

SUMMARY *of* PROCEEDINGS



BLOCKCHAIN TASK FORCE

COMMITTEE MEETING INFORMATION

May 6-7, 2019 | 8:30 AM
SpringHill Suites Jackson Hole, Conference Center
150 West Simpson Avenue
Jackson, Wyoming

COMMITTEE MEMBERS PRESENT

Senator Chris Rothfuss, Co-chairman
Representative Tyler Lindholm, Co-chairman
Senator Ogden Driskill
Senator Tara Nethercott
Representative Jared Olsen
Representative Cyrus Western
Representative Mike Yin
William Cole
Matt Kaufman
Caitlin Long

LEGISLATIVE SERVICE OFFICE STAFF

Ian Shaw, Legal Administrator
Kelley Shepp, Research Analyst
Chris Land, Staff Attorney

Please refer to ([Appendix 1-02](#)) to review the Committee Sign-in Sheet for a list of other individuals who attended the meeting.

The Committee Meeting Summary of Proceedings (meeting minutes) is prepared by the Legislative Service Office (LSO) and is the official record of the proceedings of a legislative committee meeting. This document does not represent a transcript of the meeting; it is a digest of the meeting and provides a record of official actions taken by the Committee. All meeting materials and handouts provided to the Committee by the Legislative Service Office, public officials, lobbyists, and the public are on file at the Legislative Service Office and are part of the official record of the meeting. An index of these materials is provided at the end of this document and these materials are on file at the Legislative Service Office. For more information or to review meeting materials, please contact the Legislative Service Office at (307) 777-7881 or by e-mail at lso@wyoleg.gov. The Summary of Proceedings for each legislative committee meeting can be found on the Wyoming Legislature's website at www.wyoleg.gov.

EXECUTIVE SUMMARY

The Blockchain Task Force (“Task Force”) met on May 6-7, 2019 at the Springhill Suites in Jackson, WY. The Task Force analyzed blockchain legislation from other jurisdictions, discussed digital identity, the protection of digital speech, technology intermediaries, technology innovation, decentralized organizations, the tokenization of commodities, personal data trust services, corporate law amendments and blockchain real property records.

The Task Force voted to have legislation drafted on the following topics: (1) the creation of a Select Committee on Technology Innovation; (2) legal protection for computer programmers and their work; (3) the computer crimes statutes; (4) digital asset investments for insurance companies; (5) digital assets in letters of credit and statutory lien provisions; (6) the legal status of private digital keys; (7) the creation of a hybrid category of digital assets; (8) repealing Wyoming's money transmitter act; (9) the creation of digital reserve tokens or representation tokens; (10) the authority of Wyoming Special Purpose Depository Institutions to issue reserve or representation tokens; and (11) the issuance of digital securities in local bonding.

CALL TO ORDER (MAY 6, 2019)

Co-chairman Tyler Lindholm called the meeting to order at 8:30a.m. The following sections summarize the Task Force proceedings by topic. Please refer to [\(Appendix 1-01\)](#) to review the Committee Meeting Agenda.

REVIEW OF BLOCKCHAIN LEGISLATION IN OTHER JURISDICTIONS

Domestic & International Legislation

Chris Land, Legislative Service Office (LSO), reviewed Wyoming blockchain legislation passed during the last legislative session and summarized recent domestic and international blockchain developments [\(Appendix 2-01\)](#). Mr. Land and Task Force member Caitlin Long summarized the Federal Reserve's proposed rulemaking regarding "narrow banks" who hold large deposits for the primary purpose of earning the federal reserves' excess funds interest rate and who do not perform significant additional banking services. Ms. Long stated that it is possible that overly-broad rules could define "narrow banks" in a way that might place limits on Wyoming's new Special Purpose Depository Institutions. Ms. Long summarized the Uniform Law Commission's (ULC) recent decision to consider changes to the Uniform Commercial Code (UCC), made necessary by the emergence of digital technologies and digital assets. The Task Force voted to draft a letter to the ULC asking that Wyoming be included in any effort to examine the UCC.

Mr. Land discussed a recently-announced framework for conducting the "investment contract" analysis used to determine if digital assets are regulated securities. He noted the impact Wyoming's Utility Token Act has had on the Securities and Exchange Commission [\(Appendix 2-06\)](#).

Token Taxonomy Act (H.R. 2144)

Caitlin Long discussed the Token Taxonomy Act of 2019, recently introduced in Congress. [\(Appendix 2-08\)](#). Ms. Long stated that the Act, as currently drafted, provides overly-broad definitions of digital assets and contains new provisions preempting state laws. The Act provides confusing guidance to the financial technology industry and would preempt much of what Wyoming has accomplished in regulating and defining digital assets. The Task Force voted to draft a letter to Wyoming's congressional delegation: 1) summarizing Wyoming's leadership in digital asset regulation; 2) expressing concern about the

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language of the Token Taxonomy Act; and 3) asking the delegation to take an active part in assuring that any legislation passed by Congress protects Wyoming's rights and its advancements in digital asset regulation.

The following individuals provided public comment regarding blockchain legislation, the regulation of digital identities, and the Token Taxonomy Act:

Kevin O'Hara, Harmonic Trading
 Christopher Allen, Blockchain Commons
 Bob Cornish, Wilson Elser
 Steven Sprague, Rivetz

DIGITAL IDENTITY

Co-chairman Rothfuss discussed the concept of digital identity and explained that there currently is no international system that allows a digital identity that is reliable, verifiable and is subject to proper attestation. Digital identities could be useful for many applications including compliance with federal Know Your Customer and Anti-Money Laundering laws. Mr. Land explained the benefits of systems which would allow individuals to control their own digital identities and maintain control over their personal information. The Task Force agreed that it will be challenging for Wyoming to tackle this issue alone, but that there may be opportunities to create a governance framework that encourages the development of digital identities, including collaboration with Colorado on driver's licenses and Bermuda on the development of a comprehensive, international framework for digital identification. Co-chairman Rothfuss discussed a letter from the Premier of Bermuda to Governor Gordon proposing collaboration on the creation of regulatory standards for digital identity ([Appendix 4-01](#)).

The following individuals provided public comment regarding digital identity, its uses and benefits, the ways to make it secure, the challenges in making an internationally-recognized digital identity system, and the countries and private entities that are working on solutions:

Mr. Allen
 Mr. Sprague
 Emma Channing, ConsenSys Digital Securities, LLC (Satis)
 Pat Lewis, Wyoming Department of Transportation
 Mike Geesey, Wyoming Bankers Association
 Paul Quigley, BlocLab Enterprises
 Mr. O'Hara

During Mr. Allen's public comment, he provided and discussed a document entitled *Decentralized Identity-Ideology & Architectur* ([Appendix 4-03](#)).

The Task Force requested that Representative Yin create a working group with Mr. Allen, Mr. Sprague and Ms. Channing to identify potential actions Wyoming could take to promote the development of digital identities and to incorporate the use of digital identities in Wyoming, potentially starting with financial institutions. The working group will be asked to present at the next Task Force meeting. The Task Force further determined that the Task Force should work with Bermuda in promoting an international standard for digital identities. The Task Force voted to have a letter drafted to inform Bermuda that the Task Force wishes to work with them to promote international standards for digital identities.

PROTECTION OF DIGITAL SPEECH

Ms. Long stated that the creation of digital code can be considered an expression of speech and stated her belief that developers' and computer programmers' work should be extended First Amendment protections. Ms. Long believes that developers and programmers should be given criminal and civil immunity. Ms. Long further believes that those who develop computer code should not be held liable for the actions of others who use their product for nefarious purposes. The Task Force discussed whether those who host computer code should be held liable for the act of hosting. Ms. Long, Task Force members, and those who provided public comment discussed the need for programmer immunity, the application of federal law, and what Wyoming can do to protect developers and, thereby, promote creative development activity.

The following persons provided public comment, in order:

Mr. Cornish
Trace Mayer, bitcoin investor
Ms. Channing
Mr. O'Hara
Mr. Allen
Jeremy Schwartz, private citizen

Action on this topic was postponed until the following day.

TECHNOLOGY INTERMEDIARIES

Co-chairman Rothfuss discussed 47 USCS §230 ([Appendix 7-01](#)). This federal law protects internet service providers by establishing that they have no obligation to censor or moderate information provided by others on their platforms, nor do they assume obligations if they decide to moderate content on their platforms. This is an emerging issue since modern content providers take a very active role in moderating content. There was no public comment on this topic. The Task Force took no action on this topic.

SELECT COMMITTEE ON TECHNOLOGY INNOVATION

Co-chairman Lindholm provided background on how the Blockchain Task Force was formed and explained that the Task Force will terminate this year. He explained his desire that the Legislature create a permanent entity to consider technology innovations. Mr. Allen provided public comment in support of creating a select committee. The Task Force discussed the appropriate membership of a select committee and the desire to give the committee bill-sponsoring authority. The Task Force voted to have LSO draft legislation creating a Select Committee on Technology Innovation with three members from the House, three members from the Senate, and 3 non-voting, advisory members appointed by the Governor. Not more than two members from each house may be from the same political party. The committee should be granted the authority to sponsor legislation. The selection of co-chairmen by each respective house should be established in the legislation. The legislation should include a General Fund appropriation for the first biennium with the budget to be made through Management Council thereafter.

INDUSTRY UPDATES & PROPOSALS

Mr. Cornish suggested that the Task Force review the computer crime statutes to confirm that they are appropriate for the digital asset industry. Mr. Cornish also discussed the fraud statutes and suggested that they be made more stringent to send a signal that Wyoming will be tough on fraud. Mr. Cornish would

like to increase the use of digital assets in Wyoming for institutional investors and believes the insurance statutes should be amended to make digital assets an authorized investment for insurance companies. Mr. Cornish also suggested amendments to Wyoming's letters of credit statutes and lien statutes.

Mr. Allen discussed obstacles with creating blockchain corporations in Wyoming and suggested that Wyoming create standardized forms and contracts. He believes Wyoming law should make clear that lawyers can accept Bitcoin and virtual currency, should define how executors and trustees can hold digital assets and digital keys on behalf of the parties they represent, and should clarify access to safe deposit boxes, including a presumption that they are held in joint tenancy.

Bob Ferguson, Blockchain Financial Partners, discussed whether it is legislatively possible for Wyoming to take a preferred security interest in intellectual property created or domiciled in Wyoming to protect citizens from federal actions.

Mr. Sprague discussed the challenges raised by placing data on blockchains and the need for pre-transaction regulation for blockchain-based transactions.

Nathan Kaiser, Harvard University, discussed the three definitions of tokens in 2019 Senate File 125 and his belief that there needs to be a hybrid type of digital token.

Jesse Powell, Kraken, discussed having the ability to pay for LLC's on a monthly subscription rather than annually, to rent an LLC, or to have an LLC for as little as one day. He believes this would free-up the ability to conduct more transactions in Wyoming.

MEETING RECESS

Co-chairman Lindholm moved that the Task Force stand in recess at 5:30 p.m., which was adopted without objection.

CALL TO ORDER (MAY 7, 2019)

Co-chairman Rothfuss called the meeting to order at 8:30 am.

Task Force Action

The Task Force reviewed its discussions from the prior day and, with additional public discussion from Mr. Allen, Mr. Kaiser, Mr. Sprague, and Mr. Cornish, voted to have legislation drafted on the following topics:

Legislation to provide protections to persons who create and host computer code. The legislation should consider extending First Amendment speech protection to computer programmers and developers; provide appropriate criminal immunity to computer programmers for the act of developing and deploying computer code; limit any obligation in Wyoming for persons to create back-doors in computer code; and consider ways to protect a user's fair use of computer code. The Task Force later asked that the draft legislation also include immunity and limited liability protections for node operators and participant-voters on those opensource systems that allow voting;

Legislation to amend Wyoming's computer crimes statutes to include the theft of digital assets. Senator Nethercott and Mr. Cornish will provide assistance;

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Legislation to clarify that digital assets are authorized investments for insurance companies;

Legislation to conform statutory provisions to permit the use of digital assets in letters of credit and to conform the lien language in W.S. 29-1-501 to be consistent with the lien provision in 2019 SF 125;

Legislation to provide for the handling of private keys, which control access to digital assets, but which are not digital assets. This legislation may consider the ownership of safe deposit boxes in which digital keys are stored and the characterization and treatment of digital keys as disclosable assets in probate proceedings and otherwise. Private keys should not be treated as the digital assets to which they allow access and should not be transferrable only through probate or other formal procedures;

Legislation to create or recognize a hybrid category of digital asset in addition to the three digital asset types previously created in Wyoming. This hybrid type is likely a utility token, intended for consumptive purposes, but which might at times be used as digital currency;

Legislation to repeal the Wyoming's Money Transmitter Act.

DECENTRALIZED ORGANIZATIONS/BUSINESS ENTITIES

Matt Kaufman discussed decentralized autonomous organizations (DAOs). They are business entities controlled by smart contracts, executed on blockchains, and which, once launched, can operate without significant human input. If they operate without a formal business entity structure, they are considered, by default, partnerships for which each member should be jointly liable for all business liabilities and obligations. However, because they operate autonomously, there may be no entity or person who can be located for purposes of enforcing any responsibility or liability. In this way, participants in DAOs can enjoy immunity. Bitcoin is an example of a DAO.

Mr. Land summarized DAOs and explained laws or proposed laws in other states that are addressing DAOs, including laws in Illinois and Vermont ([Appendix 13-03](#)) ([Appendix 13-04](#)).

The following individuals provided public comment regarding DAOs:

Mr. Allen
Mr. Powell
Ryan Grant, Blockchain Commons
Mr. Mayer
Mr. Kaiser

TOKENIZATION OF COMMODITIES AND OTHER ASSETS

Ms. Long explained that some assets and commodities are now being "tokenized." Tokenization refers to the representation by tokens on a blockchain of underlying assets or commodities. Tokenization can take many different forms and be accomplished in many ways. The Task Force discussed the complicated nature of tokenization. Among many other things, tokens can represent real, intangible, or personal property (or all three at the same time), can be considered to not only represent, but constitute title to the assets underlying the tokens, can represent fiat currency, can offer a utility beyond the strict value of the underlying assets, can often implicate federal law and jurisdiction, can require consideration of spoilage or disappearance of underlying assets, can raise tax questions regarding the locus of assets represented by tokens, can raise questions about the perfection of security interests, and can raise important issues concerning custodianship. Ms. Long discussed a letter concerning tokenized digital pass through assets

which requests that Wyoming act to prevent digital tokens from being confused with inappropriate types of digital assets. (Appendix 15-02). Mr. Land discussed concerns that overseas regulators may consider tokenized assets to be securities instead of commodities. Mr. Land also discussed the difference between stable coins and digital pass through assets.

The following individuals provided public comment regarding the tokenization of commodities and other assets, in the following order:

Mr. Powell
 Mr. Allen
 Doug Pepe, Mango Farms
 Mr. Cornish
 Jeffrey Tabak, Veritasium
 Mr. O'Hara
 Mr. Schwartz
 Ms. Channing

After discussion, the Task Force voted to have LSO draft the following legislation:

Legislation creating "digital reserve tokens" or "representation tokens" and establishing that the interests, rights and duties represented by these tokens are the equivalent of the interests, rights and duties of the underlying assets represented by the tokens. The legislation should consider establishing that control of the token is the equivalent of control over the interests that underlie the token. The legislation needs to address situations in which different classes of underlying assets are potentially represented by a single token.

Legislation to add language to the Special Purpose Depository Institution (SPDI) statutes authorizing a SPDI, upon the direction of the customer and with approval from the Wyoming Banking Division, to issue reserve tokens or representational tokens for the benefit of the customer and against the customer's account.

Ms. Long moved that LSO draft legislation to amend local government bonding statutes to allow the issuer of bonds to issue the bonds as digital securities, as defined by W.S. 34-29-101(a).

PERSONAL DATA TRUST SERVICES

Brittney Keiser, Digital Asset Trade Association, discussed the protection of personal data and what other states, such as Minnesota and Illinois, are doing to regulate personal data trust services. (Appendix 13-03). Ms. Keiser discussed why Wyoming needs to authorize the creation of personal information trust companies and explained why she believes that Wyoming should extend the definition of digital assets to include personal data. Ms. Long discussed who might be best qualified to conduct personal information trust services. The Task Force will discuss this issue at its next meeting and will invite comment from the Wyoming Division of Banking.

CORPORATE LAW AMENDMENTS

Business Judgement Rule & Preferred Shareholders

Ms. Long explained the Delaware business judgement rule which has been held to place a higher level of scrutiny on a board of directors when they act for preferred shareholders than when they act in the interest

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of common shareholders. The Task Force received public comment about the respective interests and vulnerability of common shareholders versus preferred shareholders. Preferred shareholders are often venture capitalists.

The following individuals provided public comment:

Ross Barbash, Atrium LLP
 Mr. Allen
 Mr. O'Hara
 Ms. Channing

The Task Force took no action on this subject.

Wyoming Chancery Court & Delaware Law

Ms. Long discussed the creation of the Wyoming Chancery Court and proposed that Wyoming formally adopt Delaware's caselaw as its own, to the extent Delaware's law is not inconsistent with Wyoming law ([Appendix 19-03](#)). The Task Force discussed the merits of adopting Delaware law. Mr. Cornish provided public comment on the issue. The Task Force took no action.

BLOCKCHAIN REAL PROPERTY RECORDS

Update on Teton County Pilot Project

Sherry Daigle, Teton County Clerk, and Rich Greenwood, Greenwood Mapping, discussed the Teton County property record pilot project which will move property records to a blockchain platform. Ms. Daigle noted that the project is going well and that the plan is to launch the final product on June 17, 2019.

Public Comment on General Topics

The Task Force asked if there was any additional public comment on any topic.

Mr. Allen and Mr. Powell discussed whether private keys should be considered a digital asset and the Task Force discussed the treatment of private keys in probate and in other judicial proceedings. The Task Force asked LSO to draft legislation specifying that private keys are not divisible digital assets and that they merely constitute a means of access to assets. Relatedly, private keys, themselves, are not an asset that must be disclosed when the owner of the private key is required to disclose assets. This bill draft may be combined with the private key bill draft requested on the first meeting day.

Mr. Schwartz testified about the potential for digital assets and financial technology to create business in Wyoming and encouraged the Task Force to launch marketing and education programs to inform the public about Wyoming's progress in these fields.

MEETING ADJOURNMENT

There being no further business, Co-chairman Rothfuss adjourned the meeting at 5:05 p.m.

Respectfully submitted,

Co-chairman Representative Tyler Lindholm

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