to go straight to Finance Committee.

We had an offer from Councilor Dominguez and Councilor Villarreal who said they would be happy to have public input be part of the Finance Committee if this Task Force wishes to do it that way.

Feedback from Task Force Members:

Mr. Fluetsch said we should hear from the sub-committees before answering these questions.

The Next Steps discussion followed all sub-committee reports.

(From the Resolution) The Task Force shall hold at least two public meetings between 3 and 6 months from the first meeting to report to residents on their progress, to hear public comment and to assure transparency and accountability to the public from the Task Force work, etc.

Ms. Lis: Remember that there are two things you are proposing to put on the agenda for October 18th, one is the City Attorney’s presentation on some of these legal issues and the other one is a more detailed presentation on the capitalization issues. Mr. Mang noted that he will not be present for that meeting; Mr. Wayne Miller will be in attendance. There will also be continuing reports from the sub-committees.

Two Components

- a. Report Progress
- b. Public Comment

Chair Bucholtz: In the work we have done we have learned a lot about the issues of the job that a public bank might be and they do breakdown in to these two separate components. The need for a bank that would have the government or some select number of government be the captured customers which is a complicated relatively narrow matter where the city has taken steps in that direction in its own way without the nomenclature of bank but still has done a lot of work. Further that there are pieces on the state law including the New Mexico Finance Authority as a lender to governments, and the State Treasurer’s Collective Investment pool, a place to simplify it a lot, where local government can make deposits and to examine those issues in regards to what would be the role of a captured public bank. Then we have the other altruistic bank that is a bank that would be more available to the citizens at large in a mechanism that would allow closer to a full service bank for the public, the regulatory issues, etc. I would like the public meeting, at least in part to be an education to the public members on that study that we have done and an explanation of what those issues

are and what are the challenges in connection with the public saying to us, "thank you very much for that but we were thinking of something else", or "here's why that is good, here is why that is bad", but I think there has to be two-way communications in that public meeting. Now that we have gotten this far we have an obligation to the public not only to hear from them but even at that early point to say, this is the kind of thinking that we are starting to do about what may be required in what you are asking for and is this really what you are asking for? Or are you asking for other things that we haven't considered? If this is what you are asking for what do you feel the pros and cons are. We need some ability for the government itself to come and say, here are the things to remind the people beyond Mr. Johnson's report and staff that is here has also graciously agreed to present a plain English version of Adam's report that might be more accessible to the public in regards to the good steps that they have taken. We owe the government an opportunity to also present in this public meeting and say, you are saying that we need x and y, here is what we have done relative to x and y, we didn't think about z, we need that give and take as well. I would like to see all of that happen in a public meeting. I don't object to having that meeting before the Finance Committee or within the proper time frames if the elements that were necessary for cause to be effective and to give proper notice to the public. Then once we go to the Finance Committee have the Council listen to that and still have the public be able to present before us and the Finance Committee and have it be a continuing dialog.

Ms. Brewer: I like the idea of having the discussion before we go to the committee, like you said, it could be a continuation, we could start it and let the public continue before the Finance Committee. I think this gives us an opportunity to have more space, time room to explain what we have been doing and what we found and to do the education that we want to talk about. The two different kinds of banks we are discovering are kind of out there. I like the idea of doing it ahead of time.

Mr. Hibben would like to have the meeting ahead of time. The sheer value of the content would be valuable to meet ahead of time.

Mr. Mang: I personally am interested in what the public has in mind and what it is they are interested in if it were a public bank. You use the term altruistic side and I have a reservation about using the word altruism when it comes to banking. What I would say is what is the added value or public impact that could come from this and what is the public expecting. If there is no expectation of added value then that tells us something else. What is the potential of having a bank or not having a bank? I would like to hear from the public has to say about that.

Mr. Fluetsch the process was to report back the progress. I think in listening to the sub committees report back to the full task force, I think I would start off the meeting with the public by allowing each sub-committee to report. We are going to have answers to the legal issues and the legal opinions and legal issues that people will find and regulatory issues are going to be something that is very educational for the public. I think the capital side of it really has a lot of nuances that maybe not everybody has thought about and I am certain that the governance committee will have, by the time you talk in November, some pretty good ideas about; these are the structures that we have looked at, these are the structures we are leaning towards, we think this is the way we want to handle that and get the public's feedback to each one of the sub-committee reports. Digest this and now what do you think?

Ms. Sullivan, in terms of timing if we wanted to have in November a full blown public hearing or town hall kind of meeting with quite a bit of education and some opportunity for

public input that might mean that we would not be reporting to Finance Committee until December.

Chair Bucholtz agrees with Mr. Fluetsch, we want to have at the very least, the input that we are expecting be done by our next meeting before we went to the public. I think it is important to have more on the legal and more on the capitalization. That would mean having a public meeting some time between October 18th and November 13th and going to Finance Committee and having another public meeting during the Finance Committee meeting.

If we are going to present at the November 13th Finance Committee requiring information by November 3rd.

Public Bank Task Force Meeting: November 8th and 19th

Finance Committee: December 4th and 18th

1. We would like to report to the governing body that we would have a public meeting first before going to Finance Committee, meeting with Finance Committee and possibly a third public hearing.
Agenda: Have sub-committee's report. What have we learned and what are the challenges.
2. Deeper understanding of what the public wants, what does it look like when we are successful, people would be talking about the benefits of what they want.

Chair Bucholtz: I appreciate all those that come here to participate. We will need to get broader coverage to get the invitation out and have them be able to speak.

Ms. Huddleston said it would also be good if it could be a facilitated discussion.

Ms. Sullivan is happy to hear that the city will make easy to understand reporting. We want to make sure that the public can understand the report, you don't want them to leave confused. Secondly, Cause, action desired, impact, they sound great but what creates nervousness is action desired. Action category seems early on.

Michelle Lis: You could shorten it to cause and action.

Mr. Mang: If there were specific questions and people could be asked to address just those questions, it might be easier to facilitate and have the open session.

Michelle Lis: Are you stating that despite the amount of people we would let them speak with no time limitation.

Brad Fleutsch: The summary reports from committees could be put on the city website and other banking websites. We could get it out 10-days before the meeting so they could have information.

Ms. Armstrong asked where and what time would the meeting be held? October 18th is that adequate time to have a meeting date?

Michelle Lis: December 4th is the only meeting for the Finance committee.

Take Away's for Michelle Lis:

1. October, refine a proposed agenda

2. Have a communications plan and a timeline.
3. Work with the city to identify a place and time for public hearing.
4. Overall timeline for the entire project.
5. Need to circle back with Councilors Dominguez and Villarreal to give them an update on the format of the meeting.

Mr. Hibben talked about a written report from the sub-committees.

Mr. Fluetsch: Next Steps, this is the 3rd meeting, at the next meeting or two you will need to develop a technical committee; what do I need to run a bank, fundamentals of banking. In 3 months we will be at the ½ way point and the task force was supposed to develop a business plan. We need to start pulling the guts together.

Mr. Mang: In order to do that, what are the products we need to have at the mid-point, what is it that we have to produce by the ½ way point.

Mr. Fluetsch: It isn't in the resolution; we discussed it in the first meeting.

Chair Bucholtz it would not be pre-mature to add to our agenda the beginning and development of the business plan and a technical committee to address the points Brad has brought up.

6. Public Bank Task Force Sub-Committee Updates

Legal Subcommittee: Goal was to meet with the city attorney to discuss how we would have access to city attorney special counsel. Direction is to have city attorney come to next meeting with presentation on the work that is being done by the city attorney special counsel and there was a report on the discussion with outside national counsel and the motion approved to at least inform that counsel that we would be interested in accepting their offer to be engaged as pro bono counsel with an understanding of this board that is not to say you are going to go to work with the City attorney but to be available to us to the extent that there could be questions or the need for further expertise on some of these technical financial questions, recognizing that they are national counsel and not New Mexico counsel and that every state is ultimately different.

Randy Hibben: Regulatory Sub-Committee

We have had a number of meetings since the task force last met including meeting with the City of Santa Fe with Brad and Christina, representing the Treasury Division and with the Regulation and Licensing Bureau. The basis for our discussion with the regulators was a preliminary memo drafted by us, their Senior Attorney which pointed out a number of their concerns and issues about the establishment of a public bank. (Memo and Summary: Exhibit A)

First concern that the Financial Institution Division had was concerning the Anti Donation clause, which has come up repeatedly in our conversations.

Chair Bucholtz stated, prior to our interacting with the City's Special Counsel I did share this memo with the Special Counsel so it is available to them. One of the go no go questions that are presented in here are whether our State Anti Donation Clause, particularly the wording on the anti donation clause which does not allow the lending or pledging of state credit. In my research on this topic over a number of years, I have

concluded that lending of credit means acting as a guarantor or otherwise offering security of the government that could be accessed in the failure of another borrowers ability to repay the borrower. And that it doesn't mean you can't lend money and expect someone to pay you back. But, there is some confusion about that in a long convoluted history of the anti donation clause. You could be attracted to another reading of those words. We had a good meeting with the attorney for the FID, we presented that questions and we had a fair amount of discussion on the issue and I think what I heard was, "I appreciate that discussion, I'm open minded on this, my expertise before I went to this position was in other places, and I would certainly be open to hear other views on that question."

Mr. Hibben stated that Mr. Graham asked that it be stressed that this is indeed a preliminary memo and his initial thoughts on the subject.

Chair Bucholtz said that if the Anti-Donation Clause was read to say a government can't do lending that certainly would have to be something to seriously consider in regard to an overall legal analysis. My own view is that there might be some flexibility there and as I said the memo in its entirety has been shared with Special Counsel to the City Attorneys office for their consideration if they go forward in the review.

Mr. Hibben stated that some other items in that memo were concerns on FDIC Insurance. The FID will not issue a charter for state banking operation unless that entity has Deposit Insurance. The bank in North Dakota is not an FDIC bank and that is how they avoid this item. Not sure if the state can grant deposit insurance. The FDIC has come down and said they are not pro issuing deposit insurance to a governmental entity. You might ask about the bank of North Dakota, they are not an FDIC insured institution. They are guaranteed by the full faith and credit of the State of North Dakota and that is how they have avoided that situation. It is certainly unclear if the State of New Mexico would be in a position to grant its full faith and authority, we go back to the anti donation clause.

Chair Bucholtz: I will put on my legal hat for a moment. I think that the questions of FDIC role in its interaction with the bank is a question which is certainly beyond my expertise but likely a question of Federal Law and question of federal FDIC, important questions. On the question of the state guaranteeing in some way or providing its full faith and credit, that would be a significant obstacle within our government structure. Our government only allows general obligations to be created for particular capital projects after a vote of the people on the ability to raise property taxes to pay that kind of indebtedness and there is sufficient case law convoluted as it may be that would be relatively restricted beyond what sometimes refer to as special funds in this case could be capitalization. The providing of the full faith and credit and the state to back up those kinds of obligations would in my view be a problematic question. I am sure that is something that Counsel will be thinking about both in regards to the question of deposits and in regards to the matter in which the law might allow capitalization.

Mr. Hibben: An additional theme that carried over was something we discussed here before and that's the glass wall that would have to be created between politics and the effective safe and sound performance of a bank. Throughout this memo you will notice that is a recurring theme. Interestingly enough they also raised a concern that a public bank might be subject to the Open Meetings Act and the impossibility of running a bank that would be subject to the Open Meetings Act. That was a great concern of the regulators. The other productive meeting we had was with Brad and Cristina going over

the Treasury Division and reviewing Adam's memo that was circulated at the last meeting regarding all the accomplishments and achievements the city has done to satisfy the concerns that were put forth in the feasibility study. The Chair and Mr. Hibben met and concluded that the Treasury Division really has stepped up and done everything it needs to do and that the addition of a public bank to serve the city's finances would really be a duplication of effort. It has already been done at the city level. Cash flow has been optimized, bonds have been diffused or pre-paid with available cash, investment returns have been increased and the ability to try to spread deposits to local community banks have been undertaken by both Brad and Cristina. With that, as the Chair has said it leaves us with an altruistic bank and how we might further those efforts with this task force.

The Chair said further in to the discussion he would like to talk about educating the public on what a public bank might be and hearing from the public what they expect to discuss what the city has done at least in regard to the question of whether it might need a captured bank, if you will.

Mr. Mang asked if any attention was given to the relationship of the federal reserves?

Mr. Hibben said yes, we did discuss the federal reserves and as a summary point in the memo; the federal reserves has also come down and said that the privileges and membership would not be extended to a publicly chartered bank. That is their initial feel and it has not been tested. A State Chartered bank need not be a member of the Federal Reserve.

Governance Sub-committee report: Darla Brewer

Looking at three main areas, composition, roles and duties of the city and its roles and responsibilities. Resources whom we have met with so far include Senator Peter Wirth, Rosemary Romero, Chris Calvert, Kelly O'Donnell, Kathy Holian, Earl Potter, Alan Webber, Mike McGonagle, Viki Harrison, Speaker Brian Egolf, James Jimenez, Beth Beloff, Anna Hamilton, Ken Mayers, the Brass Tacks Team and Mike Krauss of the Public Banking Institute.

Next Steps and Meetings we hope to have in the near future: Pat Murray, Winona Nava, Jim Gollin, Joshin Byrnes, Bill Smith, Kenneth Romero, Mike Loftin, Katherine Miller, James B. Lewis, Leslie Nathanson Juris, Leslie Elgood, Julia Rose and Curt Johnson.

We are compiling all of this information and we are putting it in to categories and we are also looking at some examples from different areas like quasi-governmental areas and non-profit areas and what their governances look like, to be general. One thing they did look at and it is available (Exhibit B) the makeup of the North Dakota Bank and their governance structure. This gives you an idea of what theirs looks like. They have a governing body and an advisory board and an Executive Committee. They changed their governance system fairly recently and this is their report.

The Chair commended Ms. Brewer on the scope of those who have been interviewed, thank you to them as well.

Ms. Sullivan said it is necessary to talk to as many people as we can to get their perspective.

Bob Mang: Capitalization

We issued a series of question at the last meeting. Mr. Johnson asked that the questions be sent to him, most of them apply to financial questions. We did not hear back from him until today and he said that they will be prepared to answer questions at the next meeting. Mr. Mang asked that those answers come to the sub-committee prior to the next meeting. There is one question that may not be able to be answered by the Finance Department as it may be more legally related; if in order to capitalize if the city borrows any money for the capital could the borrowings be repaid using allocations from the city's gross receipts tax? As I recall reading something that you have written, that the gross receipts tax is applicable to obligations of the city or it can be used in that way.

Mr. Bucholtz, first of all this is a legal discussion, not a discussion of willingness or practicality or the financial fiscal responsibilities in doing this kind of borrowing. As I said that the offering of the states full faith and credit is very limited under our state Constitution subject to a very large loophole or exemption. The exception is the Special Fund Doctrine. And the Special Fund Doctrine which is developed mostly through constitutional case law under New Mexico law indicates that if you find funds that are available other than the full faith and credit of the state those funds can be available if statutorily authorized if otherwise constitutional to repay indebtedness. (Bolton vs. Valencia County) a Court of Appeals held that gross receipts taxes could be placed in to a special fund to be available to repay indebtedness. So the general view of the bond community is that gross receipts taxes can be used to pay indebtedness. That begs the question of what kind of indebtedness you can allow that would be paid under gross receipts taxes. That question I do not believe has been definitively answered one way or the other. There is some language in what we call the Revenue Bond Act which is the statutory authorization to borrow gross receipts taxes that a home rule city can borrow for a public purpose. That is the text of that Statute. Before such a borrowing would be done, and if it were fiscally responsible and if the governing body felt like they wanted to do that the counsel would need to answer the question, with some strong expectation, that borrowing for the capitalization of a public bank is a public purpose that is allowable under that statute and otherwise permitted by our Constitution. If you found the answers to those questions to be yes, it would be an easier answer to say and you can pay that back with gross receipts tax under the special fund doctrine. One of the things I did not already comment on and Brad would know this, the city already borrows using GRT as a repayment source. When it does so, it enters in to a variety of contractual relationships with bond holders, which would include the Ordinances that the City adopts when it is borrowed. It may be upon further investigation and it would likely be that there are certain kind of restrictions in those ordinances that would have to be considered before a borrowing like this could be allowed. One for sure is that there are coverage tests, so there are tests that say you can't do more borrowing unless you can show the sufficient cash flow from gross receipts taxes to pay borrowing back, sometimes that is call an additional bonds test. But there could also be variety covenant, promise by the city or restrictions on its ability to act in regards to borrowings that you would have to examine before you would need to determine you could do this and I haven't reached any conclusions on that.

Brad Fluetsch: There might be IRS issues involved if we were to do a dead issuance and the equity that we bought was earning more. Again, who owns the bank? If the city owns the bank we can't earn an arbitrage. If we were to go out and borrow \$10 million dollars capitalize the bank, borrow at 2%, let's say the bank earns 3%, we would have to refund to the IRS 1%.

Chair Bucholtz: That raises additional questions. The city would usually borrow in a way that it would allow the interest on its bonds to not be subject to Federal Income Tax. Those are the rules that Brad is referring to. If you are doing a borrowing that is expected for the interest on that borrow will not be subject to Federal Income tax you have another incredible complex layer of federal rules that the IRS administers as to how you can borrow. The city has the authority to do borrowing where the interest on the borrowing would be subject to income tax and not be subject to those rules. That borrowing is more expensive because, since the holders of the bonds would have to pay income tax on their interest they would demand the higher interest rate. That would go to the question of financial liability of a borrower. I am not here to say it is or isn't doable under Federal Tax Court, but that would be the balances that you would go through.

Brad Fluetsch: As an example the city just refunded this property going from tax exempt to taxable so that we could lease space to non-governmental entities which bring up the whole public purpose so if we issued taxable bonds than would those be a non-public purpose and would they be allowed out of the special purposes fund.

The Chair said those are all good questions to study as the city might go forward.

Mr. Mang: So an extension of that is, you have a mortgage on this building and you are borrowing at a certain interest rate. If you begin to lease to for profits or even non-profits and the revenue is in excess of what you are paying as a return, do you have to give and what is the distinction there.

Brad Fluetsch: It is the taxability of the bond interest that the city pays. If it is a tax exempt bond, municipal bonds classical tax exempt from federal, we can't earn a profit. If it is a taxable issue we can earn a profit.

Mr. Mang: That clarification is very helpful. One of the things that we discussed in committee was the possibility of looking at city property's that are not encumbered and putting a mortgage on those to the extent that we need capital for the bank. That would be a for profit equation. That might qualify without having to revert.

Chair Bucholtz: On that topic I would caution without giving a seminar today on advanced upon study. There are some very old and difficult New Mexico cases that would cause you to trace the purchase of the building back to what resources were used to purchase the building and then determine if the mortgage created some kind of a full faith and credit pledge that you are not allowed to do. The case is called Palmer vs. Albuquerque, a 1914 case. There is a sense when we do that kind of work and we look to mortgage properties on behalf of government that we have to trace back where did the monies come from to buy the building to begin with because you may be putting something at risk that the Constitution won't let you do.

7. Citizen Communication From The Floor

Mary Schruben: Two comments if you do have the public hearing in November and if you have it in city hall, it is more orderly and the local radio and TV station can broadcast from city council chambers. I see that as a plus as opposed to having it at the convention center. Having sub-committees present and reporting is great. Also when public

comments possibly ask for participation by subject so they can organize their thoughts and maybe those that want to speak can speak at the end to organize public comment.

Elizabeth Dwyer: Thank you to everyone who is on this task force, it is wonderful to listen to the work that has been done. (request for regulation and licensing letter)

Nicole Lichen: It would be helpful if minutes and attachments would be linked to the Finance Committee web page. I would like to remind us that we are here to explore a chartered public bank that takes deposits. I don't think we have time to look at other models as part of this committee. I heard from Thomas K of the Sparcasan model that they have in Germany profits in the bank. Ms. Lichen can provide more information.

Chris Calvert: The resolution states charter public bank, I think it is intentional and we should look at that before looking at other models. I commend the city for the work they have done in financial, the reason you want a chartered bank is to leverage the bank, unless it is a chartered bank you can't do that and this is why the resolution talks to that point. One of the things that I keep in mind is the KISS model, keep it simple, when I was talking to people in the community and also stakeholders, if you kept it to a simple model, than a lot of individuals will participate, they are doing home loans and auto loans these banks wouldn't have to do.

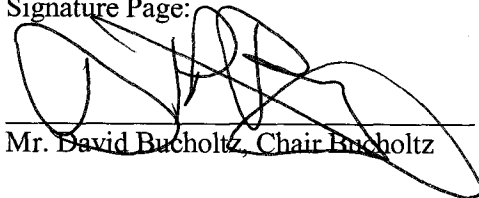
Lorie Ann Garcia: Thank you all for being community. This morning I heard on the radio that anyone that wanted to come down to talk about revenue. I am the owner of Venus – 5000 lb. apple from NY – I put it out – and the police steal it on Canyon Road, the reason I am here, my father was the bank, Bobby Garcia he helped all the people, he helped all of them. He believed in New Mexico. My father mysteriously died. 233 Canyon Road, no one can account for my father's property. The state gave me wrong information, Tax and Rev, revenue, my father has been dead for 6 years. I have been arrested for 16 times, they took me to jail community, they yanked me and took me to jail. I am speaking for all the ladies in jail that are victims for this city, they are picked up and they are put in jail – they are put in commissary and they are making money off the poor people in jail. That is revenue for the city. I am recorded for the next of kin for my father's property, a net of kin. Please do something for the people in the jail. They make you feel less.

Robert: I read the feasibility study, I have read the report and there was some consensus. Chartered bank is the focus. Impressed on what the city has done.

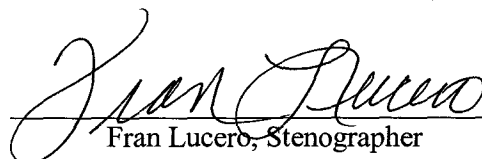
8. Adjournment

There being no further business to come before the Public Bank Task Force, the meeting was adjourned at 6:30 pm

Signature Page:



Mr. David Bucholtz, Chair Bucholtz



Fran Lucero, Stenographer

Public Bank Task Force
Regulatory Sub-Committee report
9/27/2017

Sub-Committee Members:

David Buchholtz
Judy A. Cormier
Randolph Hibben

The Regulatory Sub-Committee has conducted several meetings in it's ongoing effort to gather relevant information regarding the pros and cons of establishing a Public Bank within the city of Santa Fe.

8/30/2017- Dr. Christopher Erickson, Co-Author of the January 2016 Public Banking Feasibility Study

8/30/2017- Mary K. Root, Director, NM Regulation and Licensing Department-Alcohol and Gaming Division

9/8/2017-Kevin Graham, Attorney; Christopher Moya, Acting Director, Rebecca S. Moore, Industry Manager, - Regulation and Licensing Department-Financial Institutions Division

9/22/2017-Christina Keyes, Treasury Officer; Bradley Fluetsch, Cash & Investment Officer – City of Santa Fe Finance Division

Attachments: Preliminary memo from Financial Institutions Division
Attorney Kevin Graham re: Legal Issues and Matters for Further Research & Examination Regarding a Public Bank of Santa Fe.

Observations:

- Anti Donation Clause: Regulatory uncertainty about the scope of the phrase which does not allow a government to lend or pledge its credit may hamper the processing of a charter.
- FDIC Insurance: The Financial Institutions Division will not issue a certificate of authority for a bank to transact business without proof of deposit insurance from the FDIC or other appropriate agency. The FDIC has commented that it has concerns over issuing deposit insurance to a domestic governmental unit.

EXHIBIT "A"

- Bank of North Dakota is guaranteed by the full faith and credit of the state of North Dakota
- It is unclear if the state of New Mexico would guarantee a Public Bank for one city within the state.
- The Federal Reserve Bank has commented that it would not extend membership privileges to a publicly owned entity lacking the requisite deposit insurance. A state chartered bank is not required to be a Fed member.
- Establishing an FDIC insured Public Bank will require Federal and State regulatory approval, full bank charter, there are currently no limited purpose charters in NM.
- State banking regulators are concerned that a Public Bank may be subject to the Open Meetings Act. If so, they feel it would be impossible to manage the bank in a safe and sound manner and could not issue a permit to organize. The Creation, Governance and Oversight of Bank Policy and process for policy changes (i.e. achieved by public vote, or Board vote)
- The Financial Institutions Division is adamant that any Public Bank be staffed by a professional management team and Board of Directors completely insulated from politics and the election cycle.
- The financial advantage to the City of Santa Fe, from a Public Bank, has largely been achieved by the creation of the City's Treasury Division. As detailed in a memo from Finance Director Johnson dated 6/5/2017, and circulated at the last meeting on 9/6, cash flow and collateral have been optimized, bonds have been retired early and investment returns have increased. The Division is actively managed by Director Johnson, Treasury Officer Keyes and Cash & Investment officer Fluetsch. In terms of the City's finances, the functions of a Public Bank would only serve to duplicate the effort already expended in establishing the Treasury Division.

General Outstanding Issues/Questions

- An FDIC insured Public Bank will require City Capitalization funds where City funds must remain liquid (source TBD). From a state owned bank perspective capitalization not an issue but problematic for a city

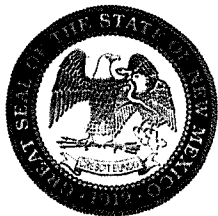
owned bank

- An FDIC insured Public Bank will require infrastructure for management, governance, staff resources for day to day operations, ongoing monitoring of regulatory requirements, reporting to Management, Board, Regulators and the Public, etc. What are the expectations of We are People Here regarding the function of a Public Bank?
- What is the most effective approach to maintain the Independence of Bank Board from management and political influence?

GOVERNANCE SUB-COMMITTEE REPORT, 9/27/17

Resources with whom we have met so far include Senator Peter Wirth, Rosemary Romero, Chris Calvert, Kelly O'Donnell, Kathy Holian, Earl Potter, Alan Webber, Mike McGonagle, Viki Harrison, Speaker Brian Egolf, James Jimenez, Beth Beloff, Anna Hamilton, Ken Mayers, the Brass Tacks Team and Mike Krauss of the Public Banking Institute.

Next Steps and Meetings we hope to have in the near future: Pat Murray, Winona Nava, Jim Gollin, Joshin Byrnes, Bill Smith, Kenneth Romero, Mike Loftin, Katherine Miller, James B. Lewis, Leslie Nathanson Juris, Leslie Elgood, Julia Rose and Curt Johnson.



**New Mexico Regulation and Licensing Department
FINANCIAL INSTITUTIONS DIVISION**

Toney Anaya Building • 2550 Cerrillos Road • Santa Fe, New Mexico 87504

Mailing Address P.O. Box 25101 Santa Fe, NM 87504

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www.rld.state.nm.us/financialinstitutions

MEMORANDUM

Susana Martinez
Governor

Robert "Mike" Unthank
Superintendent

Alex Sanchez
Deputy Superintendent

Claudia Armijo
Deputy General Counsel

Christopher Moya
Acting Director

**RE: Legal Issues and Matters for Further Research and
Examination Regarding Proposed Public Bank of**

Santa Fe

DATE: August 24, 2017

The content of this memo includes legal and regulatory issues and concerns identified by Kevin A. Graham, legal counsel for the Financial Institutions Division (FID), following his initial review in the Spring of 2016 of the "Public Banking Feasibility Study Final Report for the City of Santa Fe" produced by Katherine L. Updike and Christopher Erickson, January, 2016, as well as issues raised by the FID when considering memorial legislation which had been proposed to the New Mexico Legislature in 2017 regarding the potential for a publicly owned bank in the State of New Mexico. This memorandum should not be interpreted as a full or complete legal review of the numerous legal issues related to the establishment of a publicly owned bank in the State of New Mexico. The following subject areas of legal concern should be considered a starting point for a comprehensive legal review and assessment to be completed prior to further development of any proposal for the establishment of a publicly owned/operated bank in our State.

**I. APPARENT CONFLICT WITH EXISTING NEW
MEXICO LAW:**

The Establishment of a Government Owned "Bank" in the State of New Mexico Appears to be a Direct Violation of the Terms of the Anti-Donation Clause of the New Mexico Constitution, Article IX, Sect. 14.

1.. The formation of a "bank" being owned/run by any unit of government within the State of New Mexico using public funds to finance the "bank" appears to be in direct conflict with the language and intent of Article IX, Sect. 14 of the New Mexico State Constitution (commonly known as the "Anti-Donation Clause.")

2. The "Anti-Donation Clause" reads as follows:

"Sec. 14. [Aid to private enterprise; veterans' scholarship program; student loans; job opportunities.]

Neither the state nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person,

Alcohol and Gaming Division
(505) 476-4875

Boards and Commissions Division
(505) 476-4600

Construction Industries Division
(505) 476-4700

Financial Institutions Division
(505) 476-4885

Manufactured Housing Division
(505) 476-4770

Securities Division
(505) 476-4580

Administrative Services Division
(505) 476-4800

association or public or private corporation or in aid of any private enterprise for the construction of any railroad; except as provided in Subsections A through G of this section.

- A. Nothing in this section prohibits the state or any county or municipality from making provision for the care and maintenance of sick and indigent persons;
 - B. Nothing in this section prohibits the state from establishing a veterans' scholarship program for Vietnam conflict veterans who are post-secondary students at educational institutions under the exclusive control of the state by exempting such veterans from the payment of tuition. For the purposes of this subsection, a "Vietnam conflict veteran" is any person who has been honorably discharged from the armed forces of the United States, who was a resident of New Mexico at the original time of entry into the armed forces from New Mexico or who has lived in New Mexico for ten years or more and who has been awarded a Vietnam campaign medal for service in the armed forces of this country in Vietnam during the period from August 5, 1964 to the official termination date of the Vietnam conflict as designated by executive order of the president of the United States;
 - C. The state may establish by law a program of loans to students of the healing arts, as defined by law, for residents of the state who, in return for the payment of educational expenses, contract with the state to practice their profession for a period of years after graduation within areas of the state designated by law.
 - D. Nothing in this section shall be construed to prohibit the state or a county or municipality from creating new job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses if this assistance is granted pursuant to general implementing legislation that is approved by a majority vote of those elected to each house of the legislature. The implementing legislation shall include adequate safeguards to protect public money or other resources used for the purposes authorized in this subsection. The implementing legislation shall further provide that:
 - (1) each specific county or municipal project providing assistance pursuant to this subsection need not be approved by the legislature but shall be approved by the county or municipality pursuant to procedures provided in the implementing legislation; and
 - (2) each specific state project providing assistance pursuant to this subsection shall be approved by law. (As amended November 1, 1971, November 5, 1974, November 8, 1994, November 5, 2002, November 7, 2006 and November 2, 2010.)"
3. Due to the fact that this provision of New Mexico law is part of the State Constitution, in order to make any alteration or change to the wording of the

clause would require the passage of a State constitutional amendment – which entails a process significantly more involved than amending a state statute or regulatory provision.

4. Subsection (D) of Article IX, Sect. 14 does allow the state (or county or municipality) to work to create “new job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses...” Even if the term “infrastructure” in that provision were to be very broadly interpreted to include allowing a municipality to directly loan money to a private enterprise to create “new job opportunities,” there would still be the hurdle in place requiring implementation legislation to be approved by both houses of the State legislature before such a highly restricted “bank-type” entity could be approved (a “bank” created under this stretched definition of “infrastructure” would presumably only be able to make loans to entities that would create “new job opportunities”).
5. Phase Two of the “Strawman” section of the Feasibility Study directly calls for the City of Santa Fe to apply for a State Bank Charter.
 - (a) The City of Santa Fe is a “municipality” under the terms of Article IX, Sect. 14.
 - (b) The funding for the operation of the “Santa Fe Bank” would come from the city (and possibly later from investments from other governmental entities) which would reasonably be interpreted as involving the “credit” and resources of the City of Santa Fe (and any other government entities who might deposit money in the proposed bank.)
 - (c) In order to make loans or conduct other “bank” business as described in the Feasibility Study, the proposed bank would necessarily use municipal funds to “directly or indirectly lend or pledge [the city’s] credit or make any donation to or in aid of any person, association or public or private corporation.” Thus, without a specific amendment first being made to Article IX, Sect. 14, the proposed activities to be undertaken by the “Santa Fe Bank” would be in direct violation of the Anti-Donation Clause of the New Mexico Constitution.
 - (d) In light of this constitutional barrier to the operation of the proposed bank, the Director of the FID would not be able to issue a permit to the proposed bank to file with the Corporation Commission (§58-1-58, NMSA 1978) nor could the Director of the FID issue a certificate of authority to the bank to begin operation (§58-1-61, NMSA 1978).
 - (1) §58-1-58. Determination on application for permission to file with the corporation commission [public regulation commission]
 - A. When an application for permission to file with the corporation commission [public regulation commission] has been delivered to the commissioner [director of the

financial institutions division of the regulation and licensing department], he shall make or cause to be made a careful investigation and examination relative to:

(1) the character, reputation and financial standing of the organizers or incorporators;

(2) the character, financial responsibility of proposed directors and banking or trust experience, and business qualifications of those proposed as officers;

(3) the ability of the community to support the proposed bank, giving consideration to:

(a) the services offered by existing banks and other financial institutions;

(b) the banking history of the community; and

(c) the opportunities for profitable employment of bank funds as indicated by the demand for credit, the number of potential depositors, the volume of bank transactions, and the business and industries of the community, with particular regard to their stability, diversification and size;

(4) whether or not the full amount of the authorized capital structure has been subscribed;

(5) whether or not the proposed capital structure is adequate in the light of current and prospective banking conditions;

(6) whether or not the name of the proposed bank resembles so closely, as to be likely to cause confusion, the name of any other banks transacting business in this state; and

(7) such other facts and circumstances bearing on the proposed bank and its relation to the community as in the opinion of the commissioner [director] may be relevant.

(2) §58-1-61. Certificate of authority.

A. A request for a certificate of authority shall be made to the commissioner [director of the financial institutions division of the regulation and licensing department] after he has approved the application to file the articles of incorporation with the corporation commission [public regulation commission] and all requirements have been met. The request shall contain:

- (1) the address at which the bank will operate;
- (2) a statement that all of the bylaws adopted have been attached as an exhibit to the request;
- (3) a statement that the full amount of the authorized capital structure has been paid to the escrow agent;
- (4) the signed oaths of the directors; and
- (5) such other information as the commissioner [director of the financial institutions division] may require to enable him to determine whether a certificate of authority should be issued.

B. The commissioner [director] shall approve the request for a certificate of authority within twenty days after the request has been accepted by him and he has been satisfied that all requirements have been complied with and he shall issue a certificate of authority for the bank to transact business. Before actually transacting any banking business or accepting any deposits, the applicant must file with the commissioner [director] satisfactory proof showing that insurance of deposits has been obtained through the federal deposit insurance corporation or other appropriate agency or instrumentality of the United States government.

II. REQUIRED INDEPENDENCE OF A BANK BOARD OF DIRECTORS

The Requirement of a Truly Independent Board of Directors (and Bank Officers) Does Not Appear to have Been Fully Considered; Authority of the Board Over Time; Potential for Conflict with City Council.

1. The Feasibility Study only gives very brief attention to the fact that the model to be utilized by the bank (conventional equity model or mutual bank model) will depend "upon ongoing investigation with State regulators and legal counsel." The Feasibility Study acknowledges that "[a]ny bank charter application will require a substantial and complete description of the governance mechanisms of a new bank. At a minimum, a Board will need to be described (and later appointed) which insulates the Bank from election cycles." The Feasibility Study summarily concludes its analysis of this subject with the statement: "The Board's most important function is that of selecting a CEO to run the bank. It is also relatively common for the Board to have one or more subcommittees that focus on operational policy, such as loans, audits or investments."
2. New Mexico law places specific duties and responsibilities on members of Boards of state chartered banks, which may be generally summarized as a duty to work for the "best interests of the bank."

(a) §58-5-1, NMSA 1978 requires members of a Board of Directors for a State chartered bank to take an oath pledging to “diligently and honestly administer the affairs of the bank. . .”

(b) §58-1-65 (A), NMSA 1978 “[t]he affairs of a state bank shall be managed by a board of directors, which shall exercise its powers and be responsible for the discharge of its duties.”

(c) §58-1-66, NMSA 1978. Directors; meetings and duties. This statute provides requirements for meetings of a Board of Directors as well as the multiple subject areas related to bank business that must be examined, approved and reported on by board members at those meetings.

3. Potential for Situation Where the Board of Directors of the Proposed Bank and the City Council of the City of Santa Fe Develop a Conflict Over the Operation of the Bank.

(a) The Feasibility Study does not appear to fully address the potential for a situation where the elected Board of Directors of the proposed Santa Fe Bank and the elected City Council of the City of Santa Fe may reach a future situation where the Board would make a decision(s) in regards to lending, interest rates, bank operations, etc., that the City Council does not support. Likewise, a situation could develop where the City Council would make a request of the bank/board to support a particular project or make a particular loan and the Board declines the request on a determination the project or loan is not in the best interest of the Santa Fe Bank.

(b) In either such hypothetical situation, the City Council could react to the disagreement/denial by taking action to withdraw its funds from the bank (just like any other bank customer.)

(c) The funding structure of the proposed Santa Fe Bank appears to be based heavily on funding from the City of Santa Fe; thus a sudden reduction of funding by the City of Santa Fe could result in immediate jeopardy to the financial security of the bank.

(d) While the current Santa Fe City Council may be completely supportive of the idea/operation of a Santa Fe Bank, there is no guarantee that any future city council (following an election cycle, or even just a change in opinion of a majority of city council members) would continue to deposit City funds with the bank.

III. OPEN MEETINGS / OPEN RECORDS:

Interplay of the New Mexico Open Meetings Act, §10-15-1, NMSA 1978, and the New Mexico Inspection of Public Records Act, §14-2-1, NMSA 1978, with the Operation of a Public Bank.

1. The interplay of the Open Meetings Act and the Inspection of Public Records Act with the creation of a new bank "owned" by a government entity does not appear to have been fully considered under the Feasibility Study.

2. Consideration should be given to the idea that a government-owned bank would potentially be required to "open" the meetings of its Board as well as "open" the records of the bank beyond the requirements placed on privately held institutions. Such requirements may have an impact on the bank's ability to be competitive in the industry.

IV. ADDITIONAL CONCERNS REGARDING BANK OPERATIONS, SECURITY, STABILITY AND MANAGEMENT:

1. How would a "public bank" in New Mexico be insured? All New Mexico state chartered banks are required to be insured:

(a) §58-1-2 NMSA 1978, (A) "bank" means: (1) an "insured bank" as defined in Section 3(h) of the Federal Deposit Insurance Act.

(b) §58-1-61 NMSA 1978 "(B) Before actually transacting any banking business or accepting any deposits, the applicant must file with the commissioner [director] satisfactory proof showing that insurance of deposits has been obtained through the federal deposit insurance corporation or other appropriate agency or instrumentality of the United States government.

(c) §58-1-70. Deposit insurance; membership in the Federal Reserve System. "A state bank shall obtain insurance of its deposits by the United States or any agency thereof, and may acquire and hold membership in the Federal Reserve System."

2. What protections would exist for deposits?

(a) Most banks are funded substantially through deposits. The state needs to consider the source of protection for those deposits. Traditional banks rely on deposit insurance coverage, subject to certain limits, from the Federal Deposit Insurance Corporation (FDIC).

(b) The Bank of North Dakota is frequently cited as the example of how a publicly owned bank could be organized and operated. Deposits of the Bank of North Dakota are not insured by the Federal Deposit Insurance Corporation (FDIC) insured, but are guaranteed by the full faith and credit of the State of North Dakota.

(c) In the FDIC's Statement of Policy for Applications for Deposit Insurance, the FDIC expresses its concern about institutions owned by domestic governmental units being controlled by the political process. Additionally, the FDIC notes, the institutions could raise special concerns relating to management stability, and the

ability and willingness to raise capital. While not a definitive rejection of granting deposit insurance, the FDIC makes clear their concerns.

(d) As a condition of receiving a state bank charter in the State of New Mexico, the FID requires every applicant bank have in place insurance guaranteed by the FDIC or some other "appropriate agency or instrumentality of the United States government." (See §58-1-61 NMSA 1978, above.) As noted, a publicly owned bank may not be able to obtain this required, United States government backed, insurance.

3. What oversight would exist for the proposed publicly owned bank?

(a) U.S. banks are actively supervised by chartering authorities, including the FID, the FDIC, the Federal Reserve, and/or the Office of the Comptroller of the Currency (OCC). The state needs to determine the appropriate entity to conduct this oversight. In order to be effective, the regulator should be able to exercise its supervisory authority independently and must have the authority to review all books and records.

(b) An independent regulator must also have the tools necessary to seek corrective measures through formal enforcement actions, civil money penalties, and removal of bank officers and directors. These authorities are critical to ensuring public confidence and protecting the state's taxpayers who will ultimately need to cover any shortfall in the event of insolvency.

4. Safety and soundness of the bank.

(a) Primary objectives of regulators should always be the safety & soundness of financial institutions, compliance with laws, regulations, and supervisory policy. This includes, but is not limited to:

(1) Careful consideration should be given to the investment and lending authority of a state-owned bank in order to avoid risks to the solvency of the institution and prevent undue competition with privately owned banks. Appropriate limitations should be established on loans to insiders and affiliated entities. There should also be limitations established on loans to one borrower or group of affiliated borrowers.

(2) When the government owns the banks, lending decisions could become increasingly driven by politics, rather than economics. Resources flow to those with influence. Government-owned banks may also tend to under-price risk in order to gain votes. If there is one lesson we should take away from the recent crisis, it is that when you under-price risk, bad things happen.

5. Governance and managerial factors.

(a) Governance and managerial factors take into account the fiduciary duties of the board and management of the financial institution as well as the competence, experience, integrity, and financial ability of the institution's organizers and staff.

(b) Corporate governance is a critical component for all banks. Ultimately, the board sets the policies of the bank, determines the desired risk profile, and oversees management. The state needs to carefully consider the individuals who would be charged with this responsibility and their role, if any, in state government.

(c) One of the most important decisions for any financial institution is selecting the executive management team, since there is a direct relationship between the overall conditions of a bank, the quality of its management team, and the future performance of the bank.

6. Financial factors.

The Bank of North Dakota is currently the only state-run and state-owned American bank. The Bank of North Dakota is generally considered a well-run institution. In the past, many have contended the Bank of North Dakota provided a massive subsidy to the fossil fuel industry in North Dakota. Reviews of past annual reports for the Bank of North Dakota show the bulk of the bank's below-market lending was to the fossil fuel industry. Obviously, a significant downturn in the fossil fuel industry could present a significant challenge to the stability of a bank that has heavily engaged in lending to that industry. This situation with the Bank of North Dakota is referenced as an example of a point of concern for any publicly owned bank which would be intended/directed by the public authority to have an emphasis or focus on the development of local industry/business.

7. Capital adequacy.

Banks need to be supported by monetary capital. Capital provides the foundation for the bank to operate through the economic cycle. Banks generally add to capital during economically prosperous times and exhaust capital during periods of economic stress and unexpected losses. This countercyclical nature of capital is customary and desirable for privately-owned institutions. The state will need to determine the source of this capital, recognizing the need for it to remain in the bank throughout its existence. Capital should be sufficient at inception to support anticipated start-up costs and expected growth. In addition, the state should make a provision for contingent capital should the bank experience unexpected losses,

requiring recapitalization. Federal regulations require Tier 1 Leverage Capital to be greater than 5.75% (and this number is expected to grow in coming years) for a bank to be considered “well capitalized.” The term, “well capitalized,” refers to a category under Prompt Corrective Action. Banks with capital below this category are subject to certain mandated regulatory restrictions. Banks generally find it necessary and desirable to hold significantly higher levels. The current industry average is just below 11%. By this standard, a bank projected to be \$1 billion in assets, would need \$110 million in capital, just to open its doors.

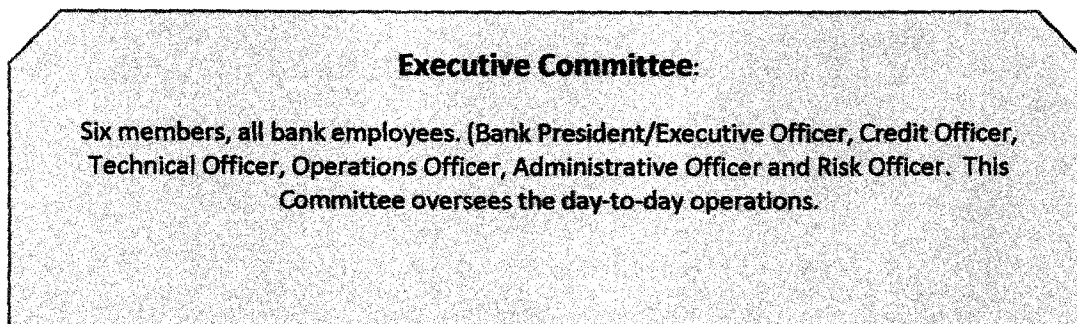
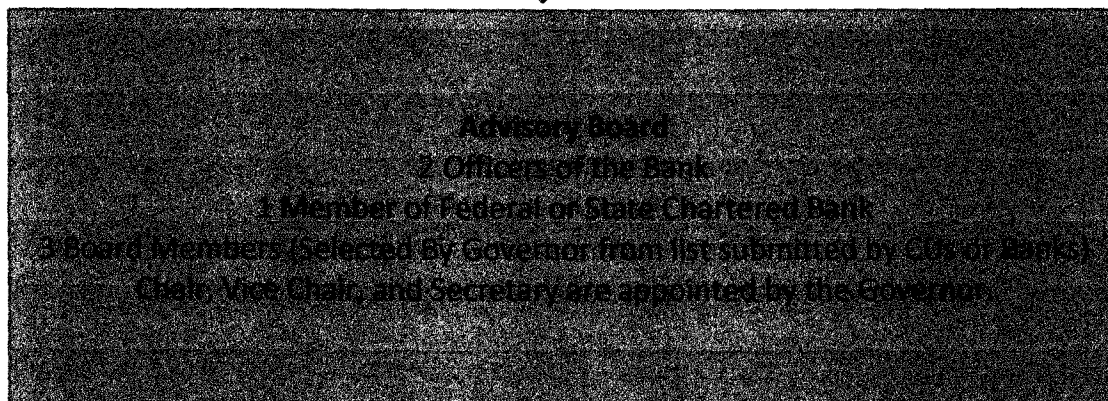


EXHIBIT "B"