

State Board of Internal Control (SBIC)

Second Meeting

Capitol Building 4th Floor Room 414

Pierre, SD

June 21, 2016

1. Call to Order – 8:32 AM
 - a. Members in attendance
 - i. Jason Dilges – Chair – BFM Commissioner
 - ii. Steve Barnett – State Auditor
 - iii. Greg Sattizahn – UJS
 - iv. Monte Kramer – BOR
 - v. Laura Schaeffer – DSS
 - vi. Tami Darnall – DOE
 - vii. Kari Williams – DOH
2. Approval of Minutes from meeting on May 2nd
 - a. Motion to approve – Darnall
 - b. Second – Kramer
 - i. Unanimously approved and motion carried
3. Housekeeping Issues
 - a. BFM Commissioner Dilges
 - i. Audio Streaming guidelines
 - ii. Sign-in sheet
 - iii. Asking questions by email
 - iv. Audio Archive this meeting on Open SD
4. Code of Conduct
 - a. BFM Commissioner Dilges
 - i. Touched on this at the 1st meeting
 - ii. Asked for input from the agencies
 1. Want to give an update on that input and where we stand now
 - b. Lt. Governor Michels
 - i. Introduced Grace Kessler and talked about several themes that he wanted to come out with this Code of Conduct
 - ii. Great input from the agencies
 - c. BFM Commissioner Dilges
 - i. Appreciate the contributions from everyone that sent items in
 - ii. Barnett got information from other states on this as well
 - d. Grace Kessler – Governor’s Office

- i. Walk through process of gathering information and input
 - ii. Gave us the chance to evaluate the policies in the State
 - iii. Appropriate for the mass array of agencies and authorities
 - iv. Inviting BHR to come talk about the Code of Conduct as it stands now and how it got here
- e. BHR Commissioner Gill
 - i. BHR was brought in to ensure that all employees are aware of personal responsibilities
 - ii. BHR started with the employee handbook
 - iii. It will be reorganized to highlight the personal responsibilities of the employees
 - iv. Easily accessible by the employees
 - v. No policies have changed as a part of this effort just a change in structure
 - vi. Review of the feedback was a joint effort between BHR, the Governor's Office, and SBIC
 - vii. Include a letter from Governor Duugaard at the beginning of the handbook
 - viii. Summary of the policies that have been chosen to represent the Code of Conduct this will be right behind the letter
 - ix. Pull the policies that are in existence so that the complete text of the Code of Conduct will be directly behind the summary
 - x. List of the policies
 - 1. Gratuities
 - 2. Anti-harassment
 - 3. Conflict of Interest
 - 4. Outside Employment
 - 5. Political Activity
 - 6. Disciplinary Action
 - 7. Use of Technology
 - 8. Workplace Fraud
 - xi. Implementation will hopefully be done July 1, 2016
 - 1. Have it updated on the internet and the icon that is on all Employees desktops
 - 2. Updated hard copies will be available upon request
- f. Lt. Governor Michels
 - i. How to report illegal or unethical activities?
 - ii. Can BHR please explain what the process is and how it is being updated?
- g. BHR Commissioner Gill
 - i. In the letter from the Governor, the tone is stating that employees are responsible to maintain the citizens' trust and to report any fraud or theft
 - ii. Employees should represent themselves and the State with integrity
 - iii. Whistleblowers policies
 - 1. Report to supervisor or Attorney General's Office (ATG)

- 2. If an employee believes there is retaliation, they can report to the Civil Service Agency
 - 3. Spent a lot of time talking about these policies and educating employees
 - iv. Once a year around Jan 1 BHR sends an email that lists all the changes to the employee handbook and where you can get the handbook
 - h. Lt. Governor Michels
 - i. On the bottom of the summary it states what fraud and theft are and that you should report it and how
 - i. BHR Commissioner Gill
 - i. To report in a way they feel safe and free from retaliation
 - j. BFM Commissioner Dilges
 - i. Responsibility of the SBIC to create a Code of Conduct for all state agencies
 - ii. SBIC didn't know a whole lot about this area so they brought in BHR to develop a Code that could be used by all state agencies
 - iii. Get input from BHR so there was not a conflict between the existing policies and the Code of Conduct and the handbook
 - iv. Any questions or input from the Board or audience?
 - v. Barnett got other Codes of Conduct from around the country as guides for BHR
 - k. Kramer
 - i. The summary looks very restrictive, the draft had listed some exceptions that this does not contain
 - l. BHR Commissioner Gill
 - i. Only a reorganization not changing any current policies
 - m. BFM Commissioner Dilges
 - i. Draft something that is more broad that can be used by a majority of the state agencies
 - ii. This change would affect state employees
 - iii. Can we use this change to assist the boards and commissions so they can adopt as well
 - n. BHR Commissioner Gill
 - i. Whenever there is a change BHR sends out the change to the boards and commissions to them for their adoption, if they wish
 - o. BFM Commissioner Dilges
 - i. Would anything in this preclude these organizations for adopting this?
 - p. BHR Commissioner Gill
 - i. Not unless there is something specific in their current policies
- 5. Conflict of Interest
 - a. BFM Commissioner Dilges
 - i. Introduced in 1st meeting
 - ii. HB 1214 details how boards and commissions deal with Conflict of Interest

- iii. A.J. Franken from the Governor's Office has been talking with ATG on how to incorporate
- b. A.J. Franken – Governor's office
 - i. Governor's Office, with the ATG, has been working on the implementation of HB 1214
 - ii. Applies to 22 boards, commissions, and authorities around the State
 - iii. Not just Conflict of Interest in the most common use but a broad array of transactions between a board member and the State
 - iv. In effect as of July 1, 2016
 - v. Does not apply retroactively
 - vi. Worked with ATG to produce instructions on a decision matrix and waiver
 - vii. Must be disclosed and waived by the board if it is to be valid and in place
 - viii. If not disclosed and waived, it is a Class 1 Misdemeanor
 - ix. Can be waived if proper to do so
 - x. Waiver Decision Matrix
 - 1. Walks through questions to determine if the board member needs to ask for a waiver or if this transaction does not pertain to the law
 - xi. Forms to be used to disclose the transaction
 - 1. Both for the member to disclose and for the board to waive
 - 2. File these with the Department of Legislative Audit
 - xii. Many comments had issue with the policies that are already in place
 - xiii. Some agencies might have stricter policies already in place
 - 1. The agencies would then be adherent to the stricter policy in place
 - xiv. Adopt policy that encompasses the existing laws and regulations that are already in place
- c. BFM Commissioner Dilges
 - i. The policy that passed 2 sessions ago
 - ii. HB 1214 expanded the one two years ago to include boards and commissions
- d. A.J. Franken
 - i. It mirrored the one for State employees but in some cases is more restrictive
 - ii. Gave an example on serving on other boards
- e. BFM Commissioner Dilges
 - i. Adopting Conflict of Interest for this board, how would we know which one takes precedent
- f. A.J. Franken
 - i. Have the Code state which policy would override the other
 - ii. Language in the law SB 162 is to adopt a policy
 - iii. Have it say the more restrictive policy would apply
- g. BFM Commissioner Dilges
 - i. A lot of work has been done on this already
 - ii. Compliment the work that has already been done rather than write up a policy that agencies may or may not go forward with

- h. A.J. Franken
 - i. Varying degree of knowledge and information for board members
 - ii. This board could add regularity for the dissemination of information
- i. Lt. Governor Michels
 - i. UJS and BOR have policies of their own or things that are restricted by outside agencies such as the federal government
 - ii. Could you walk through an example using the current law?
- j. A.J. Franken
 - i. State employees
 - 1. In regards to contract applies to those employees that have some power over the contract
 - 2. If it is a direct benefit to you or member of your household then the conflict laws apply
 - 3. Provisions in which a contract can still go forward as long as it is properly disclosed
 - ii. Boards and authorities
 - 1. Area of conflicted transactions are more broad
 - a. Includes contracts that deal in the subject matter of the board that you are sitting on
- k. BFM Commissioner Dilges
 - i. The two documents represent the decision matrix and the instructions and forms to disclose
 - ii. This board could compliment the work you have done by adopting these documents
- l. A.J. Franken
 - i. Similar documents exist for state employees
 - ii. These in front of you only apply to the 22 boards and commissions applicable in HB 1214
- m. BFM Commissioner Dilges
 - i. "You know it when you see it"
 - ii. South Dakota is small and we know a lot of people around us
 - iii. Conflicts are going to happen and that is not a bad thing, as long as they are disclosed and any conflicts are mitigated
 - iv. Use the matrix to determine if there is a conflict that needs to be reported
 - v. Comments from the Board?
- 6. Break – 9:30 to 9:52
- 7. Attestation Form
 - a. Keith Senger (BFM)
 - i. Presented form at 1st meeting
 - ii. Many comments from people on the form
 - 1. Why is there a yes or no box, if the answer is no, we shouldn't be doing business with them

2. Took those boxes out and overhauled the form
3. Chose not to adopt proposed wording changes to keep it similar with the law
- iii. The items on the attestation form come straight from the law
- iv. Goes into effect July 1, 2016, any grant agreements signed after this date need to have this form as well
- v. Might expand this form down the road to verify registration with the Secretary of State's Office
- b. Darnall
 - i. Small daycare centers do not have websites, how can they post their 990s?
 - ii. How can we do business with them since they can't sign the attestation form?
- c. Keith Senger
 - i. The law says it has to be on their website not that they need to have a website
- d. BFM Commissioner Dilges
 - i. Something that might suffice would be BFM posting the Form 990 on a State website
- e. Kramer
 - i. Add language saying that it is ok to post on a State or sponsor website
- f. Darnall
 - i. Have a check box saying they do not have a website for them to mark
 - ii. They could submit the form and it would be posted on a state website
- g. Lt. Governor Michels
 - i. Use administrative rule capability to make a change or addition
 - ii. 990s are now available timely online in some form maybe that would be a good way to go and keep them off state websites since these forms can be quite large
- h. Darnall
 - i. Sentence at the bottom
 1. If they don't meet it how can they sign it
- i. Keith Senger
 - i. To be able to work through the issues directly with the State to get those fixed like the 990 form publishing
 - ii. More to answer questions on whether they can
- j. Darnall
 - i. Change wording to "if you have concerns" rather than if "do not meet"
- k. BFM Commissioner Dilges
 - i. Change it to Cannot?
- l. Darnall
 - i. My understanding of Keith's testimony was more if you have questions before signing rather than not meeting the requirements
- m. Keith Senger
 - i. That is correct and I am open to that change
- n. BFM Commissioner Dilges

- i. Proposed change to “...have concerns regarding...” replaces “...do not meet...”
 - ii. Motions to adopt as amended
 - iii. Sattizahn made a motion to adopt the following language change on the Attestation Form: “If you, the recipient or subrecipient, have concerns regarding the requirements listed above, please contact your state agency representative before signing tis form.
 - iv. Darnall Seconded
 - 1. Kramer
 - a. Adopt as it stands today with the understanding that we need to make changes with the websites
 - 2. BFM Commissioner Dilges
 - a. Correct, with this motion there is understanding that there will be consideration brought forward at future meetings to take care of the website issue
 - i. Roll called, unanimously approved, and motion carried
- 8. Posting of Grant Agreements
 - a. BFM Commissioner Dilges
 - i. Colin Keeler from BFM Systems is here to talk through the process that we believe will be used for this
 - b. Colin Keeler
 - i. Have in place the mechanism to comply with SB 162 section 10
 - ii. Already have a requirement since 2010 to post contracts, using the same process to post the grant agreements
 - iii. There are 513 FY17 contracts and 57 grant agreements already on Open SD
 - iv. Updated documentation for posting grants is available on website and within the application
 - v. Same form as the contracts
 - 1. Fill out fields
 - 2. Added additional fields
 - a. Dollar amount
 - b. Description
 - 3. Could attach documents so this would work to attach 990
 - 4. Could also attach a link also to direct to that entity’s 990 online
 - vi. Expect the need to make refinements to this process
 - vii. Already implemented a change that was suggested to this process
 - c. BFM Commissioner Dilges
 - i. Any questions from the Board?
 - ii. Can the attestation form be either a part of the grant document or a separate document?
 - d. Colin Keeler
 - i. It would have to be embedded in the grant document
 - e. BFM Commissioner Dilges

- i. In terms of maintenance, will there be need to be yearly maintenance to take old completed ones off and add or change others
- f. Colin Keeler
 - i. With using the same process as contracts there are dates related to the document
 - ii. Once past the begin date, it will show on Open SD; then, 1 year after the end date, it will cease to show on Open SD
 - iii. So that is how the grant agreements will act as well
 - iv. There is nothing in the law saying when it should fall off Open SD, maybe this should be updated
- g. BFM Commissioner Dilges
 - i. Is that how we want it, to continue to have it fall off 1 year after the end date of the grant?
- h. Darnall
 - i. I like it falling off 1 year after the end date
- i. BFM Commissioner Dilges
 - i. I am seeing agreement from other board members as well
- j. Kramer
 - i. What about grants like from the Regents where there is confidential information?
- k. Colin Keeler
 - i. I believe that anything in the contracts and grant agreements can be redacted freely as needed
 - ii. If you have any questions or comments or if you have lots of volume of documents talk to us at BFM about possibly batching them in
- l. Williams
 - i. We have a seasonal employee this summer helping scan grant agreements and loading on Open SD and has been an easy transition and is working well
- m. BFM Commissioner Dilges
 - i. Any issues with the 990?
- n. Williams
 - i. We implemented those attestations into the grant agreements in section 2 of our agreements
 - ii. Entities are signing the agreements and not questioning anything about the attestation or single audit
 - iii. Have not verified that 990s are being posted
- o. BFM Commissioner Dilges
 - i. At a future meeting maybe do some spot checking on the grant agreements and follow them all the way through the process to ensure that all requirements are being followed
- p. Darnall
 - i. We are in the planning phase still

- ii. There are systems for most of our grants
 - iii. They are due from the schools by July 1, 2016, but generally not approved until around September so in the waiting part right now
 - q. BFM Commissioner Dilges
 - i. Be sure to ask any questions on areas that you are unsure on
- 9. Pass-through Entity / Subrecipient Activities
 - a. Keith Senger - Presentation
 - b. Lt. Governor Michels
 - i. Impose specific restrictions based on risk of subrecipient
 - ii. Have a certificate of good standing from the Secretary of State's Office
 - c. BFM Commissioner Dilges
 - i. How would I go about going to or participating in the UGG workgroup?
 - d. Keith Senger
 - i. I believe that we have at least one representative from each agency
 - ii. Scheduling is hard with big groups, so you can also attend these meeting over the phone if you can't travel and still want to participate or just to listen in
 - e. BFM Commissioner Dilges
 - i. If you are not involved and would like to be, contact Keith Senger
 - ii. Working through the areas of concern and the SBIC will see things coming from this group to memorialize as a Board
 - f. Keith Senger
 - i. That is correct we are working through the areas we have identified right now and then once these are completed we will move into different areas as well
- 10. Agencies Internal Control Responsibilities / Internal Control Officers
 - a. BFM Commissioner Dilges
 - i. Put into print the roles and responsibilities of the internal control officers
 - ii. These are more agency specific rather than a standardized list of duties
 - b. Ron Wire (BFM) - Presentation
 - c. BFM Commissioner Dilges
 - i. Keep your internal control officer updated on information and if that person changes, give BFM the new person in-charge
- 11. Motions on Conflict of Interest and Code of Conduct
 - a. Conflict of Interest
 - i. Proposed motion
 - 1. The State Board of Internal Control hereby adopts the following policy regarding conflicts of interest:
 - a. All State Agencies shall comply with all applicable laws, regulations, and internal policies regarding conflicts of interests and prohibited transactions by employees and agents of that State Agency.
 - b. All State Agencies, through their designated internal control officers, shall develop and execute a plan to:

- i. inform of and make accessible to each person in the State Agency the applicable conflict laws, regulations, and policies that apply to that person at the time that person joins the State Agency and to inform said persons where to report suspected violations of the conflict laws, regulations, or policies;
 - ii. and to inform each person in the State Agency, from time to time at a frequency no less than once every twelve months, of the applicable conflict laws, regulations, and policies that apply to that person at the time that person joins the State Agency and where to report suspected violations of the conflict laws, regulations, or policies.
- ii. Kramer
 - 1. Bullet 2 – would like it to say the internal control officer or the human resource officer
 - 2. Bullet 2B – strike “...at the time that person joins the State Agency...” this is because 2A already addresses new employees and if there are changes in the policies they would be provided on an annual basis
- iii. BFM Commissioner Dilges
 - 1. Any problems with proposed amendments?
- iv. Kramer
 - 1. Want employees to see this on a regular basis – I have no problems with passing this
- v. BFM Commissioner Dilges
 - 1. Attach the documents from Mr. Franken
 - 2. Examples for both state employees and board and commission individuals
 - 3. Show where the laws treat state employees differently than boards and commissions
- vi. Keith Senger
 - 1. Need a decision matrix developed for the state employee side like Mr. Franken created for board members
- vii. BFM Commissioner Dilges
 - 1. What are the differences between the state employees and board members?
- viii. A.J. Franken
 - 1. State employee guidance already exists along with the decision matrix and was the starting point for the creation of the board and commission documents
- ix. BFM Commissioner Dilges
 - 1. These forms are on the BHR website

2. Could we incorporate these two different documents together to have one document to reference for all people affected by SB 162?
- x. BHR Commissioner Gill
 1. Yes
- xi. A.J. Franken
 1. Yes
- xii. BFM Commissioner Dilges
 1. Revised motion
 2. The State Board of Internal Control hereby adopts the following policy regarding conflicts of interest:
 - a. All State Agencies shall comply with all applicable laws, regulations, and internal policies regarding conflicts of interests and prohibited transactions by employees and agents of that State Agency.
 - b. All State Agencies, through their designated internal control officers or human resource officer, shall develop and execute a plan to:
 - i. inform of and make accessible to each person in the State Agency the applicable conflict laws, regulations, and policies that apply to that person at the time that person joins the State Agency and to inform said persons where to report suspected violations of the conflict laws, regulations, or policies;
 - ii. and to inform each person in the State Agency, from time to time at a frequency no less than once every twelve months, of the applicable conflict laws, regulations, and policies that apply to that person and where to report suspected violations of the conflict laws, regulations, or policies.
 3. Sattizahn made a motion to adopt the proposed language.
 4. Second by Darnall
 5. Any discussion?
 6. Roll called, unanimously approved, and motion carried
- b. Code of Conduct
 - i. BFM Commissioner Dilges
 1. UJS is excluded in the first paragraph and should also be excluded in the second paragraph as well (amend)
 - ii. Sattizahn
 1. UJS will take the things adopted here and meld them into their existing policies
 - iii. Kramer
 1. Would like some time with the document to look over and review

2. Would be willing to even meet again before July 1, 2016, if needed to be in compliance with the law
 - iv. BFM Commissioner Dilges
 1. It is not needed by statute to have this completed by July 1, 2016
 - v. Kramer
 1. I would like this to be tabled until the July 2016 meeting
 - vi. Sattizahn
 1. Can the board have a say in some of the updates to the employee handbook to increase internal controls in areas where it is needed
 - vii. BFM Commissioner Dilges
 1. The handbook will be updated regardless as per the Governor's direction but it would be good for this board to meet with BHR and provide input
 2. Develop a process to get notified of the audit findings
 - viii. Auditor General Guindon
 1. Senger and I already worked on this
 2. Will send these letters to Keith and he can incorporate these letters identifying findings related to a pass through from the State into future meetings
 3. There will be a slight change in what is communicated to include financial statement findings rather than just findings in regards to the federal programs
 4. UGG now requires a corrective action plan for all findings
12. Motion to Adjourn – Sattizahn – 11:46
 - a. Seconded by Barnett
 - b. Unanimously approved and motion carried