

State Finance Committee Meeting Minutes
Olympia, Washington
April 17, 2019
11:30 AM

The State Finance Committee met in a special meeting after notice duly given to the public.

Present: Duane Davidson, State Treasurer, Chair
Jay Inslee, Governor
Cyrus Habib, Lt. Governor

Also Present: Jason Richter, Office of the State Treasurer
Svein Braseth, Office of the State Treasurer
Bill Tonkin, Foster Pepper PLLC
Rusty Fallis, Office of the Attorney General
Libby Hollingshead, Office of the Lt. Governor
Shawn Myers, Office of the State Treasurer
Catherine Mele-Hetter, Office of the State Treasurer
Austin Goble, Office of the State Treasurer
Matthew Schoenfeld, Office of the State Treasurer
Adam Johnson, Office of the State Treasurer
Brianna May, Office of the State Treasurer
Whitney Trumbly, Office of the State Treasurer
Leslie Yonkers, Office of the State Treasurer
Shelby Pelon, Office of the State Treasurer
Erhiza Rivera, Office of the State Treasurer
Scott Merriman, Office of Financial Management

Chair Davidson called the meeting to order at 11:34 AM. Chair Davidson stated for the record that all three members were present.

Item 1: Approval of Minutes

Chair Davidson introduced minutes from the State Finance Committee Meeting held on November 13, 2018 at 1:00 pm for approval. There were no corrections. The minutes were accepted as approved.

Item 2: Informational Item- ESHB 1109 as Passed Senate Floor 2019-21 Operating Budget (04/04/19), Section 127(9)—Legal Advice on Matters Relating to Bonds and Debt

Treasurer Davidson introduced the informational item and discussed the budget proviso from the Senate Operating Budget (ESHB 1109), Section 127(9). This proviso would change the way that the State Finance Committee hires and uses bond counsel. The Office of the State Treasurer was told that this proviso was placed into the budget because the Legislature wanted increased access

to bond counsel. The Office of the State Treasurer believes this can be achieved administratively rather than changing the statutes and the methods that the State Finance Committee has for hiring and managing bond counsel. Treasurer Davidson then introduced Jason Richter, Deputy Treasurer for Debt Management, to elaborate more on the proviso and the impacts it would have to the State Finance Committee.

Jason Richter read aloud from the proviso which states “To ensure that all state entities that participate in authorizing and issuing bonds have access to consistent, objective, and experienced legal advice on matters relating to bonds and debt, and to reduce reliance on special assistant attorneys general, the attorney general must employ an attorney to advise the legislature, governor, and other state agencies on these topics. In addition to providing legal advice, this attorney must manage and oversee contracts for legal services relating to bonds and debt to the great extent possible. Costs associated with this attorney must be incorporated into the agency’s overhead charges.” Jason then discussed the number of concerns that the Office of the State Treasurer has with this proviso. Jason states that many state debt issuers would be negatively impacted by the proviso including the State Finance Committee, Washington State Housing Finance Committee, The University of Washington, the Health Care Facilities Authority, The Economic Development Finance Authority, and others. He explained that these debt issuers all independently contract for bond counsel services through the Office of the Attorney General with their assigned Assistant Attorney General administering the contract. This proviso would undo those relationships requiring a single Attorney General to provide legal advice to the Legislature, Governor, and all state debt issuers. Jason stated that independent legal counsel is essential to the bond process and something expected by investors as an industry standard. We are concerned that this will jeopardized the State Finance Committee’s ability to access the required specialized services provided by bond counsel and could increase risk to the state through the bond process. Jason elaborated that the proviso’s mandate to reduce reliance on outside bond counsel is also contrary to the State Finance Committee’s debt issuance policy. This proviso would impede the efficient relationship that the State Finance Committee has with the Office of the Attorney General. In closing, Jason stated that the State Finance Committee issues over \$1 billion worth of debt each year and, at this level, the penalty for any mistakes is severe. He reiterated that it is important that the State Finance Committee and other debt issuers to be able to work with their dedicated Assistant Attorney General to carefully administer their contracts and their clients’ needs through independent legal advice. Jason then turns the conversation over to Bill Tonkin, Foster Pepper PLLC, and longtime bond counsel for the State.

Bill Tonkin explained, under their contract with the Office of the Attorney General as Special Assistant, that their client is the State Treasurer and, through that office, the State Finance Committee. Their client is not another branch of government or another agency that issues bonds. However, over many years, they have worked with the Treasurer’s Office to provide informational updates and access to other agencies and government entities (Office of Financial Management, Department of Commerce, Department of Ecology, and staff/members of the Legislature) who issue bonds. Bond counsel’s main role is to provide unqualified legal opinions on the state’s bonds. They provide that opinion on the bonds that the committee brings forward to be sold into the national bond market and to verify/provide opinion during the bond process. Bond counsel also makes sure that all SEC and IRS rules are being followed through the bond market. Bill highlighted three main concerns that bond counsel has regarding the budget proviso.

First, the proviso states that a single lawyer in the Attorney General's office is expected to provide consistent legal advice to many agencies and the legislature who probably all have different or conflicting interests. Secondly, this reduced reliance on Special Assistant Attorney Generals could discourage issuers from getting legal advice during the bond process and could expose others to greater risks and penalties. Thirdly, bond counsel works closely with the Attorney General's office, but having one lawyer to provide these services could impede bond counsel's ability to provide judgement on behalf of the State Finance Committee and the State Treasurer.

Treasurer Davidson thanked Mr. Richter and Mr. Tonkin for sharing their briefings. He closed the comments by affirming that the relationships built between bond counsel and the process that's currently being used has worked extremely well for the state for decades. Treasurer Davidson sees this as a separation of powers issue since it is mainly an executive's job to issue these bonds. He highlighted that Governor Inslee has purposely kept members of the Legislative branch off of Executive Committees in the past for similar issues and separation of powers and that hiring of bond counsel for an Executive office should not be left to the Legislative branch. Treasurer Davidson closes his comments by stating he is hopeful that the three members of the State Finance Committee can be unified in the issue.

Treasurer Davidson also clarified to the State Finance Committee that he has spoken with Attorney General Ferguson on this and that he also is not in favor of this budget proviso. Lt. Governor Habib commented that he believes the biggest issues here are conflict and competency. He believes there are cases in precedence that could help should this become an issue in the future. Lt. Governor Habib hopes that the Attorney General would use his existing power to allow for a lawyer to be contracted out should a potential conflict arise. Treasurer Davidson asserted that he is committed to trying to work through any issues with others receiving access to bond counsel over the interim should this proviso be removed from the budget. Governor Inslee thanked the State Finance Committee for bringing the issue forward and says he will also inquire more about the issue.

Treasurer Davidson adjourned the meeting at 11:51 AM.

STATE FINANCE COMMITTEE
STATE OF WASHINGTON

By _____
Duane A. Davidson
State Treasurer and Chairman

By _____
Jay Inslee
Governor and Member

By _____
Cyrus Habib
Lieutenant Governor and Member

ATTEST:

Jason P. Richter,
Deputy State Treasurer and Secretary