

**DEPARTMENT OF BUSINESS AND  
PROFESSIONAL REGULATION**

**REGULATORY PROGRAMS AND OTHER MATTERS**

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**Operational Audit**

For the Period July 2007 Through February 2009,  
and Selected Actions Through August 2009



## SECRETARY OF THE DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Section 20.165, Florida Statutes, creates the Department of Business and Professional Regulation. The head of the Department is the Secretary of Business and Professional Regulation. The Secretary is appointed by the Governor and is subject to confirmation by the Senate. The following Secretaries served the Department during the audit period:

Charles W. Drago From February 23, 2008

Holly Benson Through February 22, 2008

The audit team leader was Matthew Tracy, CPA, and the audit was supervised by Stan Mitchell, CPA. Please address inquiries regarding this report to Nancy C. Tucker, CPA, Audit Manager, by e-mail at [nancytucker@aud.state.fl.us](mailto:nancytucker@aud.state.fl.us) or by telephone at (850) 487-4370.

This report and other reports prepared by the Auditor General can be obtained on our Web site at [www.myflorida.com/audgen](http://www.myflorida.com/audgen); by telephone at (850) 487-9024; or by mail at G74 Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450.

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

## Regulatory Programs and Other Matters

**SUMMARY**

This operational audit of the Department of Business and Professional Regulation (Department) focused on Department regulatory programs and other operational matters during the period July 2007 through February 2009, and selected actions through August 2009. Our audit included a follow-up on prior audit findings applicable to the Department and contained in audit report No. 2004-181 relating to regulatory program administration. Additionally, our audit included a follow-up on prior audit findings contained in audit report Nos. 2008-031, relating to elevator safety inspections; 2008-181, relating to the distribution of alcoholic beverage license taxes; and 2008-182, relating to cigarette stamp taxes. Our audit disclosed the following matters requiring corrective actions:

**REGULATORY PROGRAMS**

**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.

**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.

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

**OTHER MATTERS**

**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.

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

**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.

**BACKGROUND**

The Department of Business and Professional Regulation (Department) is responsible for regulating professions and businesses to ensure the preservation of the health, safety, and welfare of the public. Under Florida law,<sup>1</sup> the regulation of professions shall occur when:

- Their unregulated practice can harm or endanger the health, safety, and welfare of the public, and when the potential for such harm is recognizable and clearly outweighs any anticompetitive impact which may result from regulation.

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<sup>1</sup> Section 455.201, Florida Statutes.

- The public is not effectively protected by other means, including, but not limited to, other state statutes, local ordinances, or federal legislation.
- Less restrictive means of regulation are not available.

The Department is responsible for the regulation of both professions and businesses and has various divisions which carry out its assortment of responsibilities.<sup>2</sup> The Department also provides administrative support to 16 professional boards, the Community Association Managers Council, the Florida State Boxing Commission, and the Florida Real Estate Commission, which are each generally responsible for the licensure of applicants, promulgation of rules, and licensee discipline. The Department regulated approximately one million professionals and businesses across some 200 license categories.

All moneys collected by the Department from fees, fines, and court-awarded costs for the professions regulated under Chapter 455, Florida Statutes, are to be accounted for in the Professional Regulation Trust Fund (Trust Fund). The Department maintained separate accounts in the Trust Fund for every profession and, to the maximum extent possible, was to directly charge expenditures to the account of each profession. For expenditures that cannot be directly charged, the Department allocates expenditures to each profession based on an established cost allocation plan. For each regulated business, the Department accounts for financial activities in separate trust funds.

As directed by the Governor under the “Accelerate Florida: Extending Florida’s Economic Horizons” initiative launched in August 2008, the Department had undertaken measures to review statutes, rules, procedures, and forms to better ensure that regulation is carried out more efficiently and effectively while still protecting the public. A principal effort, the Department’s “EZ Apply” project, was designed to streamline the Department’s license application process, including making the Department’s Web site more user-friendly by providing consumers easier access to licensing information.

As described below, our audit found operational improvements could be made to further enhance the Department’s ability to effectively and efficiently regulate professions and businesses.

## FINDINGS AND RECOMMENDATIONS

### Regulatory Programs

#### **Finding No. 1: Program Deficits and Surpluses**

Florida law provides that each board within the Department shall determine by rule the amount of license fees for its profession based upon Department-prepared long-range estimates of the revenue required to implement all provisions of law relating to the regulation of professions by the Department and any board.<sup>3</sup> It is the Legislature’s intent that no regulated profession operate with a negative cash balance. The Department and each board are responsible for ensuring that fees are adequate to cover all anticipated costs and to maintain reasonable cash balances. To that end, the Department produced quarterly financial statements and 5-year statements of actual and 5 years of projected revenues, expenditures, and changes in account balances for the professional boards.

As part of our audit of the Department’s regulatory programs, we analyzed Department-provided fiscal information and interviewed staff to identify programs with actual or projected deficits or significant actual surpluses, as well as the

<sup>2</sup> Divisions include: Alcoholic Beverages and Tobacco; Certified Public Accounting; Florida Condominiums, Timeshares and Mobile Homes; Hotels and Restaurants; Pari-Mutuel Wagering; Professions; Real Estate; and Regulation.

<sup>3</sup> Section 455.219, Florida Statutes.

potential causes for the noted deficits and surpluses. Fiscal information covering 2 years was examined to account for fluctuations in revenue collections resulting from 2-year licensing periods. We considered regulatory programs with actual negative fund equity balances or with actual or projected negative operating cash balances to be in a deficit situation. Our analysis of 24 regulatory programs found some programs with deficit operating cash balances (actual and projected), deficit fund balances, or both deficit operating cash and fund balances, as shown in Table 1.

**Table 1**  
**Program Fund Equity and Operating Cash Balance Deficits**

Commission/Board/Profession	Fund Equity Balance (in dollars)		Operating Cash Balance (in dollars)			
			Actual		Projected <sup>a</sup>	
	2006-07 FY	2007-08 FY	2006-07 FY	2007-08 FY	2008-09 FY	2009-10 FY
Board of Cosmetology	158,656	820,782	595,479	1,370,731	(304,493)	(2,792,047)
Board of Pilot Commissioners	116,351	35,503	91,360	(6,779)	(94,548)	(198,074)
Construction Industry Licensing Board	5,122,273	3,754,567	5,153,303	1,455,393	1,488,351	(2,414,684)
Electrical Contractors' Licensing Board	(7,502)	(856,491)	31,653	26,161	475,712	(101,331)
Florida State Boxing Commission	(13,949)	(87,914)	92,978	24,247	114,586	215,733
Talent Agencies	(542,153)	(507,799)	(553,746)	(502,849)	(558,883)	(528,364)

<sup>a</sup> Due to dynamic economic conditions, projected cash balances are subject to significant change.

Source: Department-provided data.

According to Department staff, the program deficits cited above were driven by insufficient fees<sup>4</sup> and other revenues. For example, Department staff attributed the Boxing Commission's deficit largely to an insufficient tax on the gross amount paid by a match promoter or concessionaire for the sale or lease of broadcasting rights and other match-related sales.

As shown in Table 2, our analysis also found some regulatory programs with potentially excessive operating cash balances. These programs had operating cash balances from approximately 1.4 to nearly 4 times average expenditures.

<sup>4</sup> Subsequent to our audit period, a bill related to increasing various cosmetology, construction, and talent agency fees and penalties, was signed by the Governor into law (Chapter 2009-195, Laws of Florida) on June 23, 2009.

**Table 2**  
**Program Operating Cash Balance Surpluses**

Division/Board/Profession	Average Operating Cash Balance (in dollars) 2006-07 FY and 2007-08 FY	Average Expenditures (in dollars) 2006-07 FY and 2007-08 FY	Average Operating Cash as a Percentage of Average Expenditures
Athlete Agents	163,320	44,639	366%
Barbers' Board	1,545,315	1,079,448	143%
Board of Employee Leasing Companies	1,202,962	311,339	386%
Board of Professional Engineers <sup>a</sup>	3,788,939	2,833,341	134%
Community Association Mangers	1,683,948	1,139,792	148%
Division of Real Estate	16,817,501	16,015,029	105%
Florida Condominiums, Timeshares, and Mobile Homes <sup>b</sup>	26,779,415	10,556,008	254%
Industrial Hygienist/Asbestos Consultants	176,901	116,201	152%

<sup>a</sup> Regulation of this profession is provided by the Florida Engineers Management Corporation.

<sup>b</sup> In response to audit inquiry, CTMH Division staff stated that its large operating cash balance had accumulated due to the real estate boom and was projected to decline.

Source: Department-provided data.

Some of the programs identified in Table 2 may in fact have had appropriate operating cash balances; however, for some programs excessive cash balances had accumulated, notwithstanding transfers to the General Revenue Fund for some professions and the fee holidays for others. For example:

- **Transfers to General Revenue Fund.** From the 2003-04 fiscal year through the 2008-09 fiscal year, pursuant to law, the Legislature authorized over \$36 million in unobligated cash balance amounts to be transferred from the Division of Florida Condominiums, Timeshares, and Mobile Homes (CTMH Division) trust fund to the General Revenue Fund.<sup>5</sup> During this same period, over \$20 million in unobligated cash balance amounts were transferred from the Division of Real Estate to the General Revenue Fund. Without these transfers, the surplus operating cash balances for these two divisions would have been correspondingly greater than the amounts shown in Table 2.
- **Fee holidays.** Pursuant to law, the Division of Real Estate implemented various “fee holidays” from the 2003-04 fiscal year through the 2008-09 fiscal year, resulting in over \$30 million in waived fees.<sup>6</sup> Additionally, since the 2003-04 fiscal year, barbers, community association managers, athlete agents, and employee leasing companies have had fee holidays totaling over \$2.1 million.

Our review disclosed that while the Department had established methodologies, including a cost allocation plan, that distributed all direct and indirect expenditures to Department organizational units, the Department had not performed a comprehensive, Departmentwide activity-based analysis of the costs associated with specific licensing and regulatory services, such as issuing versus renewing a license. Activity-based costing, an accounting approach that matches costs with the activities that produce those costs, helps management identify more clearly the costs involved in providing a service by objectively assigning costs first to the activities that are required to deliver a service, then to the services that drive those activities, rather than simply assigning costs to organizational units. Utilization of an activity-based costing approach would allow Department staff to analyze the costs incurred with providing various

<sup>5</sup> Section 215.32(2)(b)4.a., Florida Statutes.

<sup>6</sup> Section 455.219(1), Florida Statutes, provides that when the Department has determined, based on the long-range estimates of revenues, that a profession’s trust fund moneys are in excess of the amount required to cover necessary functions, the Department may adopt rules to implement a waiver of license renewal fees for that profession for a period not to exceed two years.

licensing and regulatory services. Comparisons of these costs to related fees, both authorized and collected, would provide the Legislature, Department management, professional boards, and other stakeholders with the information necessary to evaluate, on an ongoing basis, the extent to which specific fees are excessive, insufficient, or appropriate in amount and to realign fees at levels that avoid both deficits and excessive surpluses.

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**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.

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*In his response to this finding, the Secretary stated that in light of the recent changes to the Department's cost allocation plan and current projections for program deficits or surpluses, 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. Should the Department find that, after full implementation of its revised cost allocation plan, the plan does not produce cost information of sufficient detail to allow a comparison of individual licensing or regulatory fees to related activity costs, a periodic Department analysis of the associated costs of each major licensing and regulatory activity should be conducted in the manner recommended above. Decision-makers should be provided cost data that will allow informed decisions as to which specific fees should be adjusted and by how much.*

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#### **Finding No. 2: Unlicensed Activity Fees**

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Florida law provides that in order to protect the public and to ensure a consumer-orientated Department, it is the intent of the Legislature that vigorous enforcement of regulation for all professional activities be a State priority and that all enforcement costs should be covered by the professions regulated by the Department.<sup>7</sup> The law further requires that the Department impose, upon initial licensure and each renewal thereof, a \$5 fee per licensee to fund efforts to combat unlicensed activity. Florida law also provides that any balance remaining at the end of a renewal cycle may, with the concurrence of the applicable board and the Department, be transferred to the operating fund account of that profession.

The risks posed by unlicensed activities vary with the nature of the profession in that unlicensed activity in one profession may pose a greater threat to the health, safety, and welfare of the public than unlicensed activity in another profession. Additionally, the likelihood of unlicensed activity occurring and the costs of combating unlicensed activities may vary from one profession to another. As shown in Table 3, our analysis of unlicensed activity for the professions regulated by the Department disclosed that, as a consequence of imposing a flat \$5 fee, the unlicensed activity fees for some professions greatly exceeded related expenditures, while the fees for other professions were not sufficient to cover related expenditures.

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<sup>7</sup> Section 455.2281, Florida Statutes.

**Table 3**  
**Unlicensed Activity Fee Analysis**

Commission/Board/Profession	Revenue (in dollars) 2006-07 FY and 2007-08 FY	Expenditures (in dollars) 2006-07 FY and 2007-08 FY	Excess (Deficiency) of Revenue <sup>a</sup>	Expenditures as a Percentage of Unlicensed Activity Fee Revenue
Accountancy	191,754	203,900	(12,146)	106%
Architecture and Interior Design <sup>b</sup>	89,352	306,773	(217,421)	343%
Asbestos	2,630	1,208	1,422	46%
Athlete Agents	1,440	1,440	-	100%
Auctioneers	15,752	9,971	5,781	63%
Barbers	80,284	26,788	53,496	33%
Building Code Administrators and Inspectors	72,483	4,823	67,660	7%
Community Association Managers	80,818	55,320	25,498	68%
Construction Industry Licensing Board	664,015	885,547	(221,532)	133%
Cosmetology	1,058,400	67,938	990,462	6%
Electrical Contractors	56,759	192,682	(135,923)	339%
Employee Leasing Companies	10,827	2,202	8,625	20%
Landscape Architecture	8,423	5,934	2,489	70%
Pilot Commissioners	554	-	554	-
Professional Engineers	187,700	201,850	(14,150)	108%
Professional Geologists	11,210	2,032	9,178	18%
Professional Surveyors and Mappers	24,168	6,009	18,159	25%
Real Estate Appraisal Board	91,145	4,129	87,016	5%
Real Estate Commission	1,907,010	596,620	1,310,390	31%
Talent Agents	2,065	3,524	(1,459)	171%
Veterinary Medicine	35,870	9,188	26,682	26%

<sup>a</sup> Amounts shown do not reflect amounts from investment earnings, fines, and prior account balances used to cover unlicensed activity costs.

<sup>b</sup> Unlicensed activity regulation is handled by a private entity. The amount for unlicensed activity expenditures includes payments to the private entities to provide unlicensed activity services.

Source: Department-provided data.

For all professions but Electrical Contractors, the unlicensed activity fees, other revenues (e.g., fines and investment income), as well as prior account balances, were sufficient to cover the cost of unlicensed activity prevention and detection efforts. However, reliance on fines and other revenues may not be an appropriate substitute for suitably established fees. As it is the intent of the law that unlicensed activity fees be used to fund efforts to combat unlicensed activity, the Department and professional boards should be provided the flexibility to establish unlicensed activity fees commensurate with actual costs and risks. Such flexibility would facilitate the recognition of the differing levels of risks and costs associated with confronting unlicensed activity.

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**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.

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**Finding No. 3: Online Complaint Filing**

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The Department is responsible for regulating businesses and professions to ensure the health, safety, and welfare of the public. The ability for consumers to initiate complaints with the Department is an important function that drives many Department regulatory activities. Florida law provides that, for the professional boards under its jurisdiction, the Department shall investigate any complaint that is filed before it if the complaint is:<sup>8</sup>

- In writing.
- Signed by the complainant.
- Legally sufficient.

Florida law broadly states that a complaint is legally sufficient if it contains ultimate facts that show a violation of Florida Statutes or of any rules adopted by the Department or regulatory board. In order to determine the legal sufficiency of a complaint, the Department may also require supporting documentation such as contracts and proof of payment.

During the audit period, a consumer could file a complaint with the Department in several ways, including in person or by mail. A standard complaint form could be downloaded and printed from the Department's Web site and, while in limited circumstances a consumer may file the complaint online (such as with the Division of Pari-Mutuel Wagering), the consumer generally had to file the complaint form in person or by mail.

In a previous report, the Office of Program Policy Analysis and Government Accountability (OPPAGA) recommended that the Department explore options to improve the complaint process for the Construction Industry Licensing Board by utilizing existing Department systems to allow homeowners the ability to file complaints electronically with digital signatures and to also submit required documentation electronically.<sup>9</sup> As part of our audit, we conducted a survey of the Web sites of other states' licensing and regulatory bodies and found that many provided consumers the option of online complaint filing. Providing online complaint filing for all professional boards and regulated businesses under Department jurisdiction would provide more options to consumers and potentially enhance the Department's ability to efficiently communicate with consumers and address matters of impact to the health, safety, and welfare of the public.

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**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.

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*In his response to this finding, the Secretary indicated that complaints requiring supporting documentation are not conducive to online filing because most complainants would not have the technology to reduce supporting documents to electronic form and the Department would incur additional correspondence costs and processing delays. Our recommendation was made with the understanding that consumers are increasingly acquiring and utilizing technology to transact personal business and that without the option of filing an online complaint, many of these consumers may forego the filing of legitimate complaints against a regulated professional or business. We continue to believe that the Department should be working toward providing the option of online complaint filing for all regulated businesses and professions.*

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<sup>8</sup> Section 455.225(1)(a), Florida Statutes.

<sup>9</sup> OPPAGA report No. 08-21.

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<b>Other Matters</b>
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**Finding No. 4: Information Technology Security**

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In July 2008, after the Department had begun transitioning from contracted to in-house support and maintenance of its Single Licensing System, the Department gave formal notice to the contractor, officially terminating its support and maintenance contract ending December 31, 2008.

As a means of establishing baseline security requirements prior to the in-house transition and acceptance of the Single Licensing System, the Department contracted with an external party for two security audits. The resulting audit reports included a pre-assessment report for compliance with the Payment Card Industry (PCI) Data Security Standard<sup>10</sup> for payment card activities in support of Department business activities, as well as a report on an external penetration test of network devices and hosts. While the reports were specific to PCI Data Security Standard requirements, the reports disclosed numerous deficiencies, many of which were broad in scope and applicable to the Department's overall information technology control structure.

The specific details of the deficiencies noted in the two reports are not disclosed in this report to avoid any possibility of compromising the security of Department data and information technology resources. In July 2009, after taking corrective actions, an external party engaged by the Department reported the Department as being compliant with applicable PCI Data Security Standard requirements and that appropriate steps had been taken to mitigate external penetration risks.

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**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.

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**Finding No. 5: FLAIR Access**

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The Department relies on the Florida Accounting Information Resource Subsystem (FLAIR) to record and report its financial transactions. Effective controls should limit access to FLAIR to prevent and detect any improper or unauthorized use, as well as promote an adequate separation of incompatible access privileges. The periodic review of employee access privileges helps management ensure that the privileges granted are necessary to the performance of, and are compatible with, an appropriate assignment of employee job duties. Our audit tests disclosed that the Department had not adopted written procedures requiring periodic review of FLAIR access privileges and that, during the audit period, such periodic reviews were not performed by Department management.

The absence of the reviews allowed inappropriate access privileges to continue without detection and correction. Our test of FLAIR update privileges assigned to Department staff primarily within the accounting and budget area disclosed that ten employees had update access privileges related to accounts payable and cash disbursements modules, as well as accounts receivable and cash receipts modules. Additionally, four of the ten employees had update access to more than half of the FLAIR modules, including some of the highest risk modules, which were not

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<sup>10</sup> The PCI Data Security Standard is a set of comprehensive requirements for enhancing payment account data security developed by the founding payment brands of the PCI Security Standards Council. The major payment card brands (i.e., Visa, MasterCard, etc.) require entities that accept payment cards to comply with the PCI Data Security Standard.

required for their job duties. These access privileges are considered incompatible and excessive, and together, heightened the risk that errors or fraud may occur and not be timely detected.

In response to audit inquiry, Department personnel performed a FLAIR access privilege review, which resulted in a reduction in the update privileges of certain employees. However, our review of FLAIR access privileges subsequent to this review still found that certain employees were assigned incompatible update access privileges related to the accounts payable and accounts receivable modules. In order to safeguard assets and protect the integrity of Department accounting records consistently, it is important that periodic and thorough reviews of FLAIR access privileges be conducted.

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**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.

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#### PRIOR AUDIT FOLLOW-UP

As part of our audit, we determined that the Department had taken appropriate actions to correct the findings included in audit report Nos. 2004-181, 2008-031, and 2008-182. However, the Department had not taken timely actions to address all the findings included in audit report No. 2008-181.

In prior audit reports, we have recommended that the Department initiate annual reviews of the data integrity, reliability, and security of the Department's Single Licensing System.<sup>11</sup> The Department, in its response to our August 2006 recommendation, indicated that the Office of Inspector General's (Office) approved plan for the 2006-07 fiscal year included a review of the Single Licensing System. However, at the conclusion of our current audit field work in July 2009, the review had not been completed. The Office subsequently published, on August 31, 2009, a report on its review of access controls over the Department's network and the Single Licensing System, covering the period July 1, 2006, through June 30, 2007, and related activities through June 2009. The report noted that formal administrative policies and procedures in place within the Division of Technology regarding access to Department network and Single Licensing System resources were out of date and did not adequately protect against unauthorized use, damage, loss of data, or modifications. The report stated that as such, there was an increased risk that Department computer resources could be used improperly.

As noted above in finding No. 4, a recent security audit of selected aspects of the Single Licensing System and Department information technology controls, conducted by an external party, also found numerous deficiencies. Due to the critical importance of the Single Licensing System to Department operations, it is important that timely and comprehensive reviews of all aspects of system security and operations be conducted annually. Absent the performance of annual reviews, there is an increased risk to the integrity, reliability, and security of Single Licensing System data.

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

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<sup>11</sup> Auditor General Report Nos. 2004-112, 2007-010, and 2008-181.

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**OBJECTIVES, SCOPE, AND METHODOLOGY**

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The Auditor General conducts operational audits of governmental entities to provide the Legislature, Florida's citizens, public entity management, and other stakeholders unbiased, timely, and relevant information for use in promoting government accountability and stewardship and improving government operations.

We conducted this operational audit in accordance with generally accepted government auditing standards. Those 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 that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

This operational audit focused on Department regulatory programs, as well as other operational matters. This audit also included a follow-up on prior audit findings applicable to the Department disclosed in multi-agency audit report No. 2004-181 related to regulatory program administration. Finally, our audit included a follow-up on prior audit findings contained in audit report Nos. 2008-031, relating to elevator safety inspections; 2008-181, relating to the distribution of alcoholic beverage license taxes; and 2008-182, relating to cigarette stamp taxes. The objectives of this audit were:

- To evaluate the effectiveness of established internal controls in achieving management's control objectives in the categories of compliance with controlling laws, administrative rules, and other guidelines; the economic, efficient, and effective operation of State government; the relevance and reliability of records and reports; and the safeguarding of assets.
- To evaluate management's performance in achieving compliance with controlling laws, administrative rules, and other guidelines; the economic, efficient, and effective operation of State government; the relevance and reliability of records and reports; and the safeguarding of assets.
- To determine whether management had corrected, or was in the process of correcting, all deficiencies disclosed in the prior audit report Nos. 2008-031, 2008-181, and 2008-182.
- To determine whether management had corrected, or was in the process of correcting, deficiencies disclosed in prior audit report No. 2004-181 with respect to the Department.
- To identify statutory and fiscal changes that may be recommended to the Legislature pursuant to Section 11.45(7)(h), Florida Statutes.
- To gain an understanding of the Department's regulatory programs and to identify options for a more efficient and effective operation of Department regulatory activities.
- To identify regulatory programs requiring fiscal adjustment as a result of operating at either a deficit or significant surplus.
- To gain an understanding of and evaluate Department controls over FLAIR access.

Our audit included examinations of various records and transactions (as well as events and conditions) occurring during the period July 2007 through February 2009, and selected actions through August 2009. In conducting our audit, we:

- Interviewed Department personnel and reviewed Department procedures.
- Conducted a Departmentwide survey to collect licensing and regulatory information that was used to obtain an understanding of the professions and businesses regulated, the associated revenues and expenditures, and the nature of the regulatory activities performed.
- For 24 regulatory programs, performed various analytical reviews of Department-provided data, including revenue, expense, and fund equity information.
- Analyzed unlicensed activity fees for two fiscal years.

- Evaluated Department complaint filing options available to consumers.
- Reviewed the inspection cycle for salons and barbershops regulated by the Board of Cosmetology.
- Reviewed Department actions taken to address the findings noted in two security audits of the Single Licensing System.
- Evaluated Department actions taken to correct the deficiencies disclosed in audit report Nos. 2004-181, 2008-31, 2008-181, and 2008-182.
- Reviewed FLAIR update privileges assigned to selected Department staff.
- Performed various other audit procedures as necessary to accomplish the objectives of the audit.

**AUTHORITY**

Section 11.45, Florida Statutes, requires that the Auditor General conduct an operational audit of each State agency on a biennial basis. Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.



David W. Martin, CPA  
Auditor General

**MANAGEMENT’S RESPONSE**

In a response letter dated October 23, 2009, the Secretary of the Department provided responses to our audit findings and recommendations. The Secretary’s response is included as EXHIBIT A.

**EXHIBIT A  
MANAGEMENT'S RESPONSE**



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**Charles W. Drago, Secretary**

**Charlie Crist, Governor**

October 23, 2009

David W. Martin, CPA  
Auditor General  
G74 Claude Pepper Building  
111 West Madison Street  
Tallahassee, FL 32399-1450

Dear Mr. Martin:

In accordance with Section 11.45(4)(d), Florida Statutes, enclosed is our response to the Auditor General's September 23, 2009 preliminary and tentative audit findings and recommendations based on the *Operational Audit of the Department of Business and Professional Regulation, Regulatory Programs and Other Matters*.

We appreciate the time and energy put forth by your staff, and your efforts to improve the operations of state government.

If you have any questions, please contact Ned Luczynski, Inspector General at 414-6700.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. Drago".

Charles W. Drago  
Secretary

CD/rf

Enclosure

cc: Charlie Liem, Chief of Staff  
Scott Ross, Deputy Secretary of Business Regulation  
Maureen Olson, Deputy Secretary of Professional Regulation  
Ned Luczynski, Inspector General

**EXHIBIT A**  
**MANAGEMENT'S RESPONSE (CONTINUED)**

**Department of Business and Professional Regulation**  
**Response to Findings and Recommendations**  
**Auditor General Report No.**  
**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 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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**MANAGEMENT'S RESPONSE (CONTINUED)**

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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.

**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.

**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.

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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.

**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 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.

**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 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

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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.

**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 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.

**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

**EXHIBIT A**  
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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 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.

**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.

**Agency 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.