

Performance Audit Report

Department of Commerce User Fees

Report No. 1002104



October 1, 2009



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www.sao.wa.gov

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Mission Statement

The State Auditor's Office independently serves the citizens of Washington by promoting accountability, fiscal integrity and openness in state and local government. Working with these governments and with citizens, we strive to ensure the efficient and effective use of public resources.

Why we did this audit

In the current fiscal environment, the government needs to take a closer look at how it pays for programs. The Department of Commerce¹ charges fees for many of its programs. We conducted this audit to answer the following question:

Are policies and procedures in place to ensure user fees follow best practice and comply with state law? If not, what is the effect?

About the audit

Scope

We reviewed Commerce programs that charge fees to determine if they are managed in accordance with state law and best practices. We reviewed programs that do not charge fees to determine if they should charge a fee.

We reviewed all fee-related policies and procedures pertaining to Commerce programs in operation during fiscal year 2008. As a result, we identified seven programs to review.

Four programs that do not charge fees:

1. International Trade
2. Community Economic Revitalization Board
3. Dispute Resolution
4. New Americans

Three programs that charge fees:

1. Bond Cap Allocation Program
2. Developmental Disabilities Endowment Trust Fund
3. Drinking Water State Revolving Fund

We reviewed 15 additional programs that charge fees to ensure they complied with state law.

Methodology

To determine if Commerce has policies and procedures in place to ensure user fees follow best practices and comply with state law, we reviewed all agency fee-related policies and procedures and interviewed agency employees. We did not find policies and procedures to manage user fees. We then reviewed two of the largest fee-based programs to determine if they were aligned with best practices. We compared programs that charge a user fee to state law to ensure compliance. Finally, we reviewed programs that do not charge a user fee to determine if they could charge a fee. In conducting these procedures we reviewed laws, administrative rules, budgets, agency documents and interviewed agency personnel.

We relied on fee-related best practices to review programs that charge fees and to identify programs that could charge fees. Best practices are based on the General Accountability Office's 2008 report *Federal User Fees: A Design Guide*; the Office of Budget and Management's policy and guidance for managing user fees (Circular A-25); and other states' fee audits. Best practice includes consideration of whether the

¹ Formerly called the Department of Community, Trade and Economic Development until July 2009.

fee is equitable and efficient, difficult or costly to administer, and the users' ability to pay. When we reviewed programs that charge fees we also considered if the purpose of the fee is well defined and regularly reviewed to ensure the fee continues to be appropriate. The criteria we used to carry out this methodology is in Appendix C.

We conducted this audit in accordance with Generally Accepted Government Auditing Standards, prescribed by the U.S. Government Accountability Office. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our issues and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our issues and conclusions based on our audit objectives. We also conducted this audit in accordance with the required elements of Initiative 900, detailed in Appendix A.

The audit cost \$282,509 as of July 31, 2009.

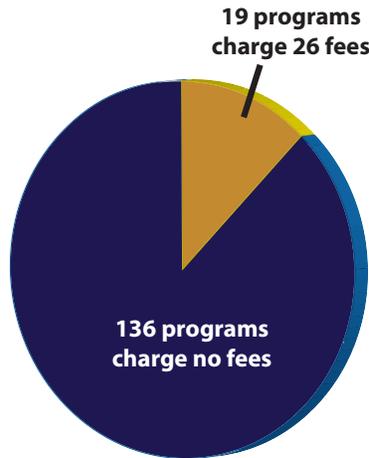
Background

User fees offer an alternate way of paying for programs, creating more flexibility in times of limited resources. According to the 2008 Government Accountability Office report, *Federal User Fees: A Design Guide*, user fees may be designed to promote efficiency and equity while reducing taxpayer burden. It defines a user fee as a charge to an identifiable person or party "related to some voluntary transaction or request for government goods or services above and beyond what is normally available to the public." Conversely, a tax arises from the government's sovereign power to raise revenue, is not optional, and does not need to be related to a specific benefit. For the purpose of this report, the term "user fee" includes fees program recipients pay as a result of a late loan payment, to originate a loan, to participate in training, or for the direct receipt of services.

Commerce has broad authority in state law² to charge user fees for conferences, workshops, training and to extend services and programs related to financial assistance, housing, international trade, community assistance, economic development, and other service delivery areas. Commerce is barred from charging fees that exceed the cost of the service.

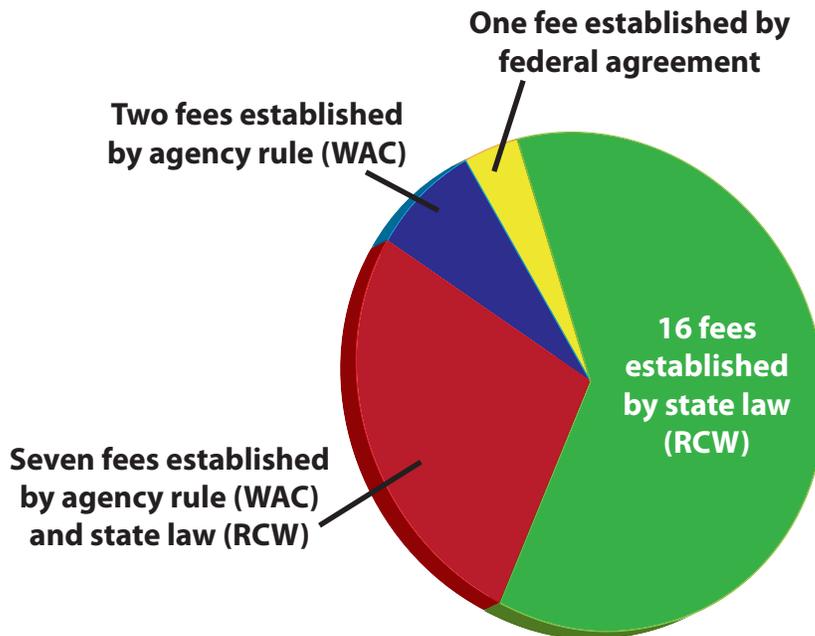
2 RCW 43.330.150 and RCW 43.330.152

155 Commerce programs



In fiscal year 2008, Commerce collected \$4.5 million in fees.

How Department of Commerce program fees were established



See Appendix B for a complete listing of fees and their descriptions.

What we found

Commerce does not have policies and procedures to ensure user fees follow best practices and comply with state law or to identify programs that could charge fees, as noted in Issue 1. The related effects are summarized below.

Program	Effect	Issue
Drinking Water State Revolving Fund	Formally reviewing the fee would improve cost awareness and transparency, ensure fees remain aligned with program costs and increase incentives to reduce costs.	Two
Developmental Disabilities Endowment Administration	Formally reviewing the fees would improve cost awareness and transparency, ensure fees remain aligned with program costs, and increase incentives to reduce costs. Additionally, the fees' purpose is not adequately defined. As a result, it is not clear why the Developmental Disabilities Endowment Trust Fund collects revenue that exceeds its operational costs.	Two
Programs authorized to charge fees by RCW 43.330.152, 42.330.150 and 43.360.050 reviewed for compliance with state law	Fees are not deposited into the required account; therefore, the State Legislature does not have the opportunity to exercise oversight over fee revenue. Fees were not established in administrative rule; therefore, the public cannot participate in the fee-setting process.	Three
Bond Cap Allocation Program	Bond Users Clearinghouse Program activities are paid for by fee revenue from the Bond Cap Allocation Program, which contradicts state law. In addition, Bond Users Clearinghouse rules have not been updated to conform to state law.	Four
International Trade	Commerce could reduce general fund spending by \$2.1 million over five years by charging a fee.	Five
Community Economic Revitalization Board	Commerce could reduce general fund spending between \$156,325 and \$312,650 over five years by charging a fee.	Five
Dispute Resolution	Commerce does not charge a fee. The related cost savings to the general fund is unknown because it is dependent on Commerce applying fee best practices to its contractors.	Five
New Americans Program	Commerce does not charge a fee. The related cost savings to the general fund is unknown because it is dependent on Commerce applying fee best practices to its contractors.	Five

Issues

Issue 1: Commerce does not have policies and procedures to ensure user fees are set in accordance with best practices and comply with state law.

Commerce does not have policies and procedures to manage or track programs that charge fees. In addition, its accounting structure is not designed to readily provide management with timely and accurate information about fee revenue and expenditures.

As a result, management could not provide a list of all programs that charge user fees. With Commerce's assistance, we created a list of 19 programs that charge 26 user fees and their related financial activity for fiscal year 2008 (see Appendix B).

- We reviewed six of the 26 fees to determine if they are set, reviewed, and managed in accordance with best practices and found instances where the fees were not aligned with best practices (see Issue 2).
- We also reviewed 15 fees to determine if they are being managed in compliance with state law and found the fees were not in compliance with state law (see Issue 3).
- We found one fee pays for an unrelated program, contrary to state law (see Issue 4).
- We reviewed all of Commerce's 155 programs and identified four programs that could charge fees, two of which are managed by contractors. (see issue 5).

Management is responsible for developing detailed policies, procedures, and practices to fit an agency's operations and monitoring to ensure they are followed. Management has not made developing fee-related policies and procedures a priority.

Recommendations

We recommend Commerce:

- Develop policies and procedures to ensure fees are managed in accordance with best practices and comply with state law. Commerce should ensure best practices are applied to contractors that manage state resources to ensure fees are consistent and equitable.
- Develop a method for tracking programs that charge user fees and their related revenue and expenditures to ensure fees comply with state law (RCW 43.330.150 and RCW 43.330.152) that requires fee revenue to not exceed the cost of service.

Issue 2: Two of Commerce's programs have not aligned user fees with best practices.

We examined two of the largest 19 fee-based programs, the Drinking Water State Revolving Fund and the Developmental Disabilities Endowment Trust Fund. The drinking water program is jointly managed by Commerce, the Public Works Board and the Department of Health to provide capital improvement loans to water systems to protect public health and comply with drinking water regulations. The trust fund provides opportunities for people with developmental disabilities and their families to pay for lifelong care by investing in a pooled needs trust.

We found the programs' fees were not aligned with best practice. Specifically:

- The Trust Fund does not follow the best practice of clearly defining the purpose of the fee, including whether the fee will cover the full or partial cost of providing the service. This information is necessary for determining if fees should be changed. The Trust Fund's administrative rule clearly states what the fees should be used for, but does not state whether the fees should cover the full or partial cost of the program. Without a clear purpose statement indicating the portion of the costs fees are intended to cover, it is difficult to determine if fees should be increased or decreased.
- Another best practice is to regularly review user fees to improve cost awareness and transparency, ensure they remain aligned with program costs and increase incentives to reduce costs. When this does not occur, agencies risk under- or overcharging users. Both programs review fees annually through an informal and undocumented process.

As a result, the Trust Fund collects more than it needs to operate the program. For example, Commerce collected \$326,000 in fiscal year 2008 and spent \$135,000, leaving an accumulated account balance of \$542,000, according to Commerce. The average annual expenditure for the program from 2003 through 2008 was \$140,000.

We recommend Commerce:

- Work with the Developmental Disabilities Life Opportunities Trust Governing Board to better define the purpose of the trust fee to include the amount of the program cost fees should cover. Commerce should formally and regularly review trust program fees. Given the large and growing balance, the Board should formally review the fee structure and document its review and any resulting fee changes.
- Work with the Public Works Board and the Department of Health to ensure the Drinking Water fees are formally and regularly reviewed.

Issue 3: Some user fees do not comply with state law.

We reviewed 15 fees of the 26 fees authorized by state laws³. Commerce does not have the required administrative rules and does not properly account for fees collected.

Specifically:

1. Ten of the 14 fees authorized by RCW 43.330.152 or 43.330.150 (identified in Appendix B) have not been established in administrative rule, a process that requires public comment. State law (RCW 43.330.156) requires fees authorized under RCW 43.330.150 and 43.330.152 be adopted under the Administrative Procedures Act (i.e., RCW 34.05) rulemaking process. By not adopting administrative rules, Commerce has denied the public the opportunity to participate in the fee-setting process.
2. Eight of the 14 fees authorized by RCW 43.330.152 or 43.330.150 are not deposited into the appropriate account. The eight fees are deposited into the general fund instead of Commerce's fee account. State law (RCW 43.330.155) requires all fees authorized under RCW 43.330.150 and RCW 43.330.152 be deposited into a fee account.
3. The one fee authorized by RCW 43.360.050 is also deposited into the general fund but is required by state law to be deposited into the Washington main street trust fund account. When Commerce deposits fee revenue into the general fund, the Legislature loses its ability to exercise fiscal oversight because the funds can no longer be individually tracked.

Recommendation

We recommend Commerce adopt fees in administrative rule as required by RCW 43.330.156 and deposit related fees in Commerce's fee account as required by RCW 43.330.155 and RCW 43.360.050.

3 RCWs 43.330.150, 43.330.152, 43.360.050

Issue 4: Bond Users Clearinghouse Program activities are paid for with fee revenue 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 with state law.

We noted the Bond Cap Allocation Program uses its fees to pay to operate the Bond Users Clearinghouse, contrary to state law. We also found Clearinghouse administrative rules do not align with state law.

State law (RCW 39.86.170) says Bond Cap Allocation program fees are to reflect only the cost of bond allocation activities. However, program employees reported the Clearinghouse has been funded by the Bond Cap program for 16 years.

The Bond Cap Allocation Program collected \$150,000 in fiscal year 2008 from applicants for state bonds. Of that, we estimated the Clearinghouse program cost approximately \$30,000 to pay two employees' wages and benefits in 2008.

The Clearinghouse collects, analyzes and publishes bond information on debt owed by Washington cities, counties, school districts and other public entities. It does not charge for the publications.

RCW 39.44.210 and WAC 365-130-030 require state and local governments or bond issuers and underwriters to report bond sales information to the Clearinghouse. This is not related to the purpose of the Bond Cap Allocation Program. During our work in this area, we noted reporting requirements in state law and administrative code are not aligned. Specifically, RCW 39.44.210 requires bond sales be reported to Commerce within 20 days, while WAC 365-130-030 requires the sales be reported within 30 days. Additionally, WAC 365-130-030 only requests State agencies issuing bonds voluntarily report the sale and RCW 39.44.210 requires it. Program personnel acknowledge the inconsistency which has led to some reporting confusion.

Recommendation

We recommend Commerce use an appropriate fund source to pay for the Clearinghouse. We also recommend WAC 365-130-030 be updated to align with RCW 39.44.210 to clarify reporting requirements.

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

Commerce has broad authority to charge user fees⁴. Additionally, best practices state that entities should regularly review all programs and consider which may be reasonably funded with a user fee. Commerce does not have a formal, regular review process to determine whether programs should charge a user fee.

We reviewed 155 Commerce programs against 10 criteria detailed in Appendix C. From these criteria, we determined the following five were the best indicators of whether a program should charge a fee:

1. The program benefits identifiable users.
2. It is administratively practical to charge a fee.
3. The users have the ability to pay.
4. The program is not based on need or merit.
5. No other program considerations cause fees to be inappropriate.

Using these criteria, we identified four programs for which Commerce should consider charging fees:

- International Trade
- Community Economic Revitalization Board
- Dispute Resolution
- The New Americans program

Depending on how much money Commerce plans to request from the general fund to operate these programs, spending for these programs could be reduced by \$2.4 million or more over five years, as detailed below.

Program	Estimated Five-Year Reduction in General Fund Spending¹
International Trade	\$2,089,032
Community Economic Revitalization Board	\$156,325 to \$312,650
Dispute Resolution	Unknown ²
New Americans	Unknown ²
Total	\$2,245,357 million – \$2,401,682 million
¹ Estimates are based on our analysis of actual program expenditures, the 2009-2011 budget and projected number of program users.	
² Cost savings are dependent on Commerce applying fee best practices to its contractors.	

International Trade

The International Trade Division does not charge user fees for export services provided by trade specialists, which cost the general fund approximately \$520,000 in fiscal year 2008.

The Division operates a program that provides free assistance to small and medium-sized businesses interested or engaged in expanding export sales. In fiscal year

4 RCW 43.330.150 and RCW 43.330.152

2008, the program served 824 businesses, the majority of which had fewer than 500 employees. The program's seven trade specialists provide information and services such as individual counseling, market information, trade leads, partner searches and developing alliances with trade representatives in other counties.

The federal government charges for similar services. For example, the U.S. Department of Commerce's Gold Key program charges \$350 to small firms new to exporting and up to \$2,300 for setting up a day of meetings with potential trading partners.

To recoup its costs, Commerce could charge businesses approximately \$30 per hour for the trade specialists' services. The salary and benefits of the seven International Trade program specialists cost approximately \$520,000 in fiscal year 2008. Program management reports these specialists commit approximately 80 percent of their time to individual businesses. If trade specialists charge an average of \$30 per hour, the program could recover 80 percent of its costs, based on 2008 staffing levels.

According to Commerce, budget cuts have caused it to reduce the number of trade specialists from seven to five for fiscal year 2010.

Recommendation

We recommend the program charge a user fee for expertise and assistance provided directly to individual businesses. Consideration may be given to a fee schedule for the types of services provided and a sliding scale based on the size of the business and the ability to pay.

Regional Services and Community Economic Revitalization Board

The Regional Services and Community Economic Revitalization Board is responsible for financing publicly owned economic development improvements to encourage business development and expansion. Improvements include industrial water, general-purpose industrial buildings, telecommunications, electricity, natural gas, roads and bridges. The Board's loans and administrative costs are funded with revenue from loan and interest payments. The Board does not charge loan fees.

A 1 percent or 2 percent loan initiation fee could recoup part of the cost of services provided by Commerce's Regional Services Unit. The salaries and benefits of Regional Services personnel are paid with general fund money, even though a significant portion of their work is related to the Board.

The Regional Services Unit assists local government and local economic development organizations by providing information about other state, federal, and local programs. The Unit provides advice on whether projects qualify for a Board loans and assists with loan applications. Additionally, the Unit reviews Board loan applications and recommends whether the Board should grant loans to applicants.

Regional Services Unit management stated seven regional staff members devote a significant portion of their time to Board issues; five regional staff spend up to 80 percent of their time on Board work and two spend up to 50 percent of their time on Board work. These positions are paid with general fund money and cost an annual average of \$83,345 for salary and benefits. We estimate the annual cost of Regional Services staff time devoted to Board work was \$387,555 in fiscal year 2008. Commerce was not able to determine the effect of the new budget on Unit employees.

According to Department personnel, the program is expected to loan \$6.3 million during the 2009-2011 biennium, compared to \$20 million in the previous biennium.

In the past, the Board charged a 1 percent loan fee. If the program resumed charging this fee, it would generate approximately \$31,265, or 8 percent of the Regional Services Unit's costs per year. A 2 percent loan initiation fee it would generate \$62,530, or 16 percent of the Unit's annual costs.

Recommendation

Given the significant portion of time devoted to Board-related efforts, we recommend the Board charge a loan initiation fee to cover a portion of Regional Service Unit's costs.

Contracted programs that may charge a fee

Two Department programs we identified as appropriate for fees are managed by contracts. While we do not recommend a specific fee for these programs and therefore do not identify a possible cost savings, we do recommend Commerce apply best practices to these contracts. We also recommend Commerce closely examine all of its contracts by applying best practices to identify additional programs that may be appropriate for a user fee.

Dispute Resolution

Commerce has a contract with a dispute resolution center to administer dispute resolution services in 20 counties. The services are provided by dispute resolution centers, most of which charge a fee. For 2007-2009 biennium, the contract was \$1.27 million. The budget was cut to \$1 million for 2009-2011 biennium.

The program offers mediation services for two-party, multiparty and community disputes and public agency mediation. The centers provide free services or charge for them using a sliding scale based on income. We contacted 13 of the 21 centers that receive funding through the contract. Eleven reported fees for individual mediation ranging from \$10 to \$300 and two do not charge fees. For comparison purposes, the cost to file a civil action in the King County Superior Court is \$200. Additionally, two Seattle-based mediation centers charge \$1,200 to \$1,500 for one day of mediation. Four mediation providers, two located in Vancouver and two in Spokane, reported services range from \$1,000 to \$1,920 for a day of mediation.

In fiscal year 2008, the program helped resolve 7,858 cases outside the court. As an example, if fees were increased by \$64 per case, assuming a similar number of cases, the fees would cover the general fund appropriation, generating \$502,912 per fiscal year. Since there are generally two parties in each case, each party would pay an additional \$32 on average.

New Americans Program

Commerce has a contract with a nonprofit organization to manage the New Americans program. The New Americans program budget is \$585,000 for the 2009-11 biennium.

Legal permanent residents who are not on public assistance and who are eligible to become U.S. citizens can receive naturalization assistance through this program. Many new U.S. residents work in occupations such as science and technology, which have a high demand for workers with specific expertise. Assistance includes outreach to immigrant communities, counseling, application processing, legal screening and citizenship preparation services at no charge.

Some of the services provided by the program also are provided by private companies (i.e., law firms typically provide assistance with document preparation for naturalization) and community-based organizations that may charge a fee or offer services free of charge.

The New Americans Program budget for 2009-2011 is \$585,000. The program manager reported it is expected to provide 500 people with assistance filing naturalization paperwork per year in 2010 and 2011. We contacted three private law firms and they reported assisting with naturalization costs from \$625 to \$2,000. We estimate if the program charged users an average of \$585, it would generate \$585,000, which is equal to the current appropriation.

Given that the program is intended to serve clients with a variable ability to pay, we recommend the New Americans Program develop a fee schedule. It could be a fixed fee, based on type of service provided or based on clients' ability to pay.

For contracted programs, we recommend:

- To minimize the state's general fund subsidy, Commerce should develop, follow, and monitor policies and procedures for applying fee-related best practices to its contractors that use state resources.
- Regardless of the fee approach selected, Commerce and the contractors should consider users' ability to pay.

Overall recommendation:

- Commerce should develop policies and procedures for the management of its fee programs and incorporate a requirement all programs be reviewed to identify those programs appropriate for user fee support, consistent with best practice.
- Commerce management should discuss with its assigned Assistant Attorney General which new or increased user fees may require legislative approval and/or administrative rules before they are put in place. While Commerce has authority to charge fees, new fees and fee increases may require the Legislature's approval under state law⁵. Additionally, some fees may require administrative rules. Where Legislative approval is necessary for compliance with Initiative 960, Commerce should provide the Office of Financial Management with best practice information used to determine which programs are appropriate for new or increased fees.

What happens next?

The release of this audit report triggers a series of actions by the state Legislature. The appropriate committee(s) will:

- Hold at least one public hearing within 30 days of this report's issue to receive public testimony.
- Review this report to identify audit recommendations that request legislative action.
- The Joint Legislative Audit and Review Committee, the Legislature's performance audit committee, will produce a report by July 1 of each year detailing the Legislature's progress in responding to the State Auditor's recommendations. The Committee must justify any recommendations it did not respond to and detail additional corrective measures taken.
- Consider the findings and recommendations contained in this report during the budget process.

Follow-up performance audits of any state or local government entity or program may be conducted when determined necessary by the State Auditor.

5 RCWs 43.135.055 and 43.135.031; Initiative I-960

Appendix A: Initiative 900 elements

Initiative 900, approved by citizens in 2005, gives the State Auditor's Office authority to conduct performance audits of state and local governments. Each performance audit must address the following elements:

Initiative 900 Element	Addressed in report?
Identification of cost savings.	Yes
Identification of services that can be reduced or eliminated.	N/A
Identification of programs or services that can be transferred to the private sector.	N/A
Analysis of gaps or overlaps in programs or services and recommendations to correct gaps or overlaps.	N/A
Feasibility of pooling information technology systems.	N/A
Analysis of the roles and functions and recommendations to change or eliminate roles or functions.	N/A
Recommendations for statutory or regulatory changes that may be necessary to properly carry out its functions.	N/A
Analysis of performance data, performance measures and self-assessment systems.	N/A
Identification of best practices	Yes

Appendix B: Table of fees

The Department of Commerce programs that charged fees during fiscal year 2008.

Programs that charged fees	Fee description	Fee authority	Fees without required rules	Fees deposited in wrong account
Agency parking fees	Parking fees for agency staff and Commute Trip Reduction participants	RCW 46.08.172	x	
Growth Management Services	Fees for using growth management database, including state agencies and a public growth management council	RCW 43.330.152; RCW 43.09.210		
	Fee for growth management course	RCW 43.330.150	x	x
Office of Crime Victim Advocacy and Policy	Conference fees	RCW 43.330.150	x	x
Low-Income Heating and Energy Assistance	Registration fees for annual joint energy conference	RCW 43.330.150	x	x
Developmental Disabilities Endowment Trust Fund	Annual management fee	RCW 43.330.152; WAC 365-220-080		
	Enrollment fee	RCW 43.330.152; WAC 365-220-080		
	Trust manager fee	RCW 43.330.152; WAC 365-220-080		
	Tax preparation fee	RCW 43.330.152; WAC 365-220-080		
Family Prosperity Account	Fees for an assets coalition conference	RCW 43.330.150	x	x
Housing Trust Fund-Resource Allocation and Contracting	Monitoring and administration of loan fee for Housing Trust Fund Loans	RCW 43.330.152	x	

Programs that charged fees	Fee description	Fee authority	Fees without required rules	Fees deposited in wrong account
Lead-Based Paint	Lead-based paint certification and training	RCW 70.103.030 (6) and (7); WAC 365-230-260; WAC 365-230-120		
Homeless Management Information System	Access to Homeless Management Information System	RCW 43.09.210		
Bond Cap Allocation Program	Fee to review and approve bond cap applications	RCW 39.86.170; WAC 365-135-050		
Community Mobilization Against Substance Abuse and Violence	Training fee	RCW 43.330.150	x	x
The Drinking Water Revolving Loan Fund	Loan origination fee	WAC 246-296-060		
	Late payment fee	RCW 43.17.240		
Tourism	Web site ads	RCW 43.330.152	x	x
	Tourism training and conference fee	RCW 43.330.150	x	x
Washington State Main Street	Downtown revitalization training and conference fee	RCW 43.360.050		x
Education and Training	Economic development training and conference fees	RCW 43.330.150	x	x
Child Care Facility Fund	Loan fee	WAC 130-14-030(5)		
Public Works Trust Fund	Late payment fee	RCW 43.17.240		
Brownsfield	Brownsfield loan handling fee	Agreement with U.S. Environmental Protection Agency		

Programs that charged fees	Fee description	Fee authority	Fees without required rules	Fees deposited in wrong account
Energy Facility Site Evaluation Council	Carbon dioxide mitigation fee	RCW 80.70.060		
	Cost recovery for monitoring and permitting energy projects ¹	RCW 80.50.071(3); WAC 463-58-030; WAC 463-58-050		
Total: 19 programs	Total: 26 fees		Total: 10 programs	Total: 9 programs
¹ The Department does not consider cost recovery for monitoring and permitting energy projects to be a fee for the purpose of reporting fees to the Office of Financial Management for compliance with Initiative 960.				

Appendix C: Methodology and criteria

To answer our audit objective: "Are policies and procedures in place to ensure user fees follow best practices and comply with state law? If not what is the effect?" we developed criteria and performed the procedures described below.

We requested Commerce policies and procedures so we could review them to determine if they provided management assurance fees are managed in accordance with best practices and in compliance with state law. The following best practices criteria were applied to selected programs currently charging a fee to determine if the lack of policies and procedures resulted in a departure from best practices:

1. Is the fee purpose documented, including whether the fee should cover all or part of the service? This is necessary for determining if fees should be changed.
2. Is the fee easy to administer or it is difficult and costly to administer?
3. Is the user's ability to pay considered, exempting low-income users or scaling fees based on ability to pay?
4. Is the fee an equitable or efficient option for funding the program?
 - a. Is the program providing benefits based on need or merit?;
 - b. Are there competing sectors in an industry where other sectors are not subject to similar fee?; and
 - c. Is it a new industry facing high initial costs in need of government support until it can be self-sustaining?
5. Does the agency review user fees charged regularly to improve transparency, ensure fees remain aligned with program costs, increase cost awareness, and increase incentives to reduce costs. Fees that are not reviewed and adjusted regularly risk under or overcharging users. Regularly reviewing fees means biennially, according to the OMB Circular No. A-25.

We developed these criteria based on our review of the General Accountability Office's 2008 report Federal User Fees: A Design Guide, the Office of Budget and Management's policy and guidance for managing user fees (Circular A-25), the State of Wisconsin's Legislative Audit Bureau's 2004 report Best Practices Report, Local Government User Fees, and the State of Mississippi's Joint Legislative Committee on Performance Evaluation and Expenditure Review report State Agency Fees: FY 2001 Collections and Potential New Fee Revenues.

We tested certain fee programs to determine if the lack of policies and procedures contributed to noncompliance with state law. The following laws were reviewed to determine if selected programs charging a fee are in compliance:

1. Are administrative rules promulgated as required by RCW 43.330.156?
2. Are fees revenues deposited into the fee revenue account, as required by RCW 43.330.155 and 43.360.050?
3. Are program expenditures in compliance with RCW 43.330.155? and
4. Are new fees and fee increases in compliance with RCW 43.135.031 and 43.135.055?

To determine whether select fee programs were aligned with best practice and in compliance with state law we reviewed laws, administrative rules, program information, and interviewed program managers.

To identify programs that could charge a user fee we examined all 155 programs under Commerce's authority against the following 10 criteria as part of our preplanning.

1. To what extent does the program benefit identifiable users and the general public?
2. Is the fee easy to administer or it is difficult and costly to administer?
3. Is the program intended to provide a benefit based on need or merit?
4. Are there competing sectors in an industry where other sectors are not subject to similar fee?
5. Is it a new industry facing high initial costs in need of government support until it can be self-sustaining?
6. Does the use of the program by certain users provide a public benefit, for example, by advancing a public goal?
7. Is the user's ability to pay low, medium, high, or variable?
8. To the extent fees are used to replace funding by general revenues, what is the impact on the distribution of the burden of financing the program?
9. For programs that have not been paid for by fees in the past, has the value of the program been capitalized into private assets?
10. Are there other program considerations causing user fees to be inappropriate?

Information related to each program was obtained by reviewing statutes, administrative rules, Operating and Capital Budgets, agency developed program information including the 2009 Commerce Agency Resource Book and interviews with Department personnel.

From this preplanning audit work we determined four programs are appropriate for user fee support:

- Dispute Resolution
- New Americans
- International Trade
- Community Economic Revitalization Board programs.

We subsequently included these four programs in our audit scope to confirm they could charge a fee and to determine the potential savings to the general fund if they were enacted. To estimate savings to the general fund, we reviewed budget documents, program expenditures, and interviewed Commerce personnel to determine program costs and estimate the number of expected program users.

We developed these 10 criteria based on our review of the General Accountability Office's 2008 report Federal User Fees: A Design Guide, the Office of Budget and Management's policy and guidance for managing user fees (Circular A-25), and the State of Wisconsin's Legislative Audit Bureau's 2004 report Best Practices Report, Local Government User Fees.

Appendix D: Responses



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.

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.

State Auditor's Office Concluding Remarks

We appreciate the cooperation of the Department of Commerce and the Office of Financial Management during the audit.

We also appreciate their recognition of best practices and their willingness to examine the areas in which we make recommendations and to work with interest groups, policymakers and lawmakers in areas in which they agree legislative changes are needed.

Related specifically to issue two, we agree the Developmental Disabilities Life Opportunities Trust Governing Board is repaying a \$460,000 loan from the state general fund. With \$110,000 left to repay, this reduces the \$542,000 fund balance to \$432,000. We affirm our recommendation to the board to review the fee structure and document its decision for increasing, decreasing, or leaving fees at their current level.



WASHINGTON
BRIAN SONNTAG
STATE AUDITOR

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