



*From the Desk of Jeffrey D. Partridge
Interim Commissioner – Bureau of Finance and Management*

March 17, 2022

Dear House and Senate Leadership,

After an overwhelming support from the legislature in passing HB 1281, the Governor instructed state agencies to review the bill and determine how it will impact current budgetary, accounting, and financial reporting practices. These agencies came back with questions about the practical and legal implications of several sections of the bill, so in my role as BFM Commissioner I am seeking guidance from you as we work toward implementing the bill as follows:

- I. Sections 2-9 create new, special budget units for 8 agencies. Per Section 1, these budget units are to be used for the American Rescue Plan Act (ARPA), the Infrastructure Investment and Jobs Act (IIJA), the Coronavirus Aid, Relief, and Economic Security Act (CARES), and any COVID-related moneys from the 2021 Consolidated Appropriations Act (the bill that funds the entire federal government). Here are the questions for this section:
 - a. Is it the legislative intent for section 1 is to apply to only the agencies where special budget units are created in sections 2 through 9 of the bill, or is it intended to apply to all agencies that received funding through the federal legislation identified in section 1?
 - b. If all agencies that received funding through the federal legislation identified in section 1 are expected to complete this base transfer, what is the appropriate budget unit into which the authority for agencies not covered in sections 2-9 should be transferred?
- II. Additionally, Section 10 says that no state agency can expend funds from ARPA, IIJA, CARES, or the 2021 federal budget without appropriations committee approval if it “commits a department or agency to change a policy.” Question here include:
 - a. What constitutes a “change in policy” as referenced in section 10? Are federal government rules and criteria revisions related to federal funding allocations a change in policy?
 - For example, the federal government frequently revises the rules and criteria for the funds utilized by the South Dakota Department of Transportation for the design, construction, administration, and inspection of roads and bridges. The IIJA contains all federal funding the SDDOT will receive over the next 5 years, including standard highway formula funding.
 - b. Every new presidential administration changes the criteria for many of the discretionary grant programs to which state agencies frequently apply. Do state agencies need to seek approval for grant applications and/or disbursements if there are policy strings attached?
 - c. Does a discretionary, competitive grant awarded to a state agency constitute a new program as defined by section 10?
 - d. Section 10 states that an agency may not expend federal funds for new programs or current programs with new policies “until the special committee...releases the appropriated money.”
 - What is the process for releasing the dollars?
 - What is the timeline for releasing the dollars?

- How should agencies notify the appropriators when they wish to utilize federal funds?
 - Once the process has been identified, is it the legislative intent for these expenditures to be made from the new budget units created in sections 2 through 9 of the bill, or from the existing budget unit where federal and state financial reporting takes place for that program?
 - Is there an appeals process if an agency disagrees with the decision of the committee?
- III. Many state agencies have federal fund authority from the federal acts identified in section 1 that is already in their base budget (established by last year's general bill). These are planned expenditures for a current program as defined by section 10.
- a. Is it the legislative intent that these agencies transfer all of their federal expenditure authority from the acts identified in section 1 into the special budget units and then transfer any expenditure authority that does not need to be released (per section 10) back to the existing program budget unit?
- IV. Because section 1 identifies this process as a base transfer, the sunset clause in section 10 would have no effect on the authority moved into the new budget units—a base transfer remains in an agency's base budget until or unless the appropriations committee changes it.
- a. If the intent is to move all federal expenditure authority from multiple areas of an agency into a single budget unit in the base, is it also the intent that all state and federal financial reporting would use this new budget unit? As opposed to the current ones used for accounting and financial reporting?
 - b. How does this legislation apply to programs that are continuously appropriated but reported as an informational budget per SDCL 4-7-7.2?
- V. Many state projects span multiple state or federal fiscal years. Would agencies need to request a release of expenditures only for work to be performed in SFY2023? Would they need to make another request for release of expenditures in subsequent state fiscal years?
- VI. What role will the current oversight commissions and informational boards play after the enactment of HB 1281? Many state agencies have boards that meet publicly to analyze and approve federal funds now—will the appropriators be duplicating these efforts?
- VII. We estimate that between LRC, State Agencies Finance Officers and BFM, we will need approximately 10 additional FTE to implement 1281 as written. Have you considered this cost and determined how you will account for this additional expense in this year's general bill? In addition, HB 1281 appears to require much more time year-round from the appropriations committee—will you be appropriating funds for additional per diem expenses year-round?

I understand others have already begun asking similar questions and asking the Legislature to address the questions. Likewise, I would appreciate guidance on these questions as the state government considers how to implement HB 1281. Thank you for your prompt attention to this matter.

Sincerely,



Jeff Partridge
Interim BFM Commissioner