

The Dormitory Authority of the State of New York met in a Regular Meeting at DASNY's Albany Office, 515 Broadway, Albany, New York at 9:30 a.m. on Wednesday, January 9, 2019.

The Meeting was called to order by the Chair. Roll call was taken and a quorum was present. Those Members present for and absent from the Meeting were as follows:

Members Present

Alfonso L. Carney, Jr., Chair, Member  
John B. Johnson, Jr., Vice Chair, Member  
Paul S. Ellis, Esq., Secretary, Member  
Beryl L. Snyder, Esq., Member  
Jonathan H. Gardner, Esq., Member  
Wellington Z. Chen, Member  
Gerard Romski, Esq., Member  
Joseph Gilchrist, Designated Representative of the Commissioner of Education, Member (ex officio)  
John Valitutto, Designated Representative of the Commissioner of Health, Member (ex officio)

Members Absent

Adrian Swierczewski, Designated Representative of the Director of the Budget, Member (ex officio)

Also Present - Dormitory Authority Staff

Gerrard P. Bushell, President  
Michael T. Corrigan, Vice President  
Michael E. Cusack, Esq., General Counsel  
Kimberly J. Nadeau, Chief Financial Officer  
Portia Lee, Managing Director of Public Finance and Portfolio Monitoring  
Stephen D. Curro, Managing Director of Construction  
Ricardo Salaman, Esq., Managing General Counsel  
Larry N. Volk, Senior Director, Portfolio Monitoring  
Deborah K. Fasser, Director, Communications & Marketing  
Daniel W. Petroff, Chief of Strategy and Business Development  
Sara P. Richards, Esq., Associate General Counsel  
Matt Bergin, Assistant Director, Public Finance and Portfolio Monitoring  
Kathy Ebert, Director, Internal Audit  
Karen Ehlinger, Manager, Internal Control Analysis  
Michael Johnson, Assistant General Counsel  
Gerrard Klauser, Senior Financial Analyst  
David Perritano, Public Information Officer

**PUBLIC SESSION**

The Chair called the Meeting to order. The Minutes of the December 12, 2018 Regular Meeting were then reviewed and approved.

**Finance Committee Report**

Finance Committee Chair Ronski reported that the Finance Committee met the prior day and after discussion, decided unanimously to recommend the InterAgency Council of Developmental Disabilities Agencies, Inc. transaction to the full Board for approval of a Resolution to Proceed.

**InterAgency Council of Developmental Disabilities Agencies, Inc.**

Mr. Klauser presented the Staff Report Transaction Summary for InterAgency Council of Developmental Disabilities Agencies, Inc. (“IAC”). He stated that the Members are being asked to adopt a Resolution to Proceed for the issuance of tax-exempt and/or taxable, fixed and/or variable rate bonds in one or more series at one or more times through a negotiated offering and/or private placement in an amount not to exceed \$31,000,000 for a term not to exceed 26 years. Mr. Klauser further stated that the proceeds of the bonds will be used to refinance existing bank loans and reimburse certain institutions for cash expenditures. He explained that the loans and cash expenditures were used to renovate or acquire properties that are used to provide services for the developmentally disabled.

Mr. Klauser informed the Members that this is the thirteenth pooled financing for IAC. He stated that there are six borrowers in this pooled transaction and that, consistent with prior transactions, each borrower will have its own Loan Agreement. Mr. Klauser further stated that the bonds will be secured by a pledge of public funds, including OPWDD Funds attributable to each financed project; a standby intercept of these funds; a six-month debt service reserve fund; and mortgages on certain real property acceptable to DASNY.

Mr. Klauser stated that Prior Property Approvals (“PPAs”) have been received for all 48 projects. He explained that, prior to initiating the development of a project to serve individuals with developmental disabilities, a not-for-profit provider must complete a Certificate of Need (“CON”). Mr. Klauser further explained that the CON is reviewed by OPWDD for need and compliance with local and State regulatory provisions. He stated that once the PPA is obtained, the projects are supported through contract and reimbursement arrangements with OPWDD. Mr. Klauser stated that the State commits to support the development and operation of the project if completed in conformance with the PPA, subject to the annual appropriation of sufficient moneys by the State Legislature. Mr. Klauser informed the Members that if a provider is not able to operate the project or provide adequate services, OPWDD may take administrative action to replace the operator. He stated that the bonds are expected to be rated Aa2 by Moody’s.

Mr. Klauser informed the Members that DASNY’s \$240,000 fee for this transaction was calculated using the new fee structure approved by the Board at its March 2017 meeting. He

explained that the fee for “pooled” transactions is calculated at \$150,000 for the first 3 participants and \$30,000 for each additional participant.

Mr. Gardner inquired whether the funding agency must consent to the standby intercept of public funds. Ms. Lee replied that the agency is a party to the standby intercept agreement. Mr. Gardner asked whether the standby intercept language would constitute an assignment of funds that might be barred under certain agreements. The Board Chair responded that each agreement would have to be examined independently to make this determination. Mr. Gardner asked whether the funding agency has an obligation to continue funding in the event the payment stream is intercepted to make debt service payments. Ms. Lee explained that the not for profit agencies provide essential services to a vulnerable population. She further explained that the PPA represents a long-term commitment on the part of OPWDD to continue to provide capital costs needed so that services can continue to be provided at these facilities. Ms. Lee noted that the PPA and standby intercept provision have provided comfort to rating agencies as well. She stated that in the event an agency is not able to continue providing services, OPWDD has the ability to appoint a replacement operator.

The Board Chair commented that the six-month debt service reserve fund would provide additional liquidity.

Mr. Klauser explained the difference between a direct intercept and a standby intercept. He stated that in the past, a direct intercept was used in connection with an OPWDD transaction, where the funds were automatically intercepted. Mr. Klauser further stated that with a standby intercept, the institution is obligated to make payment and funds are intercepted only in the event of non-payment. Mr. Gardner asked whether the funding agency is informed of the intercept. Mr. Klauser replied that the agency is notified. Mr. Gardner inquired whether direct access is provided to the bank account, and Mr. Klauser replied in the negative. He stated that if funds must be intercepted, DASNY would communicate with OPWDD, which would then pay the intercepted funds directly to DASNY for deposit to the trustee bank.

Mr. Ellis asked for an explanation of PPA and partial PPA project components. Mr. Klauser directed the Members’ attention to Table 2 in the Transaction Summary and explained that the non-PPA project components are typically a small percentage of the overall project cost. He stated that the non-PPA amount might be comprised of, for example, closing costs, or projects paid for with another source of funds. Mr. Klauser noted that the PPAs are specific in nature and sometimes additional funds are necessary to pay for certain components, but that these costs are negligible overall.

Mr. Ronski moved the adoption of the following entitled Resolution:

**A RESOLUTION OF THE DORMITORY AUTHORITY OF THE STATE OF NEW YORK (DASNY) AUTHORIZING STAFF AND BOND COUNSEL TO PROCEED TO TAKE THE NECESSARY ACTION TO PREPARE THE DOCUMENTS TO PROVIDE FOR THE FINANCING OF FACILITIES FOR INTERAGENCY COUNCIL OF DEVELOPMENTAL DISABILITIES AGENCIES, INC**

Mr. Chen seconded the motion and the Resolution was unanimously adopted.

### **Audit Committee Report**

Audit Committee Chair Gardner reported that the Audit Committee had met the previous day. He stated that Ms. Ebert reviewed the status of the 2018-2019 Audit Plan with the Committee Members. Mr. Gardner explained that due to various constraints, the Internal Audit Department is not able to audit all of DASNY's various business areas and functions. He explained that as a result, the areas and functions are ranked so that audits may be conducted for those deemed to be the highest priority. He stated that the Committee Members discussed the areas being audited as well as those that are either behind schedule or not on the audit schedule. Mr. Gardner informed the Members that Ms. Ebert stated that OSC's final report relating to monitoring prevailing wage compliance on construction contracts was filed on December 27, 2018 and that no response from DASNY is required or needed.

### **President's Report**

The President reported that on December 28, DASNY closed a \$7 million transaction for The Arc New York. He informed the Members that this represents the first portion of a \$20 million tax-exempt equipment lease authorization and that the funds will be utilized for the acquisition of adaptive equipment, specialized vehicles for individuals with disabilities, and information technology equipment upgrades.

The President informed the Members that he attended Governor Andrew M. Cuomo's swearing-in ceremony and third inaugural address at Ellis Island. He stated that the Governor pledged to propose to the Legislature a progressive agenda to advance social, racial, and economic justice. The President reported that the Governor's agenda will deliver voting reform, strengthen gun laws, protect a woman's right to choose, provide health care safeguards, decriminalize the use of marijuana, and reform the criminal justice system.

The President stated that on December 21, Governor Cuomo signed three items of significance to DASNY into law. He informed the Members that the first item authorizes DASNY to provide financing and construction services for the New York State Racing Association (NYRA) in connection with the renovation of Belmont Park. The President stated that the Governor also signed legislation to extend the authority of The Arc New York (NYSARC) to work with DASNY until December 31, 2023; and authorized the New York Academy of Medicine, a policy and advocacy organization dedicated to promoting good health and addressing health challenges, to finance with DASNY.

The President stated that on December 17, Governor Cuomo delivered a speech in New York City and unveiled his 2019 agenda. He informed the Members that the Governor's 2019 Justice Agenda includes: launching a \$150 billion infrastructure plan; introducing a 'Green New Deal' to make the State's electricity 100 percent carbon neutral by 2040; leading the fight to repeal the cap on state and local taxes while continuing tax cuts for middle-class families; protecting public-sector unions and expanding workers' rights in the private sector; and investing more in

affordable housing and reforming rent regulations, including ending vacancy decontrol, repealing preferential rent, and limiting capital improvement charges.

The President then directed the Members' attention to the Resolution included in the Board Materials recognizing the 24 employees who retired from DASNY in 2018. He stated that nine of the 24 retirees are also milestone employees who reached 30, 25, and 20 years of service. The President further stated that the Resolution expresses the gratitude of the Board for the dedicated service and valuable contributions the retirees have made to DASNY and the State of New York. He informed the Members that these retirees are representative of the commitment of every member of the DASNY team to finance and build the institutions that provide the foundation for New York's communities. The President stated that these employees have contributed decades of experience and expertise to DASNY and will be missed by the DASNY family.

Mr. Johnson moved the adoption of the following entitled Resolution:

A RESOLUTION OF THE DORMITORY AUTHORITY OF THE STATE OF NEW YORK (DASNY) RECOGNIZING WITH APPRECIATION THE SERVICE OF THE 2018 RETIREES

Mr. Gardner seconded the motion and the Resolution was unanimously adopted.

### **Financial Report**

The President asked Ms. Nadeau to present the proposed 2019-20 Budget and Financial Plan. Ms. Nadeau directed the Members' attention to the Proposed Operating Budget for the 2019-2020 Fiscal Year, which was included with the Board materials. She stated that the proposed budget reflects operating expenditures of approximately \$118 million, which is a 1.99% increase over the projected 2018-19 results. Ms. Nadeau informed the Members that consistent with past practice, the budget was prepared without insight into the State budget and assumes the continuation of the historical level of support. She stated that once staff reviews the State budget, the Members will be advised of any impacts to the proposed budget being presented to the Members.

Ms. Nadeau referred to page 3 of the presentation and stated that the increase in operating expenditures is primarily related to salaries and benefits. She explained that as further detailed on page 6 of the presentation, proposed salary increases total approximately \$1.6 million. Ms. Nadeau further explained that this increase reflects contractual obligations for cost-of-living, step and longevity increases for a full-time employee (FTE) level of 529. She stated that this number is consistent with the 2018-19 budget and reflects an increase of 9 FTEs over the current projection of 520 FTEs at the end of the current fiscal year. Ms. Nadeau informed the Members that benefits are proposed to increase by approximately \$1.2 million, which reflects a 3% increase in health insurance premiums due to higher rates and participation; higher social security taxes; and increased contributions for retirees based on the estimate received from the Employee Retirement System, reflecting the increase in FTEs and higher salaries.

Ms. Nadeau reviewed certain other key assumptions utilized when developing the 2019-2020 budget. She summarized that the proposed budget reflects financing fees for three additional

private financings for higher education clients. Ms. Nadeau stated that the value of the construction workload reflects a 25% decrease over the prior year, while the number of projects exceeds 1,000. She explained that DASNY will increase efficiency so that the additional projects can be completed with the same level of staffing support. Ms. Nadeau stated that the budget reflects three new field sites, including the new Rochester site approved at the December meeting.

Ms. Nadeau directed the Members' attention to pages 4 and 5 of the presentation. She summarized that when these assumptions are considered, the 2019-20 operating results are expected to result in a slight deficit of approximately \$0.5 million. Ms. Nadeau explained that the primary reason for the decrease, when compared to the \$1.5 million surplus projected for the current fiscal year, is a slight shift of approximately 1% from DASNY's public clients to private clients. She further explained that this shift results in a slightly larger amount of DASNY's operating costs being allocated to private clients for whom DASNY's fees are fixed. Ms. Nadeau noted that this small shift in workload allocation translates to the bottom line impact. She reminded the Members that they will be asked to vote on the proposed operating budget at the March 2019 Regular Meeting. The Board Chair encouraged the Members to contact Ms. Nadeau with any questions prior to the March meeting.

In response to an inquiry by Mr. Valitutto, Ms. Nadeau stated that the monies in the fiduciary fund are derived from prior year earnings, while the reserve for replacement fund is funded by depreciation. She further stated that the additional funds reflected in the budget were approved by the Board in 2016 and are for specific purposes to help DASNY remain competitive from a workforce, knowledge transfer, and technology perspective.

### **Public Finance and Portfolio Monitoring Report**

Ms. Lee provided a brief market update. She informed the Members that the pricing results for the \$1.6 billion PIT issuance in December are included in her written report. Ms. Lee noted that this transaction was discussed at the last Regular Meeting. She stated that the total new issue supply for 2018 was \$339 billion, which represents a 24% decrease from the 2017 supply. Ms. Lee further stated that the total supply for this week is expected to be approximately \$8.5 billion, which is higher than recent averages. She informed the Members that the market continues to be volatile. Ms. Lee reported that municipal bond funds reported outflows for the week ending January 2 after reporting inflows for the prior week. She stated that the one, ten and 30-year MMD have decreased 7, 17 and 11 basis points since the last Regular Meeting.

Ms. Lee informed the Members that staff visited Iona College yesterday to discuss changes to DASNY processes and revisions to the financing guidelines. She stated that they highlighted the process improvements and efficiencies that have been implemented since 2012, when Iona last financed through DASNY. Ms. Lee noted that the team highlighted the comprehensive services that DASNY offers, including construction services and the TELP program.

Ms. Snyder commended Ms. Lee and the Public Finance staff for their work over the past year in successfully navigating a complicated market. She stated that DASNY had significant issuances with favorable outcomes despite market volatility. Ms. Snyder noted that the volatility is likely to continue. Ms. Lee thanked Ms. Snyder. She noted that being in the market regularly

helps DASNY educate our clients regarding various trends. Ms. Snyder stated that this type of insight is especially important for smaller institution with fewer resources. In response to an inquiry from Ms. Snyder, Mr. Cusack stated DASNY is tracking IRS announcements regarding private activity bonds, the publication of TEFRA notices, and proposed rulemaking on re-issuances. He informed the Members that he would keep them updated on any developments in these areas.

Mr. Gardner moved that the Members go into Executive Session to discuss the financial and credit history of particular corporations; proposed, pending or current litigation; and the employment history of persons or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of particular persons. Mr. Romski seconded the motion and the Members went into Executive Session.

### **EXECUTIVE SESSION**

No action was taken in Executive Session other than that to return to Public Session.

### **PUBLIC SESSION**

#### **Counsel Report**

Mr. Cusack stated that the Board is being asked to approve three Resolutions to add additional law firms to the existing panels of approved legal counsel. He further stated that these panels were established after a procurement process undertaken in 2016. Mr. Cusack informed the Members that the Request for Proposals reserved to DASNY certain rights regarding changes to the approved panels in appropriate circumstances, such as when an attorney from an approved firm moves to another firm. Mr. Cusack noted that if approved, the proposed changes would be effective from the beginning of the year.

Mr. Cusack stated that the first Resolution authorizes the addition of the law firm of Thompson Hine LLP to DASNY's list of Bankruptcy, Restructuring and Workout Counsel. He explained that David Forsh, Esq., formerly of Pillsbury Winthrop Shaw Pittman, LLP has joined the law firm of Thompson Hine LLP. Mr. Cusack stated that Mr. Forsh has extensive knowledge and expertise in the areas of bankruptcy, restructuring and workouts in the health care industry and that DASNY desires to preserve the relationship. Mr. Cusack directed the Members' attention to his memorandum, which sets forth the provisions of Article 15 of the RFP. He explained that the RFP authorizes DASNY to add the firm of Thompson Hine to the Bankruptcy and Workout Counsel Panel in this situation. Mr. Cusack noted that Thompson Hine provided DASNY with information detailing the firm's qualifications and that upon review, he recommends that the firm be added to the panel. He further noted that Pillsbury will remain on the Bankruptcy, Restructuring, and Workout Counsel panel and can continue to receive assignments.

Mr. Romski moved the adoption of the following entitled Resolution:

**A RESOLUTION OF THE MEMBERS OF THE BOARD OF THE DORMITORY AUTHORITY OF THE STATE OF NEW YORK (DASNY) APPROVING AN AMENDMENT**

**TO THE LIST OF BANKRUPTCY, RESTRUCTURING AND WORKOUT COUNSEL FOR DASNY**

Ms. Snyder seconded the motion and the Resolution was unanimously adopted.

Mr. Cusack stated that the second Resolution authorizes the addition of Orrick Herrington & Sutcliffe, LLP to DASNY's Special Legal Services panel. He explained that Matthew Neuringer, Esq. has been working with Paul Koopman, Fran Lewis and others in connection with special construction-related assignments, as well as Portia Lee and Public Finance staff on various initiatives. Mr. Cusack stated that Mr. Neuringer was previously with the Ashurst law firm, which is currently on the Alternative Delivery Counsel panel. He explained that this panel was initially established pursuant to a competitive process initiated by the Construction Division, but was subsequently approved by the Board together with the firms selected pursuant to the procurement undertaken by Counsel's Office for outside counsel firms. Mr. Cusack informed the Members that Mr. Neuringer is now working at the firm of Orrick Herrington and has provided information responsive to DASNY's Legal Services RFP. He stated that he therefore recommends the addition of the firm to the Special Legal Services Panel. Mr. Cusack further stated that Ashurst will remain on the Alternative Delivery Panel and can continue to receive other assignments.

Mr. Chen moved the adoption of the following entitled Resolution:

**A RESOLUTION OF THE MEMBERS OF THE BOARD OF THE DORMITORY AUTHORITY OF THE STATE OF NEW YORK (DASNY) APPROVING AN AMENDMENT TO THE LIST OF SPECIAL LEGAL SERVICES COUNSEL FOR DASNY**

Mr. Ellis seconded the motion and the Resolution was unanimously adopted.

Mr. Cusack stated that the third Resolution before the Members would authorize the addition of the Polsinelli, PC to DASNY's Special Legal Services Panel. He explained that William Tanenbaum, Esq., was previously a partner at Arent Fox and has now moved to the Polsinelli firm. Mr. Cusack noted that the Polsinelli firm had applied to be on the bond counsel and underwriter counsel panels during the 2016 RFP process. He noted that the firm was empaneled on the underwriter counsel panel at that time. Mr. Cusack indicated that Polsinelli recently updated their original RFP response and that he recommends the addition of the firm to the Special Legal Services Panel. He informed the Members that while at Arent Fox, Mr. Tanenbaum helped to draft the contract with Fluxx for the Grants Management System, and provided general counsel with respect to the procurement of technology. Mr. Cusack stated that Mr. Tanenbaum possesses special knowledge with respect to technology matters and intellectual property rights, and that staff desires to maintain its working relationship with him at the Polsinelli firm. Mr. Cusack further stated that Arent Fox will remain on the Alternative Delivery Panel and can continue to receive other assignments.



Mr. Chen moved the adoption of the following entitled Resolution:

A RESOLUTION OF THE MEMBERS OF THE BOARD OF THE DORMITORY AUTHORITY OF THE STATE OF NEW YORK (DASNY) APPROVING AN AMENDMENT TO THE LIST OF SPECIAL LEGAL SERVICES COUNSEL FOR DASNY

Mr. Ellis seconded the motion and the Resolution was unanimously adopted.

### **Construction Division Report**

Mr. Curro directed the Members' attention to the photograph on the cover of the Construction Projects Report. He stated that it depicts the Adirondack Hall renovation at the SUNY Institute of Technology in Utica, which was a SUNY Summer Project. Mr. Curro informed the Members that the project consisted of the complete renovation of 32 bathrooms, toilets and sink rooms. He stated that the work included the replacement of all bathroom fixtures, finishes, drywall, flooring and lighting. Mr. Curro further stated that the design phase for the \$1.2 million project commenced in November 2017 and that construction was completed between May and August 2018. He noted that working in small, confined workspaces on a compressed schedule presented numerous coordination and scheduling challenges.

Mr. Curro reported that the 2019 SUNY Summer projects are currently being bid and awarded. He stated that 35 projects with a construction value of \$40 million are scheduled to commence in May.

Mr. Curro informed the Members that DASNY will be undertaking several new projects, including a \$16 million roof replacement for the Gould Memorial Library at Bronx Community College; a \$5 million interior renovation project at Wingate Hall at City College of New York; and a \$6 million elevator modernization project at the NYC College of Technology. He stated that the Court Officers Training Academy (COTA); the Hutchings Psychiatric Center; and the Bronx Psychiatric Center projects were completed during the reporting period.

Mr. Curro reported that year to date construction expenditures through November 2018 were \$481 million, as compared to \$588 million through the same time period last year, a decrease of \$107 million.

Mr. Curro provided an update on several larger construction projects. He stated that with respect to the NYCHA projects, 68 of 78 security projects have been completed, as well as 32 of 38 appliance installation projects, and 7 of the 48 quality of life projects. He further stated that 21 quality of life projects are in the construction phase and 20 are in the design phase.

Mr. Curro reported that heavy structural, mechanical and electrical trades are engaged at the Moynihan Station project, and that work on the skylights and penthouses is also progressing. He noted that DASNY continues to oversee the project from a permitting standpoint.

With respect to the Javits expansion, Mr. Curro stated that heavy foundation work and structural steel erection is underway, as well as the cast-in-place concrete parking garage. He noted that DASNY continues to oversee the project from a permitting standpoint.

Mr. Curro stated that the South Beach Psychiatric Center is currently DASNY's largest construction project. He informed the Members that building enclosure activities are underway, as well as mechanical, electrical and plumbing work and additional sitework activities. Mr. Curro noted that the project remains 64 days beyond the baseline substantial completion date. He stated that an on-site meeting is taking place tomorrow with DASNY's construction manager, general contractor and the Office of Mental Health.

Mr. Curro updated the Members on two SUNY projects currently in progress. He reported that the design/build contract for the new residence hall at SUNY Polytechnic Institute was issued in December. Mr. Curro stated that the project is currently in the design phase and that construction is scheduled to begin later this spring. With respect to the SUNY Oneonta Ford Hall Net Zero Design/Build renovation project, Mr. Curro stated that DASNY is conducting an information session tomorrow for interested team members to explain the project and scope expectations.

Mr. Curro informed the Members that three SUNY capital projects are currently underway and are expected to be completed in time for the Fall 2019 semester: Plattsburgh Whiteface Hall renovation, Albany G & H Hall Renovation, and Buffalo State Tower 3. He stated that the Mackenzie Hall Phase II renovation project at SUNY Alfred is expected to be completed in December 2019.

Mr. Curro updated the Members on additional Construction Division business. He stated that Construction is working with IS and expects to issue an RFP for a new Project Management System by the end of the month. Mr. Curro further stated that DASNY has extended the end date for the NYC Project Labor Agreement through September 2019. He informed the Members that DASNY has hired an additional Chief Project Manager to manage the \$750 million DOH Life Sciences Laboratory project. Mr. Curro reported that he would be speaking at the SUNY Physical Plant Administrators Association Winter conference in early February.

The Chair informed the Members that the blood drive held yesterday in honor of Sandra Shapard was a success.

Ms. Snyder moved that the Meeting adjourn, Mr. Johnson seconded the motion and the Meeting was adjourned at approximately 11:10 a.m.

Respectfully submitted,

Michael E. Cusack  
Assistant Secretary