



THE HONORABLE CURTIS M. LOFTIS, JR.
State Treasurer

April 27, 2011

VIA HAND-DELIVERY

The Honorable Nikki R. Haley, Governor
Office of the Governor
The State House
Columbia, South Carolina 29201

Dear Governor Haley:

One of the issues that I have the greatest interest in is board governance. I take my role and responsibilities as a member of the Budget & Control Board very seriously and believe that includes managing those duties within proper guidelines.

I have two concerns related to the Board where I would request your assistance in ensuring we have proper governance and oversight. In general, I believe Boards such as ours should operate with well-defined by-laws, policies, and procedures and based on the information previously provided to me, the Board appears to lack such a formal framework and governing policies. It appears that the Board operates based on tradition or practice rather than formal written guidelines. My first request in this letter is that you ask the Board staff to undertake the development of establishing by-laws and other written policies for the Board to consider and adopt so governance issues can be clearly presented and followed.

Secondly, and on a more specific point, I have been concerned about the recent reorganization of the Board in that I feel some of these decisions may require Board approval, or at least, ratification. I have asked my staff to research the statutory authority for the Board to reorganize and it appears that the Board is the entity responsible for these actions. Please find enclosed a copy of that research. Given the

lack of formal by-laws and policies, however, we may not have identified all relevant authority or any delegation of authority regarding restructuring and would welcome any additional insight your office or the Board staff may have to offer regarding this issue. As part of this governance and delegation review, I believe we should begin with developing the planning stage portion of the Executive Director's performance evaluation. My request is that a draft of the planning stages documents be shared with the Board so we have time to consider it in a timely manner as well. In any event, I think these issues help illustrate my first point in that the Board needs to adopt formal by-laws and policies so there would clear guidelines regarding governance.

I look forward to discussing these issues with you and the other Board members soon. In the meantime, if you or other Board members or staff, have any other insights or concerns, I would be interested in hearing those.

Yours very truly,



Curtis M. Loftis, Jr.
State Treasurer

CMLjr/afw

cc: The Honorable Hugh K. Leatherman, Chairman, Senate Finance Committee
The Honorable Daniel T. Cooper, Chairman, House Ways & Means Committee
The Honorable Richard A. Eckstrom, Comptroller General
Ms. Eleanor Kitzman, Executive Director
Mr. Edwin Evans, General Counsel



THE HONORABLE CURTIS M. LOFTIS, JR.
State Treasurer

MEMORANDUM

TO: Treasurer Loftis

FROM: Frank Rainwater *FRM*

RE: Statutory Authority Regarding Budget & Control Board Organization

DATE: April 26, 2011

You have asked me to research the statutory authority regarding the organization of and hiring of directors by the Budget & Control Board. In general, there are several statutory provisions dealing with these issues. Some of these provisions are very detailed and direct a specific structure and practices for the Board. One statutory provision, however, grants the Board discretion on how to organize. This discretion, however, has been both reaffirmed and restricted by provisos adopted in the annual appropriations act. Listed below is a more detailed discussion of these items.

Organization

Section 1-11-20 specifically creates three divisions of the Board: Finance, Purchasing and Property, and Personal Administration. This section also provides that the directors of these divisions must be employed by the Board.

SECTION 1-11-20. Divisions of Board; directors and employees.
The functions of the State Budget and Control Board must be performed, exercised, and discharged under the supervision and direction of the board through three divisions, the Finance Division (embracing the work of the State Auditor, the former State Budget Commission, the former State Finance Committee and the former Board of Claims for the

State of South Carolina), the Purchasing and Property Division (embracing the work of the former Commissioners of the Sinking Fund, the former Board of Phosphate Commissioners, the State Electrician and Engineer, the former Commission on State House and State House Grounds, the central purchasing functions, the former Surplus Procurement Division of the State Research, Planning and Development Board and the Property Custodian) and the Division of Personnel Administration (embracing the work of the former retirement board known as the South Carolina Retirement System and the administration of all laws relating to personnel), each division to consist of a director and clerical, stenographic and technical employees necessary, to be employed by the respective directors with the approval of the board. The directors of the divisions must be employed by the State Budget and Control Board for that time and compensation as may be fixed by the board in its judgment.

Section 1-11-22, however, allows the Board to organize its staff as appropriate.

SECTION 1-11-22. Organization of staff.

Notwithstanding any other provision of law, the Budget and Control Board may organize its staff as it deems most appropriate to carry out the various duties, responsibilities and authorities assigned to it and to its various divisions.

The authority of the Board to reorganize has been both supported and restricted by the General Assembly several times by budget provisos, which are listed below. Provisos in five budgets have authorized the Board to realign based on actual agency operations but three provisos have prohibited restructuring without approval of the General Assembly. There is no proviso related to restructuring in the current budget.

FY 2001-02

63A.11. (BCB/DED: BCB Realignment) The Budget and Control Board shall be authorized to realign its Fiscal Year 2001-02 detailed budget and Division structures into a revised structure to reflect actual agency operations.

FY 2002-03

63.8. (BCB: BCB Realignment) The Budget and Control Board shall be authorized to realign its Fiscal Year 2002-03 detailed budget and division structures into a revised structure to reflect actual agency operations. Where a proviso contained in the appropriations bill for the current year references either an Office or Division of the Budget and Control Board, the Office of State Budget is directed to change that reference to "Budget and Control Board."

FY 2003-04

63.6. (BCB: BCB Realignment) The Budget and Control Board shall be authorized to realign its Fiscal Year 2003-04 detailed budget and division structures into a revised structure to reflect actual agency operations. Where a proviso contained in the appropriations bill for the current year references either an Office or Division of the Budget and Control Board, the Office of State Budget is directed to change that reference to "Budget and Control Board."

FY 2004-05

63.5. (BCB: BCB Realignment) The Budget and Control Board shall be authorized to realign its Fiscal Year 2004-05 detailed budget and division structures into a revised structure to reflect actual agency operations. Where a proviso contained in the appropriations bill for the current year references either an Office or Division of the

Budget and Control Board, the Office of State Budget is directed to change that reference to "Budget and Control Board."

FY 2005-06

63.3. (BCB: BCB Realignment) The Budget and Control Board shall be authorized to realign its detailed budget and division structures into a revised structure to reflect actual agency operations. Where a proviso contained in the appropriations bill for the current year references either an Office or Division of the Budget and Control Board, the Office of State Budget is directed to change that reference to "Budget and Control Board."

FY 2006-07

63.3. (BCB: BCB Realignment) The Budget and Control Board shall be authorized to realign its detailed budget to reflect actual agency operations. However, any reorganization or restructuring between divisions of the board must receive prior approval from the General Assembly either by joint resolution or statutory authorization before implementation. Further, any reduction in force must receive prior approval from the General Assembly either by joint resolution or statutory authorization before implementation. Where a proviso contained in the appropriations bill for the current year references either an Office or Division of the Budget and Control Board, the Office of State Budget is directed to change that reference to "Budget and Control Board."

FY 2007-08

*****63.3. (BCB: BCB Realignment) Any reorganization or restructuring between offices of the board must receive prior approval from the General Assembly either by joint resolution or statutory authorization before implementation. Further, any reduction in force must receive prior approval from the General Assembly either by joint resolution or statutory authorization before implementation.***

Text printed in italic, boldface indicates sections vetoed by the Governor on June 27, 2007. **Indicates those vetoes overridden by the General Assembly on June 28 or June 29, 2007.

FY 2008-09

80A.3. (BCB: BCB Realignment) Any reorganization or restructuring between offices of the board must receive prior approval from the General Assembly either by joint resolution or statutory authorization before implementation. Further, any reduction in force must receive prior approval from the General Assembly either by joint resolution or statutory authorization before implementation.

Appointment of Division Directors

Several code sections also deal with the appointment of division directors. As noted above, Section 1-11-20 states that employment of the three directors is to be approved by the Board. Three other positions are also referenced in the code as being appointed by the Board.

Director of Budget Division

SECTION 1-11-23. Filling vacancy in position of Director of Budget Division. Vacancies in the position of Director of the Budget Division of the State Budget and Control Board must be filled by appointment of the Budget and Control Board.

Director of Local Government Division

SECTION 1-11-25. Local Government Division.

There is hereby established a Local Government Division within the State Budget and Control Board to act as a liaison for financial grants among local governments, the General Assembly and the Governor's Office. The division shall be under the supervision of a director who shall be appointed by and who shall serve at the pleasure of the Budget and Control Board and whose compensation shall be as provided for by the General Assembly. He may employ such staff as may be approved by the board. The division shall be responsible for certifying grants to local governments from both federal and state funds. The term "local government" shall mean any political entity below the state level.

Director of Motor Vehicle Management

SECTION 1-11-220. Division of Motor Vehicle Management; Fleet Management Program.

There is hereby established within the Budget and Control Board the Division of Motor Vehicle Management headed by a Director, hereafter referred to as the "State Fleet Manager", appointed by and reporting directly to the Budget and Control Board, hereafter referred to as the Board. The Board shall develop a comprehensive state Fleet Management Program. The program shall address acquisition, assignment, identification, replacement, disposal, maintenance, and operation of motor vehicles.

One position is referenced as being hired by the Executive Director.

Director of the SC Confederate Relic Room

SECTION 1-11-1110. Director of South Carolina Confederate Relic Room and Military Museum; appointment.

The Director of the South Carolina Confederate Relic Room and Military Museum must be appointed by the Executive Director of the State Budget and Control Board after consultation with the South Carolina Division Commander of the Sons of the Confederate Veterans and the President of the South Carolina Chapter of the United Daughters of the Confederacy. The director shall serve at the pleasure of the executive director.

Other References

There is another statutory provision that might potentially relate to organization and hiring. Chapter 30 of Title 1 grants specific responsibilities and duties to governing boards and department directors. Section 1-30-10(C) and (D) provide that the governing body of the department is responsible for the organization of the department. Subsection (E) allows department directors to appoint deputy directors who serve at the pleasure of the department director (1-30-10(E)). One concern, however, with this section is that the definition of executive branch in subsection (A) does not list the Budget & Control Board as a department of the executive branch.

SECTION 1-30-10. Departments of State Government.

(A) There are hereby created, within the executive branch of the state government, the following departments:

1. Department of Agriculture
2. Department of Alcohol and Other Drug Abuse Services
3. Department of Commerce
4. Department of Corrections
5. Department of Disabilities and Special Needs
6. Department of Education

7. Department of Health and Environmental Control
8. Department of Health and Human Services
9. Department of Insurance
10. Department of Juvenile Justice
11. Department of Labor, Licensing and Regulation
12. Department of Mental Health
13. Department of Natural Resources
14. Department of Parks, Recreation and Tourism
15. Department of Probation, Parole and Pardon Services
16. Department of Public Safety
17. Department of Revenue
18. Department of Social Services
19. Department of Transportation
20. Department of Employment and Workforce.

...

(C) Each department shall be organized into appropriate divisions by the governing authority of the department through consolidation or subdivision. The power to reorganize the department supersedes any provision of law to the contrary pertaining to individual divisions; provided, however, the dissolution of any division must receive legislative approval by authorization included in the annual general appropriations act.

Any other approval procedures for department reorganization in effect on the effective date of this act no longer apply.

(D) The governing authority of a department is vested with the duty of overseeing, managing, and controlling the operation, administration, and organization of the department. The governing authority has the power to create and appoint standing or ad hoc advisory committees in its discretion or at the direction of the Governor to assist the department in particular areas of public concern or professional expertise as is deemed appropriate. Such committees shall serve at the pleasure of the governing authority and committee members shall not receive salary or per diem, but shall be entitled to reimbursement for actual and necessary expenses incurred pursuant to the discharge of official duties not to exceed the per diem, mileage, and subsistence amounts allowed by law for members of boards, commissions, and committees.

(E) The department director may appoint deputy directors to head the divisions of their department, with each deputy director managing one or more of the divisions; in the case of the Department of Commerce, the Secretary of Commerce may appoint a departmental executive director and also may appoint directors to manage the various divisions of the Department of Commerce. In making appointments race, gender, and other demographic factors should be considered to assure nondiscrimination, inclusion, and representation to the greatest extent possible of all segments of the population of this State; however, consideration of these factors in making an appointment in no way creates a cause of action or basis for an employee grievance for a person appointed or for a person who fails to be appointed. Deputy directors serve at the will and pleasure of the department director. The deputy director of a division is vested with the duty of overseeing, managing, and controlling the operation and administration of the division under the direction and control of the department director and performing such other duties as delegated by the department director.

Delegation of Authority

While Section 1-11-22 allows the Board to restructure, it is difficult to determine whether this authority has been delegated to the Executive Director by Board. There are two likely ways this delegation could have been accomplished; either by direct action of the Board or through assignment of job duties and responsibilities.

The Office of Executive Director was established by the Board on August 10, 1978. At that time, the Board agreed that the organization structure and duties of the Executive Director would be presented at a subsequent meeting. The salary of the Executive Director was set at the following meeting on August 17 and a job description was presented as information on September 26, 1978. A review of the minutes for the next year did not find any further discussion on this matter.

As an agency head, the Executive Director is subject to the Agency Head Salary Commission. Under that process, an agency head should meet with the board or commission to complete the planning phase of the evaluation process in order to determine objectives and standards for success in the upcoming year. If you have received this planning document, it might help answer this question. Listed below is an excerpt from the Agency Head Evaluation forms.

Planning Document Instructions

In completing the planning phase of the evaluation process, the agency head will meet with the board/commission (Governor or designee) to propose the objectives and standards for success he/she will meet in the upcoming year.

The board/commission (Governor or designee) will accept, reject, modify, and discuss the agency head's proposed objectives and success criteria. Success criteria is a statement of conditions that will exist when a duty or responsibility has been satisfactorily met. The success criteria must include the expected actions, timeframes, frequency, costs, quantities or other appropriate and specific measures and business results that will enable the agency head and evaluators to agree on expected outcomes and recognize when these outcomes have been satisfactorily achieved.

When acceptable objectives are identified, the board/commission (Governor or designee) will complete the planned objectives on the evaluation document and review them with the agency head. Signatures will be obtained and the original will be retained by the board/commission (Governor or designee) for completion at the end of the evaluation period. The planning process should be completed by September 15 of each year.

In closing, based on the information I could find, it appears that the statutory responsibility for organizing the Board rests with the members of the Board. If that duty or responsibility has been delegated, it will be necessary for you to ask the Board to determine when and how that delegation was accomplished and I would suggest contacting them.