

PUBLIC TESTIMONY SUMMARY

I-900 STATE AUDITOR'S PERFORMANCE AUDIT:

Eight Counties' Building Permit and Inspection Fees Clark, Klickitat, Pacific, Pend Oreille, Skamania, Walla Walla, Whatcom, Yakima (December 29, 2009)

As Heard by the Joint Legislative Audit & Review Sub-Committee on I-900 Performance Audits
on January 5, 2010

The performance audit being discussed at this hearing was conducted solely and independently by the office of the State Auditor, under the authority of legislation approved by the voters in Initiative 900. The State Auditor is elected directly by the people of the State of Washington and operates independently of the Legislature and the Joint Legislative Audit & Review Committee. Staff to the Joint Legislative Audit & Review Committee prepare a summary of public testimony on State Auditor reports. These summaries are for informational purposes only, and do not serve as an assessment by committee staff of the findings and recommendations issued by the State Auditor nor do they reflect a staff opinion on legislative intent.

Title: Eight Counties' Building Permit and Inspection Fees

Clark, Klickitat, Pacific, Pend Oreille, Skamania, Walla Walla, Whatcom, Yakima

Audit Scope and Objectives:

SAO reports that the audit reviewed data for 2006 through 2008 and 2009, as available. SAO developed the following audit objectives:

- Determine whether eight counties' agricultural, residential and commercial permitting application fees are limited to what is necessary to cover direct and indirect costs associated with permitting.
- Identify the methods used by each county to calculate agricultural, residential, and commercial permit fees and how those methods match up with direction provided by state law (Chapter 82.02.020 RCW and Chapter 19.27.015 RCW).
- Assess whether the methods ensure fees are no greater than what is necessary to pay the direct and indirect costs of permitting. Identify uniform guidance to help counties determine allowable costs and how to allocate them to the building permit program.

In addition, SAO indicates the audit included the nine elements of Initiative 900.

SAO Findings:

The audit identifies several "themes":

- State law requires counties to set permit fees to recover only the costs of administering the program. Achieving this objective will require counties to adopt cost-recovery methods for fee setting. The eight counties use varying approaches to setting building permit fees. Most of these approaches do not set fees to recover costs, but instead focus on setting rates at a reasonable level in relation to established benchmarks.

SAO Recommendations:

The audit provides specific recommendations to each of the eight counties (Appendix A).

<ul style="list-style-type: none"> • SAO identified common challenges in establishing an appropriate fee amount and provides guidance to assist counties in setting them. • Cost tracking and cost allocation challenges exist at most of the eight counties audited. SAO provides guidance and recommendations to assist these and all other counties, cities and towns in addressing these challenges. • A review of annual building fees compared to plan review and inspection costs by county showed most of the eight counties sometimes charge more than necessary to cover these costs. • Counties have difficulty predicting future building activity and the resulting revenue from permit fees, which makes it difficult to set fees at the right amount to cover costs. Revisions to state law are necessary in light of the ups and downs that occur with building and permitting activity and the uncertainty about what are appropriate building permit processing activities and allowable expenses. 	<p>The audit provides guidance on the tracking of costs related to allowable permitting activities (Appendix B) and on a specific approach to calculating building permit fees (Appendix C).</p> <p>The audit includes the following recommendation to the Legislature: We recommend the state Legislature develop legislation that:</p> <ul style="list-style-type: none"> • Allows for thresholds of working capital from surplus building permit revenue. • Defines building permit processing activities and allowable expenses. • Specifically allows for appropriate indirect costs for all permit types.
<p>Agency Responses in Audit Report?</p>	<p>Yes; county responses are in Appendix E.</p>
<p>Legislative Action Requested?</p>	<p>Yes, as described above.</p>

Agencies Testifying:

Clark County (Marty Snell, Director of Community Development)

Summary of Testimony from Audited Agencies:

While the report recognizes direct and indirect costs, there is a lack of detail and examples on internal department cost allocation plans. For example, there may be a building safety program within a larger department; are indirect costs of that building safety program included, and are the administrative costs of the department included? We would welcome any discussion on fund balances or surplus. Our county has been through 18 months of laying off 50 people. Some of that is due to the significant downturn in building and development in Clark County. It also reflects that we had no fund balance in fees and had to rely on the general fund. Fund balances and surpluses are a requisite need for maintaining services throughout volatile years.

Other Parties Testifying:

Jay Gordon, Washington State Dairy Federation
 Brian Enslow, Washington State Association of Counties
 Robert Johnson, Director of Community Development, Lewis County
 Fred Chapman, Lewis County Building Official
 Warren Cheney, Snohomish County Planning and Development Services
 Timothy Harris, Building Industry Association of Washington

Summary of Testimony from Other Parties:

The bill that called for this study is one that we and others worked on for a couple of years. The idea behind it was the wide disparity seen in the costs of and processes for building permits for

barns and other agricultural structures. We wanted the State Auditor's Office to review this, as some of the fees are outrageous. The intent section of the bill focuses on agricultural structures and the fees for these. We do see where the last section of the bill may have lost some of that focus for the audit. We are disappointed in the end result and the use of the advisory committee. The advisory committee was not consulted until December, when the report was already in draft form.

We acknowledge that the State Auditor's Office faced a difficult job given the timelines established in SB 5120 and the complexity of the issue. The bill gave the State Auditor's Office three directives: 1) provide guidance on determining allowable costs and methodologies on allocating costs; 2) establish and consult with the advisory committee, and 3) provide consideration of the relative size of local governments. They did not meet the intent of any of these directives. Counties were hoping for some specific guidance on these difficult issues. We do not believe anything in statute or case law supports that it is invalid to set fees based on the valuation of projects. It is likely that the cost of implementing the recommendations would far outweigh any benefit. If the Legislature decides to act on any of these recommendations, we urge them to work with their local government partners.

The audit was supposed to be narrowly focused on a subset of agricultural structures, basically, storage buildings that did not involve processing. The audit then grew to be very broad due to the Auditor's Office interpretation of intent. The fees need to reflect differences in local jurisdictions, not only in terms of factors such as staff size but also factors such as the differences in distance staff must travel. The Legislature set up the Building Code Council to look at building codes, including the fees associated with the various types of structures and occupancy. The Legislature could direct the Building Code Council to look further into these issues. In terms of modifications, these are issues appropriately addressed at the local government level.

There has to be a more in-depth mechanism for addressing the large differences in agricultural buildings. There are uniform building codes with regional modifiers. Consider sending this issue to the Building Code Council and the building officials, and allow the professionals in the field to try to come up with a solution.

Building permits may take several years to conclude from the time that they are issued. The revenue collected in one fiscal period might need to be carried over to future fiscal periods to offset costs of inspections. This was not factored into the cost recovery findings and it skews the judgments in the report. It is quite common in building divisions to generate surpluses in some years and deficits in other years. Fees are only too high if a building division is consistently over-recovering their costs year after year. The audit report shows that none of the eight counties consistently over-recovered in every year. The question of whether fees are too high or too low is really a reserve issue. In counties that manage their building divisions within their general fund, that reserve function is managed within the capacity of the general fund. For counties that operate with special funds or enterprise funds, it's an explicit reserve calculation. Further guidance may be needed on the appropriate reserve levels for counties to maintain across years. The fee methodology recommended in the audit report would cause permit fees to spike up in slow economic times when permit volume is low and to spike downward in boom times when permit volume is high.

Housing affordability and small business viability are enhanced with predictability and reasonable fees. The report shows that cost allocation is not being done well enough. The advisory committee does not include the interests of builders. It would have been nice to have those interests consulted on the study.

Some jurisdictions use part of their permit fees to enhance their general funds. Three recent lawsuits (Bainbridge Island, Clark County, City of Bellingham) have found problems with the permit collection fee. Anecdotally, we hear about similar problems all the time. Builders often don't want to sue; they want to work with local building departments.