



DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATION
Office of Inspector General

CHARLIE CRIST
Governor

CHARLIE LIEM
Interim Secretary



MEMORANDUM

TO: Charlie Liem, Interim Secretary

FROM: Ned Luczynski, Inspector General *NJ*

DATE: April 16, 2010

SUBJ: Status of Corrective Actions, Auditor General Report No. 2010-045, Regulatory Programs and Other Matters

In accordance with the provisions of s. 20.055(5)(i), Florida Statutes, we have reviewed the status of corrective actions taken by appropriate management in response to recommendations made by the Auditor General in the above referenced report.

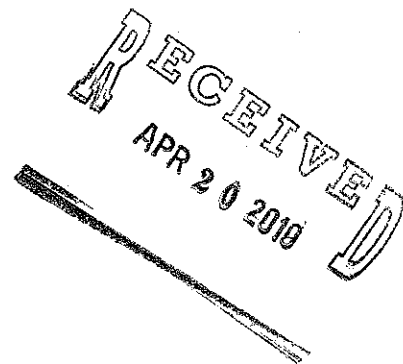
The findings, recommendations, original response, and the April 2010 status of corrective actions, if applicable, are attached for your review.

Please contact me if you have any questions.

NL/rf

cc: Maureen Olson, Deputy Secretary of Professional Regulation
Scott Ross, Deputy Secretary of Business Regulation
Janet Parramore, Director of Budget and Financial Management
Terry Kester, Chief Information Officer
Joint Legislative Auditing Committee

Attachment



**Department of Business and Professional Regulation
Status of Corrective Actions
Auditor General Report No. 2010-045
Operational Audit, Regulatory Programs and Other Matters**

Finding No. 1: Program Deficits and Surpluses

Finding No. 1: Multiple Department regulatory programs had operating cash balance deficits or significant surpluses. Without a comprehensive, Departmentwide activity-based analysis of costs associated with specific licensing and regulatory services, decision makers may lack the information necessary to evaluate the appropriateness of specific fee levels and to realign such fee levels to avoid both deficits and excessive surpluses.

Recommendation: We recommend that the Department conduct a comprehensive, Departmentwide activity-based analysis of the costs associated with each type of licensing and regulatory service and compare the results of such analysis to established licensing and regulatory fees. Utilizing the results of the analysis, the Department, in conjunction with professional boards, should develop strategies to eliminate program deficits. These strategies should include decreasing regulatory program costs where possible and requesting legislative fee increases where necessary. Programs identified as having excessive surpluses should be evaluated to determine whether fee holidays or, in instances where surpluses are recurring, permanent fee reductions are appropriate.

Agency Original Response:

Program deficits or surpluses

The Department acknowledges that some professions have actual or projected negative cash balances while others have actual or projected cash surpluses. All fees are set by Rule and some are capped by Statute. The Department has provided financial projections to the boards to allow fees to be adjusted on a more timely basis. Additionally, the Department performs a review of all professions at the end of each fiscal year. Those professions in a deficit or having excessive surpluses are reviewed for appropriate fee adjustments and recommendations are made to the board for a course of action necessary to eliminate the actual or projected deficit or surplus. The ultimate decision to decrease fees is determined by the boards. The Department can take action to increase fees when there are deficits to correct projected long term deficits.

On June 30, 2009, there were five (5) professions with negative cash balances. The Board of Cosmetology has adequate funds in its unlicensed activity account to cover the deficit in the operating account. Section 455.2281, Florida Statutes, allows a balance in the unlicensed activity account, at the end of a billing cycle, to be transferred to the operating account.

The Electrical Contractors Licensing Board is working with the Department to determine how much of a one-time assessment or fee increase should be implemented to eliminate the current deficits and deficits in future years.

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Due to the small number of licensees, Talent Agencies do not generate sufficient funds to cover the department's cost of regulation.

The Florida Real Estate Appraisal Board ended fiscal year 2008-09 with a negative balance but it is anticipated that they will have a surplus in future years when the real estate market stabilizes. It is likely that this Board will not have a recurring problem.

The Florida Real Estate Commission ended fiscal year 2008-09 with a negative balance, which was generated by a fee holiday. This is a one time situation and in future years, there is a projected surplus.

On June 30, 2008, it was projected that the Board of Pilot Commissioners, Construction Industry Licensing Board, and the Florida State Boxing Commission would have a deficit in the fiscal year ending June 30, 2009 and projected years. Once the final financial statements were completed for the fiscal year ended June 30, 2009, we determined that none of the above boards will be in a deficit in the current fiscal year or projected future years.

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At the January 20-22, 2010 General Business Meeting, the Electrical Contractors Licensing Board voted to impose a \$75 special assessment fee to eliminate the board's deficit.

We have reviewed the current year projections and believe that the original responses are accurate.

Agency Original Response:

New cost allocation plan

The Department established a new cost allocation plan for all direct and indirect costs beginning July 1, 2008. Over a period of one year all cost centers, methodologies, statistics, source data and information, definitions and staff or Division responsible for the information were reviewed and updated to reflect changes in operations and organizational structure. This new allocation plan better matches all activities and the related resources that are used within each Division or Profession. The new cost allocation plan should allow the Department to more accurately project costs and thus more effectively manage the fees for licenses for each Division or Profession to avoid program deficits or surpluses. Since this is the first year of applying the new cost allocation plan it will take a few years to fully evaluate the actual allocations and resultant impact on the Divisions or Boards.

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We are three quarters into the second year of the new cost allocation plan and believe that it is providing better cost projections that lead to effective management of the various programs:

Agency Original Response:

Activity-based costing

Activity-based costing (ABC) can theoretically be used in almost any industry, because it can be adapted to determine costs at different levels. However, ABC is most effectively used in complex companies that are not entirely service-based. Complex companies may see the most benefit from this type of costing because it is helpful when the costing information is difficult to understand or evaluate.

Service industries like this Department may not benefit as much from ABC as other industries because its costs can be difficult to assign, as they may not have an identifiable cause and effect relationship. Additionally, ABC costing is expensive to implement, expensive to maintain, and may not conform to generally accepted accounting principles.

Consequently, in light of the recent changes to the Department's cost allocation plan and the current projections for program deficits or surpluses, the Department believes that activity-based analysis is not appropriate or necessary to evaluate fee levels and to realign such fee levels to avoid both deficits and excessive surpluses.

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Stand on original response.

Finding No. 2: Unlicensed Activity Fees

Finding No. 2: Statutory unlicensed activity fee requirements limit the ability of the Department and professional boards to set fees commensurate with unlicensed activity regulation risks and costs.

Recommendation: We recommend that the Legislature consider revising the unlicensed activity fee requirements of Section 455.2281, Florida Statutes, to provide the Department and the professional boards with flexibility in setting fees that are commensurate with unlicensed activity regulation risks and costs.

Agency Original Response: It is the Department's opinion that the greatest risk to consumers, the largest number of violators, and the greatest area of concern for our licensees is in the construction industry which is why a disproportionate amount of enforcement is in that area. The Department agrees with the finding and supports any legislative changes to allow the department to make adjustments.

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Our original comment remains the same. There are no new updates.

Finding No. 3: Online Complaint Filing

Finding No. 3: The filing of online complaints against businesses and professions regulated by the Department was generally not available to consumers.

Recommendation: We recommend that, utilizing existing systems where possible, the Department implement online functionality through its Web site that enables consumers to file complaints online with digital signatures. Where feasible, this functionality should also provide for online submission of required supporting documentation.

Agency Original Response: The Department's existing online complaint system allows an individual to file an online complaint in those areas where supporting documentation is not required. Many complaints require supporting documents, such as, contracts, cancelled checks, building plans, and correspondence. Often most of the required supporting documents are not available electronically. We believe that most complainants would not have the technology to reduce supporting documents to electronic form.

Receiving complaints online where supporting documents are required introduces additional costs and inefficiencies into the complaint process. When a complaint has been received online without supporting documents, the Department must incur the costs of corresponding with the complainant to request the supporting documents. This correspondence delays the processing of the complaint as documents may be needed to determine legal sufficiency as described in Section 455.225(1)(a), Florida Statutes. The resultant increased processing time may impair the Department's ability to comply with Section 455.225(4), Florida Statutes, which requires that investigations or disciplinary proceedings not before the Division of Administrative Hearings be closed within one year after the initial filing of the complaint.

The Department, where feasible, utilizes online complaint forms where additional supporting documentation is not required. The Division of Pari-Mutuel Wagering, as noted in the report, utilizes the online complaint form where documentation is not required. The Division of Hotels and Restaurants receives the majority of food service and lodging complaints requiring no documentation from the online complaint form. The Division of Alcoholic Beverages and Tobacco currently allows online complaint filing regarding violations of the Florida Clean Indoor Air Act and plans to expand capability to alleged violations of alcoholic beverage and tobacco laws and rules.

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The Division of Alcoholic Beverages and Tobacco, in addition to the ability to file online complaints of violations of the Florida Clean Indoor Air Act, now has expanded the capability to file online complaints for any alleged violation of alcoholic beverage and tobacco laws and rules.

The Department is currently piloting an enhancement to its existing licensing system that permits our applicants to apply for licensure online. As a part of this new online application process, the applicant has the ability to upload supporting documentation. This enhancement to our online application system will provide the necessary infrastructure to allow the Department to also accept complaints and their associated documentation online.

The extension of the online licensure system, to include the receipt of online complaints, is expected to begin in fiscal year 2012/2013.

OTHER MATTERS

Finding No. 4: Information Technology Security

Finding No. 4: An external security audit disclosed deficiencies in Department compliance with the Payment Card Industry Data Security Standard as well as other Department information technology security issues.

Recommendation: We recommend that the Department continue to ensure that appropriate information technology controls, including but not limited to those reasonably ensuring adherence to PCI Data Security Standard requirements, are operating effectively. The Department should also continue routine performance of external penetration tests to ensure the security of network devices and hosts.

Agency Original Response: The Department will continue to ensure adherence to PCI Data Security Standard requirements outlined in Self-Assessment Questionnaire C. Additionally, the Department will continue to participate in the risk assessment requirements mandated by Section 282.318, Florida Statutes.

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In July 2009, the Department contracted with an external PCI Qualified Assessor who certified that DBPR was compliant with PCI Data Security Standard requirements referenced in PCI Self Assessment Questionnaire C (SAQC). The SAQC is required to be updated annually by the Department of Financial Services. This will be performed by DBPR in July 2010.

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Additional risk assessment scanning software was purchased to enable the department to perform quarterly scans (penetration tests) to further ensure that we remain compliant with PCI Data Security Standard requirements. The first scan was performed in February 2010 and the second will be performed in May 2010. Successive scans will be performed quarterly.

Finding No. 5: FLAIR Access

Finding No. 5: Excess and incompatible Florida Accounting Information Resource Subsystem access privileges were granted to a number of employees.

Recommendation: We recommend that the Department adopt written procedures requiring the performance of periodic reviews of FLAIR access privileges to identify excess and incompatible privileges granted to employees. The excess and incompatible privileges identified should be promptly removed unless the Department determines that the duties assigned cannot be separated and sufficient compensating controls, such as management review of high-risk transactions, are in place and operating effectively.

Agency Original Response: The Bureau of Finance and Accounting has adopted quarterly FLAIR access review procedures. The review includes letters to the various division directors and to supervisors in the Office of Financial Management requesting they review their employees' FLAIR access and compatibility with their position during the period in review. If the employee has terminated or changed positions, it will be the responsibility of that division or supervisor to inform accounting of the changes. Also included in the letter is a statement that it is the division's responsibility to inform the FLAIR access control custodian of changes in an employee's FLAIR access. The review is filed and maintained for audit purposes.

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The following corrective actions have been added to access review procedures:

1. Quarterly review by Directors.
2. Memorandum to Directors created as to their responsibility and the requirements.
3. List of employees and their function access levels compiled from the Access Control reports for attachment to the Memorandum.

PRIOR AUDIT FOLLOW-UP

The Department had taken adequate corrective actions for findings included in audit report Nos. 2008-182, 2008-031, and 2004-181. However, the Department had not timely completed an annual review of the data integrity, reliability, and security of its Single Licensing System, as recommended in audit report No. 2008-181.

Recommendation: We again recommend that the Department perform annual reviews of Single Licensing System data integrity, reliability, and security.

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Agency Original Response: The Office of Inspector General will continue to conduct audit activities addressing the data integrity, reliability, and security of the Single Licensing System within annual audit plans.

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The Office of Inspector General issued Report No. A-15-0708-005, Audit of the Division of Information Technology – Agency Access Controls, on August 31, 2009. The recommendations made in this report resulted in the agency improving procedures for system access security. Appropriate follow-up will provide assurance of mitigating associated risk.