# Texas Public Finance Authority



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## MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS OF THE TEXAS PUBLIC FINANCE AUTHORITY

**May 5, 2011**

The Board of Directors (the "Board") of the Texas Public Finance Authority (the "Authority") convened in open meeting, notice duly posted pursuant to law (a copy of which notice is attached hereto as Exhibit "A") at 10:30 a.m., Thursday, May 5, 2011, Stephen F. Austin State Office Building, 1700 North Congress Avenue, Room 170, Austin, Texas. Present were: Mr. Joe Meister, Chair; Ms. Ruth Schiermeyer, Vice Chair; Mr. Gerald Alley, Secretary, Mr. Rodney Moore, Member; and Mr. Billy M. Atkinson, Jr., Member.

Representing the Authority's staff was: Mr. Dwight D. Burns, Executive Director; Ms. Susan Durso, General Counsel; Mr. John Hernandez, Deputy Director; Ms. Pamela Scivicque, Business Manager; and Ms. Paula Hatfield.

Present in their designated capacities were the following persons: Tilghman Naylor, Jefferies; Mark Nicholson, Southwest Securities; Art Morales, Siebert Brandford Shank & Co.; Courtney Cain, Morgan Keegan; Carmen T. Best, Raymond James; Tim Peterson, JP Morgan; Tim Kelley, Piper Jaffray; Robin Redford, Ramirez & Co.; Kim Edwards, Fidelity Markets; and Chris Allen, First Southwest Co.

Mr. Meister called the meeting to order at 10:40 a.m.

**Item 1. Confirm meeting posting compliance with the Open Meetings Act.**

Mr. Meister confirmed the meeting had been duly posted in compliance with the Open Meetings Act.

**Item 2. Excuse absences of board members.**

Ms. Schiermeyer moved to excuse the absence of Messrs. Roddy and Eidman. Mr. Atkinson seconded. The motion passed unanimously.

**Item 3. Approve the minutes of the April 7, 2011, Board meeting.**

Mr. Meister asked if there were any corrections or additions to the minutes of the Board meeting of April 7, 2011. Ms. Schiermeyer stated on page 6, third paragraph, "Mr. Durso" should be changed to "Ms. Durso." Mr. Atkinson moved to approve the minutes as amended. Ms. Schiermeyer seconded. The motion passed unanimously.

**Item 4. Discuss and possibly take action on agency administrative matters, including:**

**(a) discussion, possible revision, and approval of the Board's underwriting policies and procedures, including but not limited to, the underwriter selection policy, pricing committee procedures, board and staff meetings with underwriters and related matters;**

**(b) discussion, possible revision, and approval of TPFA's personnel policies, including but not limited to, modifications to the personnel manual, the hiring and interviewing policies and procedures, evaluation policies and procedures, and related matters.**

Mr. Burns stated the items for discussion covered key underwriting points such as policy, definitions, management and structure fee information and a provision for members of the pricing committee to sign documents in advance of the sale. He noted the proposed updates to the personnel policies were also provided.

Mr. Meister suggested the underwriting policies and the personnel policies be taken up for discussion separately.

Mr. Meister suggested that the procedure for obtaining signature pages in advance of the pricing should require the express release, either orally or in writing electronically, by each member of the pricing committee. Mr. Alley stated he preferred the electronic notification method so that it established a document trail. Mr. Burns stated that the member present may or may not have access to email and asked if the instruction could be either/or to provide for all situations. Ms. Durso explained that in the past she has requested that each member of the pricing committee orally affirm their authorization for her to release signature pages on the pricing call and that, in the future, she could confirm the oral authorization by email. Others on the pricing call will have heard the board members' instruction to release their signatures and the confirmation email would document the receipt of approval.

Mr. Meister turned the discussion to the underwriting policy regarding the use of structuring and management fees. He stated that he views the fundamental question concerning the structuring and management fees as basically an issue of the Authority being asked to tip the underwriters without a defined criteria or range of typical fees awarded. He said that since 1997 or 2000 the Authority had awarded a fee 33 times with the average fee size being $40,000. While that amount is not a huge amount of money if considered on a percentage basis, it is also not insignificant amount of money. Mr. Meister gave the example of when conducting state business, if he took a taxi, the State would reimburse for the taxi ride, but if he chooses to tip, the tip is on him. He said his belief was that the take-down was adequate compensation. He stated the purpose of an established policy would be to tell vendors there would be no additional compensation.

Mr. Burns stated that Mr. Meister made all cogent points, but said that he did not view the management fee as a tip, but as extra compensation. He explained the management fee was not a tip in two ways: (i) the takedown--a good amount of compensation--goes to the underwriting desk with a share for the lead banker and another share to the desk and (ii) the fee was for work over and above that expected on the deal. The fee rewards the lead banker for additional or exceptional work provided. An example would be the Texas Workforce Commission transaction where the lead banker, in addition to the financial advisor support, made the sale work through a difficult market environment. Significant negotiation took place in the State's favor. He stated that in fairness no one was getting rich off of the Authority. The management fee was used to compensate on an as needed basis in a measurable way for work done requiring extra time and effort.

Mr. Alley said he had concerns about the quantitative measure of the work, such as the value added, but prefers to leave the option open to continue the fee option without it being a totally subjective award. If the criteria were measurable and pre-set, the determination would be whether or not the criteria had been preformed.

Ms. Durso said the structural fee had been used to compensate firms who provided services ahead of the term specified in contractual arrangements and it provides the Authority flexibility to compensate as needed for empirically measurable work. She agreed that the development of award criteria would be beneficial and helpful.

Ms. Schiermeyer stated that the possible fee amount had a full range from cents on the dollar per thousand upward and needed parameters.

Mr. Meister said the question before the Board was whether to continue the practice of awarding a management and/or structuring fee or not. Mr. Atkinson stated his conclusion was that in the past the fees had been optional and the question was really about the philosophy of an award and the parameters. He noted that each transaction seemed somewhat unique or complex. He stated that from his experience the practice currently was too loose or liberal. He asked if the discussion could wait so that the issue could be noted in the next transaction or two. He felt that the practice must be legally correct and well-mandated because the public and underwriters will be focused on it, and it must eliminate confusion. Mr. Atkinson suggested that the Board think about the fees over the next couple of sales and, collect data on fees issued from other states. Data could be used to compare the fee awarded to the transaction size and the range in award amounts. He requested that Ms. Durso gather census data and real time information, possibly including data from other states. Ms. Schiermeyer stated her opinion was to keep the fee option because she believed it was appropriate given the need and the incentive it created for underwriters to step up at a sale.

Mr. Meister stated he concluded that the Board seemed to want to keep the fees and make some sort of cheat sheet be available to the pricing committee in order to determine the fee in the future. He would like the factors to be easy and straight forward, and not all over the map.

Mr. Burns asked Ms. Durso to introduce the personnel issues. She stated that the proposed changes were responsive to the Texas Workforce Commission Civil Rights Division Human Resources audit and some items she noted needed clarification or revision. The HR audit was performed to make sure agency policies state the law and fully described employees' rights and opportunities. The proposed changes to the personnel manual include changes to the employee evaluation form to allow for a description of the performance, add a disciplinary action policy, expand the grievance policy, update the workplace accommodation policy and establish a reduction-in-force policy. Ms. Durso invited questions from the Board on the proposed changes to policies and forms.

Ms. Schiermeyer said her only concern was she thought the reduction-in-force policy appeared to be based on tenure. Ms. Durso stated that with a very small staff function would be the criteria used for implementing a reduction-in-force and only when there were two in like or similar positions would the review first look at tenure and then if a tie, performance. Ms. Schiermeyer said she preferred to see a review of experience and value to agency before tenure. A discussion then followed on whether 'value to the agency' was too subjective a criterion. Mr. Moore or Mr. Atkinson agreed that the determining factor had to be performance not tenure. The goal of the policy was to provide guidance, but without tying hands of agency. Further discussion ensued and the consensus of the Board was that Ms. Durso draft a revised policy to include a review of function and then performance, rather than tenure.

Ms. Durso then directed the Board's attention to the upcoming annual evaluation of the Executive Director in June, and a proposed evaluation instrument for the Executive Director position and the current form for staff's input into the ED evaluation.

Ms. Durso explained that she could not find a performance evaluation instrument that had been used for the Executive Director, so she drafted one using an instrument similar to the staff form, but describing performance expectations shown in the current job description and usual management expectations. She also described the current process for acquiring staff input for the Board to consider in conducting the Executive Director's evaluation. Ms. Durso stated that she thought the input instrument was fine and she did not recommend using the process that she recommended last year where staff members met with a team of two board members.

The Board asked no other questions regarding the proposed personnel policy changes.

Mr. Meister said he realized that the Board had skipped discussion about the Debt Management Guidelines in their earlier discussion of the underwriting policies and the Underwriting Selection Process under Tab 3. He stated he wanted to discuss contact with vendors by Board members and this aspect was not included in the current policy. He said he was aware the process for making selections could become heavily politicized and that should be avoided. He acknowledged that whether reality or perception, selection should not be determined by whether the contact is a friend, someone you have lunch with or someone who called on you. He also stated he wanted it to be each board member's choice whether they had contact with vendors. He asked if contact with vendors should be part of a formal policy or allow each to decide for themselves. Mr. Meister said that in the beginning of his Board appointment in 2007 contact was primarily before and after meetings, hand-shaking and putting faces to names. But, in the past few years, he has been contacted more frequently.

Mr. Atkinson stated he had been an independent auditor and that his attitude about it was very conservative. He also stated that it was very clear from the two video tapes he was required to watch when he was appointed to the Board that meeting with vendors outside board meetings could create perception problems.

Mr. Burns explained that it has been the informal practice to ask underwriters to let staff know when they have a meeting with a Board member and have them provide any materials to the staff as well. Mr. Meister stated that he thought any contact should be reported to the General Counsel and any materials provided by a vendor to a Board member should be provided to the Executive Director and General Counsel. Then these materials should be provided to each Board member to achieve transparency.

Mr. Moore asked about the industry standards for communication.

Mr. Alley stated that in his experience before selecting vendors there was a period of time that barred contact entirely. Ms. Durso explained that there was a black-out period of no contact when a Request for Proposals was issued until the process was complete. However, once the pool has been selected, the Authority selects underwriters from the pool as transactions are initiated.

Mr. Meister said that he would like to see the selection process tightened up to create a tighter record on selection input from staff. He would like to see a formal process for deliberation with the Senior Staff and financial advisor, a record of dissent and why. The selection needs to show the capital matching to the transaction, the historical expertise for the type of transaction, previous experience with similar transactions, and access to the available markets. He would like the board to be provided with the evaluation materials and selection and composition of recommended team before the meeting.

Mr. Meister asked Ms. Durso to help frame the motion based on the Board's discussion covering the personnel policies. Ms. Durso recommended the motion be stated as a motion to amend the Agency's personnel policies as discussed, and to provide a revised manual to staff with the exception of the Reduction-in-Force policy, which would be revised and submitted to the Board for consideration at its June meeting. Ms. Schiermeyer moved to accept staff's recommendation. Mr. Atkinson seconded. The motion passed unanimously.

Mr. Meister suggested the underwriting policies be considered individually.

Mr. Atkinson moved to approve the Debt Management Guidelines as stated without any changes. Ms. Schiermeyer seconded. The motion passed unanimously.

Ms. Schiermeyer moved to adopt the Pricing Committee procedures allowing members' signatures to be escrowed and to include a statement that clear and expressed authorization to release the signatures must be made orally to the General Counsel followed by electronic confirmation by the General Counsel. Mr. Alley seconded. The motion passed unanimously.

Mr. Atkinson moved to adopt the Underwriting Selection Policy as currently stated. Mr. Alley seconded. The motion passed unanimously.

Mr. Moore moved to postpone adoption of the Underwriting Policies and Procedures in order to allow revisions to include provisions about criteria to award a management and/or structuring fee.

The Board also asked Ms. Durso to draft a policy addressing Board contact with vendors.

**Item 5. Staff Report (No Action Items)**

Mr. Burns updated the Board on the Status of Legislation Affecting Agency, including House Bill 1, the General Appropriation Bill and HB 2251, the agency's Sunset legislation.

The Board then discussed the new meeting time beginning at 10:30 a.m. and most agreed it was helpful. Therefore, the next scheduled meeting would be June 2 at 10:30 a.m.

**Item 6. Adjourn.**

The meeting adjourned at 12:11 p.m.

The foregoing minutes were approved and adopted by the Board of Directors on June 2, 2011.

Gerald B. Alley
Secretary, Board of Directors

ATTACHMENT: Posting Notice - Exhibit A

# Open Meeting Submission

## *Success!*

**Row inserted**

| | |
|---|---|
| **TRD:** | 2011002983 |
| **Date Posted:** | 04/27/2011 |
| **Status:** | Accepted |
| **Agency Id:** | 0113 |
| **Date of Submission:** | 04/27/2011 |
| **Agency Name:** | Texas Public Finance Authority |
| **Board:** | Texas Public Finance Authority |
| **Liaison Id:** | 3 |
| **Date of Meeting:** | 05/05/2011 |
| **Time of Meeting:** | 10:30 AM ( **##:## AM Local Time)** |
| **Street Location:** | 1700 North Congress Avenue, Room 170 |
| **City Location:** | Austin, Texas |
| **State Location:** | TX |
| **Liaison Name:** | Paula Hatfield |
| **Additional Information Obtained From:** | If you need any additional information contact Paula Hatfield, 512/463-5544, 300 W. 15th Street, Suite 411, Austin, TX 78701. |
| **Agenda:** | TEXAS PUBLIC FINANCE AUTHORITY<br>THURSDAY, MAY 5, 2011, 10:30 A.M.<br>Stephen F. Austin State Office Building, Room 170<br>1700 North Congress Avenue<br>AUSTIN, TEXAS 78701<br><br>AGENDA<br><br>1. Confirm meeting posting compliance with the Open Meetings Act.<br>2. Excuse absences of board members, if necessary.<br>3. Approve the minutes of the April 7, 2011, Board meeting.<br>4. Discuss and possibly take action on agency administrative matters, including:<br>(a) discussion, possible revision, and approval of the Board¿s underwriting policies and procedures, including but not limited to, the underwriter selection policy, pricing committee procedures, board and staff meetings with underwriters and related matters;<br>(b) discussion, possible revision, and approval of TPFA¿s personnel policies, including but not limited to, modifications to the personnel manual, the hiring and interviewing policies and procedures, evaluation policies and procedures, and related matters.<br>5. Staff Report (No Action Items) |