

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
OFFICE OF INSPECTOR GENERAL**

ENTERPRISE ETHICS AUDIT

EXECUTIVE SUMMARY

PURPOSE

Pursuant to Section 20.055, Florida Statutes, the Office of Inspector General (OIG) is charged with promoting accountability, integrity, and efficiency in government. The OIG conducts audits of programs, activities, and functions within the Department of Business and Professional Regulation (DBPR or department) in conformity with the *International Standards for the Professional Practice of Internal Auditing* published by the Institute of Internal Auditors, Inc. These standards require the internal audit activity to assess and make appropriate recommendations for promoting ethics and values within the organization.

In February 2011, the Governor's Chief Inspector General called on all inspectors general to conduct an audit of their agency's ethical climate. The specified objectives of these audits were to evaluate:

- Each agency's implementation of Governor Scott's Executive Order Number 11-03, *Ethics and Open Government*; and
- The design and effectiveness of each agency's ethics-related objectives, guidance, and activities in order to identify areas of potential weakness and best practices that could be shared among all agencies.

The stated scope of each engagement was to focus primarily on recent actions taken by the agency to design, communicate, monitor, promote and enforce ethical standards and policies applicable to its employees.

Over 20 state agencies undertook this assignment, including the Office of Inspector General within the Department of Business and Professional Regulation. Based on the findings and recommendations in agency audits, the Chief Inspector General will report to the Governor on the status of ethics within Florida state government.

RESULTS IN BRIEF

The department has generally implemented Governor Scott's Executive Order 11-03, *Ethics and Open Government*, and provisions of the Governor's Code of Ethics. The department's ethics program encompasses many of the elements recommended for an effective ethics program, including policies, procedures, and practices designed to help detect and prevent unethical behavior. While the department has a statement of *Mission, Vision and Values*, it does not have a formal, written Code of Ethics that is separate from its body of compliance-based policies and procedures. The Chief Ethics Officer provides ethics training to the department's Senior Management Service (SMS) staff, and the Division of Administration's Bureau of Human Resources provides ethics training for new employees. The department does not provide annual ethics training to non-SMS employees.

The department's ethics program promotes an organizational climate that encourages ethical conduct. Results of an employee survey showed that the Department of Business and Professional Regulation has a strong ethical climate. For example, of the 875 survey respondents:

- 80% strongly agreed or agreed that senior management models and promotes ethical behavior.
- 89% strongly agreed or agreed their supervisor models and promotes ethical behavior.
- 87% strongly agreed or agreed their co-workers model and promote ethical behavior.
- 86% reported they know how to report suspected unethical behavior and fraud within the agency.
- 82% strongly agreed or agreed the agency has made clear their ethical responsibilities.

MAJOR RECOMMENDATIONS

To fully implement the Governor's Code of Ethics, **we recommend** that the Chief Ethics Officer ensure the secretary receives annual training on ethics, public records, open meetings, records retention, equal opportunity and proper personnel procedures, and that similar annual training is provided the secretary's deputy secretaries and chief of staff. **We also recommend** that the Chief Ethics Officer develop a values-based Code of Ethics for adoption by the department that reflects the department's core *Mission, Vision and Values*. **We recommend** that all employees receive annual training on ethics and related subjects, including public records, open meetings, records retention, equal opportunity and proper personnel procedures. **We further recommend** that the department provide employees with periodic reminders about ethical conduct and how to report fraud, waste and abuse, ethical misconduct, and sexual harassment or other employment discrimination.

OBJECTIVES, SCOPE AND METHODOLOGY

In cooperation with the Chief Inspector General's initiative, the OIG undertook a review of the department's implementation of Governor Scott's Executive Order Number 11-03. We also evaluated the design,

implementation, and effectiveness of the department's ethics program. To address these objectives, we reviewed applicable state laws, executive orders, and various elements of the department's ethics program, including department policies, procedures, and practices for promoting an ethical climate and deterring unethical conduct.

As part of this assessment, we requested that department employees complete a survey prepared by the Chief Inspector General. The survey was also sent by the other participating agencies to their employees. Survey results for Department of Business and Professional Regulation employees were provided to us by the Department of Transportation's Inspector General's office which hosted the survey for all participating agencies. The Department of Transportation also provided data on the results across all agencies. The DBPR and statewide survey results are included in this report and will also be included in the Chief Inspector General's report to the Governor.

The Office of Inspector General has an active role in the department's ethics program. The OIG receives and responds to all complaints concerning allegations of fraud, waste, mismanagement, misconduct, and possible criminal wrongdoing by department employees or contracted entities. The OIG also conducts background checks of executive-level employees, reviews and/or investigates accidents involving department vehicles, and investigates any use of force incidents. Performance of these non-audit services does not impair the OIG's independence as an audit organization. However, to evaluate our performance of these services would impair our independence. Accordingly, we describe these activities in this report but do not assess their effectiveness.

Except as noted above, this audit was conducted in accordance with the *International Standards for the Professional Practice of Internal Auditing*. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable

basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

INTRODUCTION AND BACKGROUND

Article II, Section 8, Florida Constitution, establishes standards of ethical conduct and financial disclosure applicable to public officers and employees. The section also requires the state to establish a code of ethics in law. The *Code of Ethics for Public Officers and Employees* adopted by the Florida Legislature is provided in Chapter 112, Part III, Florida Statutes. The Code sets forth standards of conduct for public officers and employees in such areas as conflicts of interest, the receipt and acceptance of gifts, financial disclosure requirements, and restrictions on post-employment activities.

In January 1999, former Governor Bush issued Executive Order 99-20, directing the immediate adoption and implementation of a revised Code of Ethics by all secretaries and deputy secretaries of executive agencies under the Governor's purview. The Order provided for the Executive Office of the Governor/Lieutenant Governor to offer training on ethics to each executive agency head and for agencies to provide similar ethics training to all employees, annually. The Order also stipulated that each executive agency designate an Ethics Officer to undertake appropriate measures to ensure that the employees responsible for adhering to the Code of Ethics became familiar with all relevant ethics requirements.

In January 2007, former Governor Crist issued Executive Order 07-01, which also directed immediate adoption and implementation of a Governor's Office Code of Ethics and a Code of Personal Responsibility. Executive Order 07-01 both reinforced and built upon sections of Executive Order 99-20.

Governor Scott's Executive Order 11-03, issued January 4, 2011, directed the immediate adoption and implementation of a revised Code of Ethics by the Office of the Governor.

The Executive Order applies to all employees within the Office of the Governor, as well as the secretaries, deputy secretaries, and chiefs of staff of all executive agencies under the Governor's purview. Pursuant to the Executive Order, this Code of Ethics imposes clear, enforceable standards that incorporate and exceed the requirements of the statutory code of ethics set forth in Chapter 112, Part III, Florida Statutes.

The Office of General Counsel shares responsibility with the Division of Administration's Bureau of Human Resources and the Office of Inspector General for the department's ethics program. A deputy general counsel serves as the department's Chief Ethics Officer and has general oversight for the department's ethics program. The Bureau of Human Resources and the Office of Inspector General work together to investigate incidents of non-compliance and take appropriate disciplinary or other action should unethical conduct or violations of statute, rule, or department policies and procedures occur.

DISCUSSION

Evaluation of Implementation of Executive Order 11-03 and the Governor's Code of Ethics

Issue 1. The department has generally complied with, or exceeded the requirements of Executive Order 11-03 and provisions of the Executive Office of the Governor Code of Ethics. However, the Chief Ethics Officer needs to ensure the department secretary receives annual training on public records, open meetings, records retention, equal opportunity, and proper personnel procedures. The Chief Ethics Officer also needs to ensure that similar training is provided at least annually to the secretary's deputy secretaries and chief of staff.

Executive Order 11-03 includes the following directives:

1. Each agency secretary must designate an individual to act as the agency's Chief Ethics Officer;
2. The agency's Chief Ethics Officer must make reasonable efforts to ensure the employees responsible for adhering to the Governor's Code of Ethics become familiar with relevant ethics, public records and open meeting requirements; and
3. Each agency secretary must review and evaluate the Governor's Code of Ethics in light of the current policies adopted by his or her agency, with a view towards using the Code as the base standard for his or her agency to the extent practicable, and adjusted for those unique program requirements and variables for his or her agency.

The department designated a deputy general counsel as its Chief Ethics Officer in July 2009. Since that time, the Chief Ethics Officer has provided periodic ethics training for the

secretary, deputy secretaries, and chief of staff as well as for all Senior Management Service (SMS) staff.

The department has not had a full complement of executive staff since the effective date of Executive Order 11-03. A deputy secretary was appointed effective March 9, 2011; however, a second deputy secretary position and the chief of staff position remain vacant as of this writing. Governor Scott named a new secretary to the department on March 23, 2011. The Chief Ethics Officer reported that formal ethics training and other actions necessary to comply with the Code of Ethics will be provided as these positions are filled.

In the interim, DBPR's General Counsel re-designated the Chief Ethics Officer and advised all SMS staff of the requirements of Executive Order 11-03 and of the Governor's Code of Ethics. Pursuant to department policy, the provisions of the Governor's Code of Ethics are applicable to all senior managers (SMS employees) of the department, as well as to the secretary, deputy secretaries and chief of staff.

The Chief Ethics Officer reported that the Governor's revised Code of Ethics is similar in most respects to the Code implemented by the prior administration. The department has therefore continued its existing policies, procedures and practices as these meet or exceed the base standards provided by Governor Scott's revised Code of Ethics. Our review showed that, taken together, the department's existing policies and procedures appear to conform to, or exceed the standards in Governor Scott's revised Code of Ethics.

For example, the department's policy on *Conflict of Interest: Gifts and Gratuities* prohibits any DBPR employee from accepting a gift from a lobbyist or a non-lobbyist, unless the non-lobbyist is a relative. Employees are further prohibited from accepting gifts from a relative if the relative is a lobbyist.

The policy provides that no department employee may solicit or accept, directly or

indirectly, any gift from a contracted entity, regulated entity, or licensed entity.

The policy states it is essential that all department employees avoid any conduct or transaction which might result in, or create the appearance of:

- Using public office for private gain.
- Giving preferential treatment to an individual or entity.
- Losing complete independence or impartiality.
- Making a departmental decision outside official channels.
- Adversely affecting the confidence of the public in the integrity of the department.

Further, “All department employees are expected to adhere to the highest standards of integrity and conduct” as reflected in the policy.

The department’s administrative policy on gifts and gratuities applies to all Career Service, Selected Exempt Service, Senior Management Service and Other Personal Services employees of the department. While the policy does not explicitly apply to members of boards administratively housed within the department, board members are encouraged to refer to DBPR’s policy for guidance.

The Chief Ethics Officer provides the secretary with counsel regarding ethics, public records, and related matters. However, the Chief Ethics Officer did not provide documentation of the secretary’s attendance at training on public records, open meetings, records retention, equal opportunity, and proper personnel procedures as required by the Code of Ethics. The Code also provides that each agency secretary shall arrange for similar training of his or her employees on an annual basis.

RECOMMENDATIONS

We recommend that the Chief Ethics Officer ensure the secretary receives annual training on ethics, public records, open meetings, records retention, equal opportunity, and proper

personnel procedures, and that similar annual training is provided to the secretary’s deputy secretaries and chief of staff.

Evaluation of the Department’s Ethics Program and Ethical Climate

Issue 2: The department’s ethics program includes many of the elements recommended for an effective ethics program, including policies, procedures and practices designed to help detect and prevent unethical behavior. The ethics program also promotes an organizational climate that encourages ethical conduct. Results of the employee survey show that the Department of Business and Professional Regulation has a strong ethical climate. The department could enhance its ethics program by establishing a formal, values-based Code of Ethics, providing annual ethics training for all employees and otherwise improving communications regarding ethical conduct.

Since November 1991, the United States Sentencing Commission’s Federal Sentencing Guidelines for organizations has encouraged organizations (including governments) to adopt formal ethics and legal compliance programs. The guidelines assert that effective compliance and ethics programs have two complementary components. Effective programs exercise due diligence to prevent and detect criminal conduct. Effective programs also promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.¹

The guidelines provide that elements of an effective ethics program include establishing standards and procedures to prevent and detect criminal conduct; high-level oversight of the organization’s compliance and ethics program;

¹ United States Sentencing Commission, *2010 Federal Sentencing Guidelines Manual*, Chapter 8, Part B, Section 2.1, Effective Compliance and Ethics Program, <<http://www.ussc.gov>>, accessed March 16, 2010.

due diligence in hiring and promotion; effective communication of the organization's standards and procedures, including training; and processes for compliance monitoring, enforcement and prevention.

The department's ethics program has many of the elements of an effective ethics program. The department's ethics program consists of a body of policies, procedures and practices that promote ethical behaviors and prohibit unethical actions. The ethics program includes requirements to report and investigate suspected unethical activity, and all new employees receive ethics training.

In lieu of an overarching Code of Ethics, DBPR's *Mission, Vision and Values* statement (see Exhibit A) establishes the department's ethical framework. This framework includes the core values of accountability, innovation, integrity, ownership, responsiveness, respect and teamwork.

The department requests that each new employee attest in writing to having read the *Mission, Vision and Values* statement and thereby commit to accomplishing the department's mission, uphold the department's values and achieve the department's vision. As part of the department's performance management process, each employee is evaluated annually on his or her achievement of the core values.

Many organizations adopt a values-based Code of Ethics that reflect the organization's values and priorities. For example, the Bureau of Law Enforcement within the department's Division of Alcoholic Beverages and Tobacco requires all sworn law enforcement officers to sign such a values-based Code of Ethics (see excerpts, below):

...I will be honest in thought and deed in both my personal and official life....I will strive to execute my assigned duties to the best of my ability....I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to

be held so long as I am true to these ethics.

A values-based Code of Ethics is unlike a rules-based code of conduct that focuses on prohibited behaviors. The department has not established a written, values-based Code of Ethics. However, rules-based requirements that delineate expected conduct and prohibited behaviors are provided in numerous administrative policies and procedures.

Department administrative policies and procedures help promote a culture that encourages ethical conduct and compliance with the law. Expected ethical conduct and prohibited behaviors are addressed in many of the department's administrative policies and procedures. In addition to the policy on gifts discussed in **Issue 1** above, the department has stringent policies and procedures regarding both dual employment and compensation, and secondary employment.

The department's policy on *Dual Employment and Compensation* applies to all DBPR employees, including Other Personal Services (OPS) employees and contractors. Dual employment may be approved only if such employment does not constitute a conflict of interest and is justified as being in the best interest of the state. The policy provides that:

No officer or employee shall have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his/her public duties or that would impede the full and faithful discharge of his or her public duties (Chapter 112.313(7), Florida Statutes).

All dual employment and compensation must be approved by both DBPR and the Department of Management Services.²

² No Senior Management Service employees had requested approval for dual employment as of March 16, 2011.

DBPR's administrative policy on *Conflict of Interest: Additional Employment Outside State Government* provides the following guidance on ethical conduct:

Because of the high degree of public trust which has been reposed in the department by the Florida Legislature in the regulation of various business activities, it is essential that all employees and officers of the department avoid any conduct or transaction which might result in, or create the appearance of using public office for private gain; giving preferential treatment to any person; losing complete independence or impartiality; making a departmental decision outside official channels; or adversely affecting the confidence of the public in the integrity of the department.

The policy establishes strict parameters on secondary employment, as follows:

Except as provided in Chapter 112, Florida Statutes, no employee of this agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, this agency.... no department employee or officer will be granted permission to have any contractual, ownership, or employment relationship with any entity licensed under the Alcoholic Beverage, Tobacco, or Pari-Mutuel statutes.

Provisions for regular reference and background checks as part of an organization's hiring process contribute to maintaining an ethical culture. The department's policy on *Criminal History Records Checks and Fingerprinting* requires the conduct of a Florida Crime Information Center check of all applicants selected for employment with DBPR. A National Crime Information Center check and fingerprinting is conducted on all applicants chosen for employment in positions designated

as sensitive and for sworn law enforcement officers.

Numerous other administrative policies and procedures address expected ethical conduct and prohibited behaviors, such as the department's policies on requests to campaign or hold public office, drug free workplace, affirmative action/equal employment opportunity, competitive solicitation requirements, etc. The substance of the department's rules-based policies and procedures is presented in Exhibit B.

Procedures for reporting violations. The department's *Complaint Policy* provides that the Office of Inspector General shall conduct, supervise or coordinate the inquiry, investigation, or review of all complaints concerning allegations of violations of law, rule or policy by department employees or contracted entities. The policy establishes guidelines for the OIG to receive and process all complaints concerning allegations of fraud, waste, mismanagement, misconduct, and possible criminal wrongdoing by DBPR employees or contractors. The policy applies to all complaints against department employees or contracted entities received from any source.

The department's *Complaint Policy* stipulates that an employee who observes, is aware of, or receives information concerning unethical conduct is required to promptly report such conduct to their division director or to the OIG.

The policy provides employees with information on how to file a complaint with the OIG by mail, telephone or fax, or via the OIG's on-line complaint form. This complaint form is available on the department's Intranet as well as the DBPR web site. Consumers may also file complaints with the OIG through a Consumer Complaint form available on the department's web site. Any complaints of alleged misconduct against OIG staff are forwarded to the Office of the Chief Inspector General.

In Fiscal Year 2009-10, the OIG received and closed 276 complaints. Of this total, 106 complaints were submitted through the OIG's web-based complaint hotline. The majority of complaints were against licensees and/or regulated entities and did not involve department employees or contractors. The OIG reviewed all complaints and referred 207 complaints for review and/or investigation by the appropriate DBPR division or other state agency. The OIG investigated and closed the remaining 69 cases. The OIG also investigated five use of force reports, and conducted four background investigations of executive-level staff.

Ethics telephone hotline. The Chief Ethics Officer responds to complaints and employee questions via the department's Ethics Telephone Hotline. In Fiscal Year 2009-10, the Chief Ethics Officer reported providing formal, written responses to approximately 40 inquiries on such issues as the acceptance of gifts, agency donations, secondary employment, and post-employment restrictions. Employees also frequently contact the Chief Ethics Officer or General Counsel for informal guidance on ethics-related matters.

Ethics training. As discussed in **Issue 1** above, the Chief Ethics Officer provides ethics training to SMS employees, including the secretary, deputy secretaries and chief of staff. All new employees receive a copy of the *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, and must attest in writing they understand it is their responsibility to become familiar with the provisions of this document.

New employees must acknowledge receipt and review of the provisions of the following documents: 1) Department of Management Services Personnel Rules and Statutes; 2) DBPR's policy on unlawful discrimination and sexual harassment; 3) DBPR's policy on Standards and Procedures of Discipline; and 4) DBPR's policy on American's with Disabilities Act. New employees also receive a copy of the

Florida Commission on Ethics' *Statement of Financial Interests* with filing instructions.

All new employees, including OPS employees, receive training on ethics as part of the new employee orientation provided by the Bureau of Human Resources (bureau). The bureau provided ethics training to 117 new employees during new employee orientation in Fiscal Year 2009-10. The bureau trained an additional 88 new employees during the period from July 1, 2010 through January 27, 2011.

The department's ethics training discusses the meaning of ethics and the applicability of Chapter 112, Florida Statutes to all employees, including OPS staff and members of advisory boards. Due to the department's regulatory and enforcement responsibilities, the training stresses it is essential that employees' actions not result in, or create the appearance of, a conflict of interest. In addition to explaining requirements of the state's Code of Ethics, the training focuses on DBPR-specific policies concerning the acceptance of gifts and secondary employment restrictions.

The training also includes information on where to seek guidance regarding ethical conduct and on the consequences for failure to comply with department policies and state law. A representative from the Office of Inspector General provides information about fraud awareness and how to report suspected incidents of unethical behavior, or of fraud, waste or abuse of state resources. New employee orientation also provides information about the department's policies regarding equal opportunity and sexual harassment, and how to seek guidance or report incidents of discriminatory conduct or sexual harassment.³

New employee orientation is provided to employees located in the department's regional offices via web-based conferencing. These employees are required to submit an Acknowledgement Form to the Bureau of

³ All new employees must also attend a separate awareness course on Sexual Harassment.

Human Resources attesting to their attendance at the orientation session.

An ethics training module and a reference copy of the *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees* are available on-line through the department's Intranet. The department also offers a supplemental, on-line training course on sexual harassment. The department's *Public Records Manual* and all administrative policies and procedures are available on the department's Intranet.

Although the department provides extensive training for new employees, it does not offer annual training to non-SMS employees on ethics, sexual harassment, public records, or other critical department policies and procedures. Nonetheless, survey results show the department has a strong ethical climate.

DBPR has a strong ethical climate. Results of the climate survey of DBPR employees showed the department has a strong ethical culture. It appears, however, that results could be improved by establishing a formal, written Code of Ethics and providing annual and periodic training on ethical conduct to all employees.

The OIG sent an electronic link to the Ethical Climate Survey to the department's 1,660 employees (includes 1,516 filled Full-time Equivalent Positions and 144 Other Personal Services staff).⁴ Responses were received from 875 (53%) of DBPR survey recipients and from 32,368 (35%) of the 92,788 employees surveyed, statewide. The survey questions and responses from department employees are presented in Exhibit C. Of DBPR respondents:

- 80% strongly agreed or agreed that senior management models and promotes ethical behavior (80% statewide).
- 89% strongly agreed or agreed their supervisor models and promotes ethical behavior (88% statewide).

- 87% strongly agreed or agreed their co-workers model and promote ethical behavior (86% statewide).
- 86% reported they know how to report suspected unethical behavior and fraud within the agency (88% statewide).
- 82% strongly agreed or agreed the agency has made clear their ethical responsibilities (89% statewide).

DBPR could enhance its ethics program.

Fifty-six percent of DBPR respondents agreed or strongly agreed that unethical conduct is appropriately handled by agency management, while 28% did not know, or had no opinion. Sixteen percent disagreed or strongly disagreed that unethical conduct is appropriately handled by agency management. These response rates indicate the department should provide more frequent training and communication with employees regarding the handling of unethical conduct.

Responses regarding ethics training showed the department does not provide annual ethics training. Only 178 (21%) of respondents indicated they had received ethics training within the last year, 317 (37%) responded they had received ethics training within the last one to three years, and 146 (17%) responded they had never received ethics training. In comparison, 61% of respondents statewide reported they had received ethics training within the last year. In addition, 74% of DBPR respondents reported they had been adequately trained to know what constitutes ethical and unethical behavior while statewide, 88% of respondents reported they had received adequate training.

Training and information on ethics and related matters, such as employment outside state government and equal employment opportunity could be provided via various mechanisms including video-conferencing, web-based training, and articles published in the department's Intranet newsletter.

⁴ The 92 OPS staff who do not have DBPR e-mail addresses were not included in the survey.

Responses also indicated the department does not have a formal Code of Ethics document. Survey results show that:

- 79% of DBPR respondents reported the agency has written ethical guidance, such as a code of conduct, policy and/or other guidelines, compared with 89% of respondents statewide.
- 75% of DBPR respondents strongly agreed or agreed the agency's ethical guidance is clear and comprehensive, compared with 88% of respondents statewide.

RECOMMENDATIONS

We recommend that the Chief Ethics Officer develop a values-based Code of Ethics for adoption by the department that reflects the department's core *Mission, Vision and Values*. **We also recommend** that the Division of Administration provide annual training on ethics to all DBPR employees and require all employees to sign the Code of Ethics at the completion of such annual training. **We further recommend** that the Division of Administration provide DBPR employees annual training on public records, open meetings, records retention, equal opportunity, and proper personnel procedures. **We recommend** that the Division of Administration require all DBPR employees to review critical administrative policies and procedures annually, including policies on equal employment opportunity and sexual

harassment. **We recommend** that the Division of Administration explore various options for providing annual and periodic training and information, including video-conferencing, web-based training, and articles published in the department's Intranet newsletter.

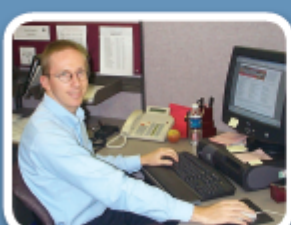
RESPONSES FROM THE CHIEF ETHICS OFFICER AND DIVISION OF ADMINISTRATION

The Division of Administration and the department's Chief Ethics Officer have agreed with our findings and recommendations. The full text of the Division of Administration response is included as Attachment A; the full text of the Chief Ethics Officer response is included as Attachment B.

This report and other audit reports prepared by the Office of Inspector General of the Department of Business and Professional Regulation can be obtained by telephone (850-417-6700) or by mail (1940 North Monroe Street, Tallahassee, FL 32399-1018).

Exhibit A

Florida Department of Business and Professional Regulation



OUR MISSION

License efficiently. Regulate fairly.

OUR VISION

We will make DBPR and Florida great places to do business. To that end we will invest in our employees, treat our licensees as valued customers and partners, and uphold laws that protect the public and Florida's competitive marketplace.

OUR VALUES

Accountability - We hold ourselves to the highest standards on behalf of our customers and the public.

Innovation - We foster an environment that encourages everyone to seek ways to make DBPR and Florida great places to do business without the constraints of fear of change or long held practices.

Integrity - We are fair and honest in all that we do so that our employees and customers trust our decisions.

Ownership - We embrace our responsibility to serve and see things through to resolution.

Responsiveness - We are approachable and empathetic, we provide timely, accurate, and consistent information, and we offer alternative solutions when available.

Respect - We treat our employees and customers with fairness and courtesy and appreciate each person's viewpoint.

Teamwork - We understand, rely upon and cultivate the talents of our colleagues and customers to help us reach our goals.

*I have read the **Mission, Vision and Values**, and by signing below, I commit myself to doing my part to accomplish our mission, uphold our values and achieve our vision.*

Signed _____

Exhibit B

Department of Business and Professional Regulation

Administrative Policies and Procedures Addressing Ethical Conduct and Prohibited Behaviors

- ***Conflict of Interest: Gifts and Gratuities:*** Applies to all Career Service, Selected Exempt, Senior Management Service and Other Personal Services employees; does not explicitly apply to members of boards administratively housed in the department, but board members are encouraged to refer to the policy for guidance; provides that no department employee may solicit or accept, directly or indirectly, any gift from a lobbyist, contracted entity, regulated entity or licensed entity.
- ***Dual Employment and Compensation:*** Applies to all Career Service, Selected Exempt Service, Senior Management Service, Other Personal Services employees and to all individuals with whom the department will establish a contractual relationship; stipulates that dual employment and compensation may be approved if it does not interfere with the employee's ability and availability to perform his duties in the primary department and does not constitute a conflict of interest; provides procedures for request and approval of dual employment and compensation.
- ***Conflict of Interest: Additional Employment Outside State Government:*** Applies to all DBPR employees; additional employment outside state government must not constitute a conflict of interest, or interfere with the employee's ability or availability to perform his or her regular duties; considerations regarding conflict of interest include: whether the employee is in a position to give advice or recommend action regarding business transactions or purchasing, whether the employee approves or denies applications for licensure, whether the employee has the ability to refer licensees and whether the employee's duties together with a review of his or her private employment are compatible, separate, and distinct or whether they coincide to create a situation which tempts dishonor; employees are prohibited from having any contractual, ownership, or employment relationship with any entity licensed under the Alcoholic Beverage, and Tobacco, or Pari-Mutuel statutes; employees who do not follow the stated policies and procedures are subject to disciplinary action.
- ***Criminal History Checks and Fingerprinting:*** Provides policies and procedures for conducting a Florida Crime Information Center check of all applicants chosen for employment with DBPR, and a National Crime Information Center check and fingerprinting on applicants chosen for employment with DBPR in positions designated as sensitive or sworn.
- ***Complaint Policy:*** Establishes guidelines for the Office of Inspector General to receive and process all complaints concerning allegations of fraud, waste, mismanagement, misconduct, and possible criminal wrongdoing by DBPR employees or contractors; the policy applies to complaints against department employees or contracted entities received from any source and include, but are not limited to reports of state vehicle accidents, use of force incidents, and any alleged violation of law, rule, or policy applicable to DBPR employees or contracted entities.
- ***Request to Campaign and/or Hold Public Office:*** Establishes policies and procedures for the request of, and approval of requests by employees to campaign for and to hold public office; prohibits employees from certain activities related to support for, or opposition of any candidate, party or political issue.

Exhibit B - continued

- ***Drug Free Workplace:*** Commits DBPR to ensuring a drug-free workplace in compliance with Section 112.0455, Florida Statutes. Provides that abusing alcohol or controlled substances is inconsistent with the behavior expected of employees, subjects employees and the public to unacceptable risks, and may affect DBPR's ability to operate effectively and efficiently. DBPR expects employees to conduct themselves, on and off the job, in a manner that does not bring discredit or embarrassment to the department or State of Florida. DBPR strictly prohibits employees in the workplace or engaged in state business, to use alcohol, controlled substances or unlawfully manufacture, distribute, dispense possess or sell alcohol or controlled substances. Establishes drug testing procedures and identifies employee and job applicant rights regarding drug testing.
- ***Workplace Violence:*** Defines department objective to provide all DBPR employees with a workplace that is free from violence by establishing preventative measures, holding perpetrators of violence accountable and by providing assistance and support to victims; provides mechanisms for reporting any work related or non-work related situation that has the potential to create violence in the workplace; employees have an obligation to report incidents or threats of incidents of workplace violence to management.
- ***Affirmative Action/Equal Employment Opportunity:*** Assures each job applicant and employee equal employment and promotional opportunities without regard to that person's age, race, color, sex, religion, political affiliation, marital status, or disability; defines sexual harassment of employees and applicants as a form of unlawful discrimination and informs job applicants, DBPR employees and persons or entities regulated by, or doing business with the department, of the mechanisms for filing complaints of acts of unlawful discrimination or sexual harassment.
- ***Americans with Disability Act:*** Assures equal access and opportunity to persons with disabilities; applies to employees and the public in job application, hiring, separations, advancement, compensation, job training, licensing, and access to facilities and programs; provides procedures for filing complaints.
- ***Standards and Procedures of Discipline – Career Service Employees:*** Stipulates that all employees are subject to Part III of Chapter 112, Florida Statutes, governing standards of conduct; implements statutes and rules concerning misconduct by Career Service employees and deficiencies in work performance. Provides that DBPR employees are expected to perform their job duties and conduct themselves in a manner which fosters the attainment of the department's mission and goals. All employees are expected to perform the duties and responsibilities of their positions with maximum efficiency and effectiveness. The policy's disciplinary guidelines are established to communicate the department's view regarding inappropriate conduct and to ensure fair and equitable disciplinary action is taken when an employee violates the standards of conduct; provides that employees outside permanent Career Service status may be dismissed at-will.
- ***Internal Grievance: Career Service Employees:*** Establishes policy that DBPR insures all permanent career service employees filling established positions are afforded fair, equitable, and expeditious reviews on grievances without fear of coercion, discrimination, or reprisal.
- ***Procurement of Commodities and Services:*** Incorporates by reference the definitions and requirements of Chapter 112, Florida Statutes for DBPR procurement staff; employees who evaluate competitive solicitations must complete a DBPR conflict of interest questionnaire.

Exhibit B - continued

- ***One Florida Initiative Business Requirements:*** Establishes policy that legitimate business needs and corporate philosophies are met and supported through a network of suppliers and programs rich in diversity; to this end, agency personnel involved in the purchase of commodities and/or services are directed to actively seek diversity of suppliers in the purchasing process.
- ***DBPR Competitive Solicitations:*** All competitive solicitations are subject to Chapter 112, Florida Statutes; respondents must disclose the name of any officer, director, employee or other agent who is also an employee of the State. Respondents must also disclose the name of any State employee who owns, directly or indirectly, an interest of five percent (5%) or more in the respondent or its affiliates. Respondents must sign a Statement of No Involvement/Conflict of Interest Statement (Non-collusion). Consultants and other contractors for services must agree not to undertake any engagement under the contract if there is, or may be the appearance of, a conflict of interest by the contractor. Due to the department's licensure and regulatory responsibilities, the department also requires all contractor's to complete a DBPR conflict of interest questionnaire. For example, contractor's must provide information if they (or their parents, spouse or children) have ever been employed by, or under contract with DBPR, have ever been a member of a board, commission or council within DBPR, etc.
- ***DBPR Public Records Manual:*** Provides guidance for maintaining and disseminating public records held by the department; establishes policy that all public records in the department's possession shall be open for personal inspection by any person, for any reason, at any reasonable time and under reasonable conditions; protects the identity of Whistleblowers pursuant to requirements of Section 112.3188, Florida Statutes.
- ***DBPR Office of Open Government:*** Oversees and ensures the department's compliance with the public records laws by providing advice, assistance and training to staff and management. The Office serves as the primary liaison between the department and the Governor's Office of Open Government and coordinates responses to requests for public records.

Exhibit C
Department of Business and Professional Regulation
Survey to Assess the Ethical Environment
Survey Results provided by the Department of Transportation,
Office of Inspector General

Survey Questions	Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know or No Opinion	Yes	No
My agency's senior management models and promotes ethical behavior.	39.4%	40.1%	7.4%	3.9%	9.2%		
My supervisor models and promotes ethical behavior.	53.4%	35.4%	4.7%	3.1%	3.3%		
My coworkers model and promote ethical behavior.	35.9%	51.4%	5.0%	2.5%	5.2%		
I know how to report suspected unethical behavior and fraud within my agency.						85.9%	14.1%
I have been adequately trained by my agency to know what constitutes ethical and unethical behavior.	26.7%	47.7%	9.7%	4.3%	11.6%		
My agency has written ethical guidance, such as a code of conduct, policy and/or other guidelines.					19.6%	79.4%	1.1%
My agency's ethical guidance, including code of conduct, policy and/or other guidelines, is clear and comprehensive.	26.8%	48.5%	4.9%	2.1%	17.8%		
I believe my agency has made clear my ethical responsibilities.	29.9%	52.0%	6.1%	2.1%	9.9%		
Unethical conduct is appropriately handled by management in my agency.	23.0%	32.9%	10.0%	5.8%	28.3%		

	Within the Last Year	In the Last 1-3 Years	In the Last 3-5 Years	More than 5 Years Ago	Never
I have received ethics training provided by my agency.	21.0%	37.4%	15.3%	9.0%	17.2%

	Career Service	SES	SMS	OPS	Other
Please select your position type.	63.0%	31.2%	1.8%	4.1%	0.0%

	Less than 1 Year	1-3 Years	3-5 Years	5-10 Years	More than 10 Years
How long have you worked for DBPR?	8.4%	18.3%	15.8%	21.4%	36.1%

Attachment A
RESPONSE FROM THE DIVISION OF ADMINISTRATION



Division of Administration
 Phil Fleming, Director
 1940 North Monroe Street
 Tallahassee, FL 32399-0791
 Phone: 850.487.2074 • Fax: 850.921.8992

Charlie Liem, Secretary

Rick Scott, Governor

MEMORANDUM

TO: Stan Branham, Inspector General
 Department of Business and Professional Regulation

FROM: *for* Phil Fleming, Director *Glenn Abbott*
 Division of Administration

SUBJECT: Audit of Ethics Program Response

DATE: April 26, 2011

In accordance with our meeting March 29, 2011 and the review of the OIG Report #A-1011EOG-006, we concur with the findings from the Inspector General's Office. The Division of Administration addresses each issue as follows:

The Division of Administration will work with the Chief Ethics Officer to ensure that all policies are reviewed for consistency and in support with the department's values-based Code of Ethics. The division will establish formal methods of enhancing the department's ethics program by using distance learning resources to improve communications with all staff regarding ethical conduct.

Issue #1: The department has generally complied with, or exceeded the requirements of Executive Order 11-03 and provisions of the Executive Office of the Governor Code of Ethics. However, the Chief Ethics Officer needs to ensure the department secretary receives annual training on public records, open meetings, records retention, equal opportunity, and proper personnel procedures. The Chief Ethics Officer also needs to ensure that similar training is provided at least annually to the secretary's deputy secretaries and chief of staff.

The Division of Administration will collaborate and assist the Chief Ethics Officer as needed to facilitate the recommendations cited in the audit.

Issue #2: The department's ethics program includes many of the elements recommended for an effective ethics program, including policies, procedures and practices designed to help detect and prevent unethical behavior. The ethics program also promotes an organizational climate that encourages ethical conduct. Results of the employee survey show that the Department of Business and Professional Regulation has a strong ethical climate. The department could enhance its ethics program by establishing a formal, values-based Code of Ethics, providing annual ethics training for all employees and otherwise improving communications regarding ethical conduct.

The Division of Administration will continue to conduct monthly ethics training courses for all new employees. The division will also begin to provide training updates on public records issues, open meetings, records management, equal opportunity, ethics and policies & procedures on a quarterly basis beginning in October 2011 via the Human Resources' electronic bulletin board

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Attachment A (continued)
RESPONSE FROM THE DIVISION OF ADMINISTRATION

Division of Administration
Ethics Program Audit Response
Page 2 of 2

and department's intranet newsletter – "*The Pulse*" and "In the Loop." The division will also develop a method of electronically distributing and tracking the annual review of critical administrative policies and procedures for all employees, including policies on equal employment opportunity and sexual harassment. In addition, the division will research and implement additional methods for disseminating information and providing annual and periodic training. Additional methods will include video-conferencing, web-based training, refresher courses and articles published in the department's Intranet newsletter coinciding with the recommendations of this audit. All enhancements and developments are targeted to be implemented in October 2011.

cc: Glenn Abbott, Human Resources Chief
Amy Toman, Ethics Officer

PF/ia

Attachment B
RESPONSE FROM THE DBPR CHIEF ETHICS OFFICER



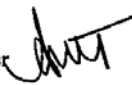
Office of the General Counsel
Reginald D. Dixon, General Counsel
1940 North Monroe Street
Tallahassee, Florida 32399-2201
Phone: 850.488.0063 • Fax: 850.922.1278

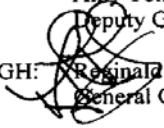
Charlie Liem, Secretary

Rick Scott, Governor

MEMORANDUM

TO: Stan Branham, Inspector General
Department of Business and Professional Regulation

FROM: Amy Toman
Deputy General Counsel/Chief Ethics Officer 

THROUGH:  Reginald Dixon
General Counsel

SUBJECT: Response to Audit of the Ethics Program

DATE: April 27, 2011

In accordance with our meeting on March 29, 2011 and our review of the OIG Report No. A-1011EOG-006, we concur with the findings of the Inspector General's office. The Chief Ethics Officer and the Office of the General Counsel address the issues as follows:

Issue 1. The department has generally complied with, or exceeded the requirements of Executive Order 11-03 and provisions of the Executive Office of the Governor Code of Ethics. However, the Chief Ethics Officer needs to ensure the department secretary receives annual training on public records, open meetings, records retention, equal opportunity, and proper personnel procedures. The Chief Ethics Officer also needs to ensure that similar training is provided at least annually to the secretary's deputy secretaries and chief of staff.

As of today's date, a new Secretary, new Deputy Secretary (Business) and a new General Counsel have been appointed to the department. The positions of Deputy Secretary (Professions) and Chief of Staff remain vacant.

The Chief Ethics Officer will:

- o Provide training on ethics, public records, open meetings, and records retention to the Secretary, Deputy Secretary (Business) and General Counsel on or before June 6, 2011;
- o Provide similar training within six weeks of the start dates of the Chief of Staff and Deputy Secretary (Professions), once those positions have been appointed; and
- o Supplement the current annual ethics training of SMS employees with training related to public records, records retention and open meetings. The next annual training will be scheduled in September 2011, and annually thereafter.

ISSUE 2: The department's ethics program includes many of the elements recommended for an effective ethics program, including policies, procedures and practices designed to help detect and prevent unethical behavior. The ethics program also promotes an organizational climate that encourages ethical conduct. Results of the employee survey show that the Department of Business and Professional Regulation has a strong ethical climate. The department could enhance its ethics

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Attachment B (continued)
RESPONSE FROM THE DBPR CHIEF ETHICS OFFICER

program by establishing a formal, values-based Code of Ethics, providing annual ethics training for all employees and otherwise improving communications regarding ethical conduct.

The Chief Ethics Officer will:

- Update the ethics power point presentation offered to new employees at New Employee Orientation (on or before May 27, 2011);
- Develop a values-based ethics code for adoption by the department and present it via the department's intranet newsletter upon adoption (on or before July 29, 2011);
- Develop a web-based training module addressing ethics, public records, records retention and open government (on or before September 30, 2011) which employees will be required to confirm that they have viewed (on or before October 31, 2011, and annually thereafter); and
- Provide input to the Division of Administration for quarterly training updates on ethics, public records and other issues.

cc: Phil Fleming, Director, Division of Administrative Services