



STATE OF WASHINGTON

September 16, 2009

The Honorable Brian Sonntag
State Auditor
P.O. Box 40021
Olympia, WA 98504-0021

Dear Auditor Sonntag:

Thank you for the opportunity to provide this joint response to the performance audit of user fees at the Department of Commerce.

The Department is taking the steps necessary to ensure that fees are managed with appropriate administrative rules and accounting procedures. We also are reviewing the practices suggested in the report to determine if they would improve management of our diverse programs.

Regarding implementation of new user fees or changing current fees, we want to highlight two issues:

1. Citizens approved Initiative 960 in 2007, which moved the authority for establishing or changing user fees from state agencies to the Legislature. Therefore, agencies no longer have unilateral discretion over fee changes. Audit recommendations to establish or raise fees now must be approved by the Legislature.
2. We agree it is beneficial to have formal policies in place and to review best practices related to the management of user fees. Such policies and practices can help inform the Department, the Office of Financial Management, and the Legislature when reviewing new or existing fee structures and amounts. However, like the service being provided for the fee, each fee is unique and any change should be reviewed on a case-by-case basis with input from fee payers, stakeholders, and the public.

In accordance with the audit recommendations, the Department of Commerce will discuss new or increased user fees with our Assistant Attorney General. The Department will also provide any user fee information needed to the Office of Financial Management. We also look forward to working with the Legislature should it choose to implement or change fees for any of the Department's programs.

Sincerely,

Handwritten signature of Rogers Weed in black ink.

Rogers Weed, Director
Department of Commerce

Handwritten signature of Victor A. Moore in black ink.

Victor A. Moore, Director
Office of Financial Management

Enclosure

cc: Cindy Zehnder, Chief of Staff, Office of the Governor
Kimberly Cregeur, Liaison on Performance Audit, Office of the Governor
John Thomas, Internal Auditor, Department of Commerce

**Official Response to the Performance Audit of User Fees
from Department of Commerce and Office of Financial Management
September 16, 2009**

The Department of Commerce (Commerce) and Office of Financial Management (OFM) are providing this coordinated response to the final performance audit of user fees delivered on September 2, 2009. OFM responds to performance audits to provide perspective on potential statewide issues, including policy, strategic planning, performance management, budget, accounting, purchasing, human resources, information technology, labor relations and risk management. **It is our intent that the organization of this document will make it easier to copy and paste our response after the appropriate issue section in the report. *Note: This sentence was deleted by the State Auditor's Office in their final report.***

Issue 1: The Department does not have user fee policies and procedures to ensure user fees are set in accordance with best practice and in compliance with state law.

AGENCY RESPONSE: While a policy on user fee management is not legally required, Commerce agrees that this is a best practice and having such a policy would be valuable. Commerce updates its policies each year and will develop a User Fee Management Policy as part of this year's update.

Action Steps and Timeframe:

- Create and implement the Department of Commerce's User Fee Management Policy. By November 1, 2009.

OFM RESPONSE: Although they are not required by law, we agree it would be beneficial to have formal policies and procedures on the management of user fees. While we appreciate the audit's focus on best practices, we question whether the criteria established by the Auditor's Office constitute a true best practice, and therefore, would be beneficial for Commerce to follow.

According to Appendix 3, the audit staff consulted a wide variety of sources for possible best practices and developed criteria based on publications describing federal fees, local government fees, and another state's agency fees. While comparisons with other states and levels of government can be useful, it is somewhat questionable whether such sources, when mingled together, truly constitute a single best practice. Instead, we encourage Commerce to review the generic practices suggested by the audit research to determine if they would be of value to any of Commerce's diverse set of programs.

Issue 2: Two of the Department's programs have not aligned their user fees with best practice.

AGENCY RESPONSE: Although Commerce has an administrative support role in both of the programs mentioned in this issue, the responsibility for the funds lies with independent authorities. The Drinking Water State Revolving Fund is jointly governed by the Public Works Board and the Department of Health, and it is overseen by the federal Environmental Protection Agency (EPA). The Developmental Disabilities Endowment Trust Fund has an independent governing board. Final decisions concerning the fee rules and reviews are determined by these independent authorities.

While we do not have the authority to directly implement best practices, we agree that reviewing fees regularly is a best practice. We will encourage those that govern these funds to formalize their existing, public review processes and to clearly communicate the purpose and cost recovery of their fees.

As part of the review process to properly manage a revolving loan program or trust fund, the managers must compare fee revenue and program expenditures with a long-term perspective. Fee revenue should not be considered only in comparison with annual expenditures. For example, the EPA requires the Drinking Water State Revolving Fund to collect a fee that will cover the cost of administering the loan until the loan is repaid 20 years later.

The federal government has stated that at some point it will discontinue funding for this program. If the fee did not cover the administrative cost for the full lifetime of the loan, the fund would not be able to cover the cost of overseeing loans made over the last 20 years that are still being repaid. The fees collected now are expected to pay for administration over the 20-year life of each loan. Comparing revenue and expenditure for a single year, as the audit does, can be misleading because it lacks this long-term view.

Action Steps and Timeframe:

- Communicate audit issues to the Public Works Board and Department of Health for their consideration and action. By November 1, 2009.
- Assist the Developmental Disabilities Life Opportunities Trust Board in adopting a motion to annually review the Trust Fund fee structure and recommend any adjustments based on the review. COMPLETED.

OFM RESPONSE: We agree with the best practice of regularly reviewing fees to ensure they are set at appropriate levels.

We have particular concern with the issue raised concerning the Developmental Disabilities Endowment Trust Fund. The narrow scope of the audit leads to a conclusion that is not supported by a more in-depth review of the revenue and expenditure of this program. Evaluating a six-year revenue average, instead of highlighting a single year of revenue, gives a more complete picture. From 2003-2007, average revenue was \$147,000, which just covered the average cost of running the program. When compared to the last several years, 2008 was an outlier year, with a spike in revenue from an unusually high number of enrollments.

The 2001 budget required the Trust Fund to pay citizens back for its start-up costs. To repay this obligation, the Trust Fund needs to take in more revenue than it spends until it saves up enough to repay the state general fund. Commerce is planning to complete that obligation in the 2010 budget. To ensure it is self-sustaining, the Trust Fund also needs to maintain a responsible reserve. We encourage Commerce and all agencies to use a similar healthy, long-term management strategy for these types of programs.

Issue 3: User fees do not comply with state law.

AGENCY RESPONSE: We will evaluate any fees that are out of compliance and ensure that the appropriate administrative rules and accounting procedures are in effect.

However, we disagree that a lack of administrative rules has deprived the state of valuable public input. Out of the ten fees that do not have a rule, seven are admission charges for specific training sessions or conferences, and the eighth is an employee parking fee. These fees do not appear to need the same level of review as actual public program fees. Regardless, the public notice and transparency on fees provided by the legislative process under the law created by I-960 ensures that citizens have ample opportunity to provide input.

Action Steps and Timeframe:

- Create and implement appropriate fee development policies for applicable programs. By November 1, 2009.
- Inform the programs with user fees of our intent to create separate accounts for each fee. Secure their input and adjust the plan or timeline if necessary. By October 1, 2009.
- Design a set of accounts to appropriately deposit and hold user fees. By November 15, 2009.
- Create and begin using the new fee accounts. By June 30, 2010.

OFM RESPONSE: We agree that user fees should be managed with necessary administrative rules and accounting methods.

We strongly disagree that Commerce denied the public an opportunity to participate. We do not consider administrative rulemaking to be the only way of obtaining public input, nor the most effective in all cases. Since the passage of Initiative 960 in 2007, the Legislature must approve all new fees and fee increases. Thus, fees approved or raised receive an unprecedented level of public input and review because they go through the public legislative process and are communicated according to the public notification requirements of the initiative.

Issue 4: Bond Users Clearinghouse Program activities are paid for with fee revenues from the Bond Cap Allocation Program which is contrary to Bond Cap Allocation Program law. In addition, Bond Users Clearinghouse rules are not updated to conform to state law.

AGENCY RESPONSE: Commerce concurs with this issue and will submit a proposal to amend the Bond Cap Allocation program statute to allow it to pay for the Bond Users Clearinghouse. Over the past 16 years, several options for funding the Bond Users Clearinghouse have been suggested, but no proposal has been well received by the users or other interest groups. Unfortunately, charging for use would likely result in less participation and a loss of valuable information. Staff will revise the Bond Users Clearinghouse rule to ensure it aligns with the statute.

Action Steps and Timeframe:

- Submit departmental request legislation to OFM to revise the Bond Cap Allocation Program. By September 30, 2010.
- Submit the proposed legislation (if approved by the Governor's Office) to the Legislature. By January 1, 2011.

- Revise the Bond Users Clearinghouse rule to ensure alignment with the statute. By January 1, 2010.

OFM RESPONSE: OFM will review any legislative proposal from Commerce related to the Bond Users Clearinghouse.

Issue 5: The Department could reduce general fund spending by between \$2.2 and \$2.4 million or more over five years if fees were charged for four programs.

AGENCY RESPONSE: In 2007, the citizens of Washington passed Initiative 960. While Commerce once had authority to charge user fees, passage of I-960 placed authority for both instituting new fees and raising existing fees with the Legislature, not state agencies.

The New Americans program was created after passage of I-960. When the Legislature chooses to create a program such as this one without including a fee, Commerce has no discretion to institute a fee without additional legislative approval. We will review each of the four programs to determine if it would be appropriate to request the legislation needed to charge new fees.

While it is no longer our sole discretion to create fees, we are pleased that the audit found that for 151 programs (over 97%), Commerce made the correct determination about when it would be appropriate to charge fees.

Action Steps and Timeframe:

- Review International Trade, CERB, Dispute Resolution, and New Americans program to determine appropriateness of charging a user fee. By December 31, 2009.
- Follow legislative direction in implementing or changing fees.

OFM RESPONSE: We are pleased that the audit reviewed and confirmed the current use of user fees in 97% of the Department of Commerce's 155 programs. Although Commerce can no longer unilaterally create or raise fees for its programs, we appreciate that when it did have that authority, it was used wisely.

Since Initiative 960 took effect, it is the Legislature's decision to charge a user fee for any particular program. The report suggests a new fee and a fee increase for two programs (New Americans and Dispute Resolution Center, respectively) that were created or reauthorized with additional funding after I-960 became law. This means that the Legislature had the opportunity to establish user fees for these programs, and it declined to do so. Commerce cannot unilaterally institute new fees.

OFM will review any requested legislation to create new fees or increase existing ones. OFM's policy is to review each fee on a case-by-case basis looking at the impact on fee payers, services, and its impact on the economy and low-income populations.