LFA
LEGISLATIVE FISCAL ANALYST

INTERIM REPORT:
FEES AND FEE REVENUE

EXECUTIVE APPROPRIATIONS COMMITTEE JUNE 17, 2008

Executive Summary

This report examines statutory requirements as they relate to fees. It reviews the accuracy of fee revenue estimates. It analyzes revenue from fees compared with tax revenue and compensation increases. The report recommends that:

1. Legislators clarify in statute that all fees charged by an agency must be submitted to the Legislature and approved in an appropriations act;
2. The Legislature require that agencies provide to the Legislature reports to show how fee revenues will compare with all direct and indirect costs;
3. The Legislature clarify that regulatory fees are subject to public hearing requirements prior to legislative appropriations subcommittee meetings as defined in statute;
4. The Executive Appropriations Committee direct the Legislative Fiscal Analyst, Governor's Office of Planning and Budget, and agencies to better forecast fee revenue prior to an annual general session;
5. Appropriations subcommittees set-aside new fee based revenue sufficient to pay compensation increases prior to approving fee revenue appropriations for expanded programs and/or projects and that subcommittees report projected revenue, presumed fee-based compensation increases, and fee-based building block appropriations to the Executive Appropriations Committee.

Introduction

Utah's state budget is comprised of numerous revenue sources. While the Legislature as a whole balances and prioritizes revenue to the General Fund and Education Fund, these two sources represent approximately 49% of the total state budget. Fees charged to the public totaled $263 million in FY 2007, or 2.5% of the state budget.

State law currently requires that "regulatory fees" be approved each year by the Legislature during its annual General Session. Regulatory fees are defined as any fee established to finance licensure, registration, or certification. The implementation of this statute is inconsistent. Many state agencies submit more than just regulatory fees to the Legislature for approval, but in some cases, fees are not reviewed and approved.

Statute further requires that agencies "conduct a public hearing on any proposed regulatory fee and increase or decrease the proposed regulatory" (UCA 63J-1-303(2) (b)). Some agencies consider an appropriations subcommittee meeting a hearing and others hold separate public hearings.

In approving fee revenue, appropriations subcommittees largely bear the burden of balancing expenditures with estimated revenue. The accuracy of revenue estimates and thoroughness of review vary widely by subcommittee and agency.

Finally, while subcommittees largely control fee revenue appropriations for special projects, new programs, and program expansions, the Executive Appropriations Committee decides statewide compensation and internal service fund rate impact policy. These policies directly impact fee revenue expenditures, but are undecided during the appropriations subcommittee meetings.

In an attempt to address the above policy issues this report asks the following questions:

1. Which fees should be submitted to the Legislature for approval in an appropriations act?
2. How do other states review and approve fees?
3. For which fees should agencies be required to hold public hearings? What constitutes a public hearing?
4. To what degree are agency budgets impacted by fee revenues? How accurate are agency estimates?
5. Has fee revenue growth been sufficient to cover compensation increases? How can subcommittees account for compensation increases before approving other spending increases?

Which Fees Should Be Submitted To The Legislature For Approval In An Appropriations Act?

UCA 63J-1-303 requires all "regulatory fees" to be submitted for legislative approval, but there is no requirement for non-regulatory fees to be included in the process. The current code is vague on the definitional difference of regulatory versus non-regulatory fees. The Legislative Fiscal Analyst reviewed the process followed by agencies submitting new fees for legislative approval during the 2007 and 2008 General Sessions.

The Legislative Fiscal Analyst attempted to identify how many of the fees approved by the 2008 Legislature may be considered non-regulatory by applying the statutory definition:

UCA 63J-1-303 (1) (d).Regulatory fees means fees established for licensure, registration, or certification.

Of the 2,680 fees included in the 2008 appropriations bills, 230 or 9% were clearly not regulatory and not required by statute to be approved by the Legislature. Some examples of these fees are photocopy, data processing charge, returned check charge, or late fees. Table 1 represents a summary of the findings based on each appropriations subcommittee.

Non-Regulatory Fees in Appropriation Bills, 2008 GS
(Excluding ISF Rates*)

	All fees	Non-reg	Non-reg as %
Executive Office & Criminal Justice	82	6	7%
Capital Facilities & Gov't Op.	24	24	100%
Commerce & Workforce Services	636	15	2%
Economic Development & Revenue	65	17	26%
Health & Human Services	658	101	15%
Natural Resources	800	7	1%
Public Education	21	4	19%
Transportation and Environment	394	62	16%
Total Fees	**2680**	**230**	**9%**

**ISF Rates are not fees and are not included in this study. The Internal Service Funds (ISF) include rates that are charged internally for services such as information technology services and building maintenance. These rates are not considered and are not included in these figures.*

ISF Rates*	499
Total Fees/ISF Rates in Appropriations Bills	3179

Table 1

The Legislative Fiscal Analyst also found several examples where the classification of a fee as regulatory versus non-regulatory based on current statutory definition was not clear. The following examples are fees that could be considered regulatory in some interpretations, but non-regulatory in other interpretations:

a. Department of Public Safety: *Fingerprints and Photos fees*
b. Department of Health, Epidemiology & Lab Services: *Environmental Testing fees, Expert Witness fees, Diet Monitoring fee*
c. Department of Natural Resources: *Camping fees or Easement fees*

How Do Other States Approve and Review Fees?

The Legislative Fiscal Analyst conducted an informal survey of other states to determine different ways in which fees are reviewed. A few unique approaches to reviewing fees are listed below:

1. Texas – The Legislature sets an annual revenue goal for fees; each agency adjusts fees as often as needed to reach that revenue goal.

2. Idaho – Agencies set all fees which are subject to legislative review in the first few weeks of session.

3. Florida – Agencies must demonstrate annually that fee revenues are sufficient to cover both the direct and indirect costs associated with the services provided or provide justification for a subsidy from other funds.

4. Most other states – Some combination of fee details in statute, agency authority to establish fees, legislative oversight of agency authority for setting fees and legislation for fee changes.

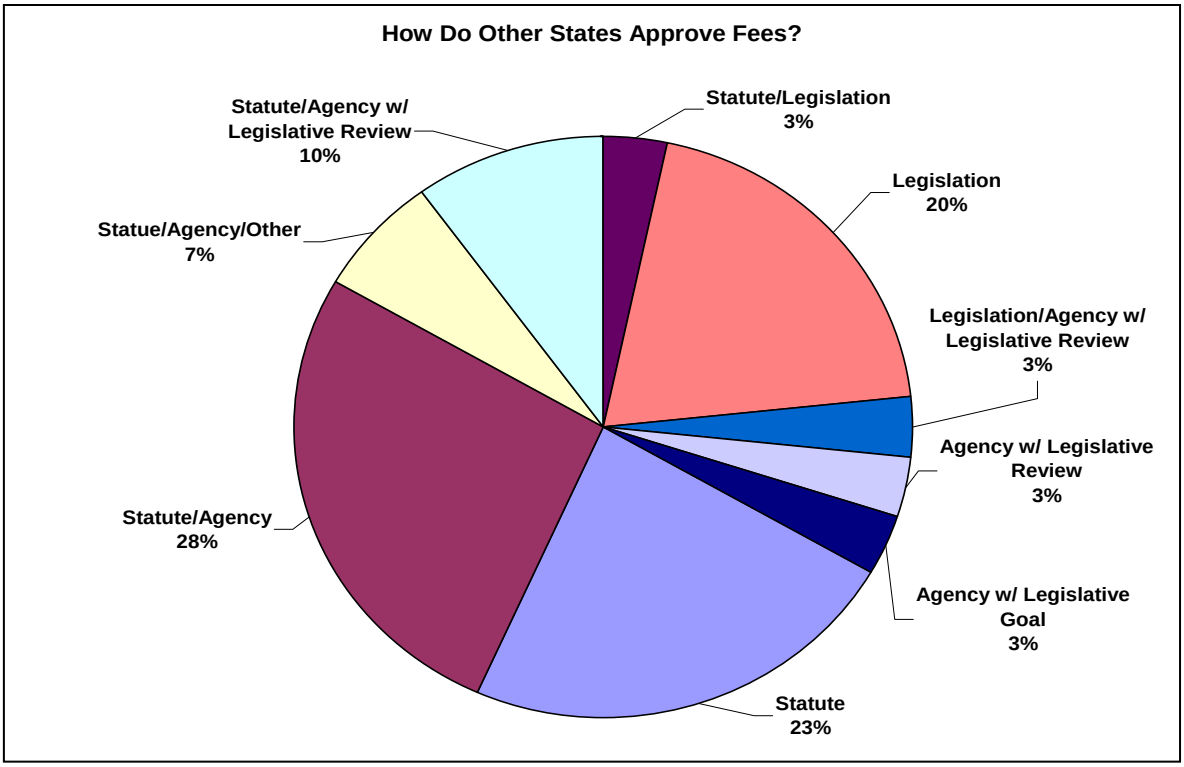


Figure 1

Of the 49 states surveyed, 30 provided responses. The chart above, Figure 1, summarizes the results of how other states approve their fees. For the definition of each method please see the Appendix. As noted on the chart, the most common methods are: (1) some fees in statute with agency authority to set some fees, (2) all fees in statute, and (3) all fees approved through the legislative process.

UCA 63J-1-303 (2)(a)(i) requires agencies to "adopt a schedule of fees assessed for services provided by the fee agency that are reasonable, fair, and reflect the cost of services provided." Based on this guideline and the lessons learned from other states, the Legislative Fiscal Analyst recommends that agencies be required to submit annual reports showing whether or not fee revenues cover all associated direct and indirect costs. For cases where fee revenues do not cover all costs, justification should be provided for using other funds to subsidize costs. Further, as fees are a significant part of state revenue, the Fiscal Analyst recommends all fees be submitted to the Legislature for approval in an appropriations act.

For Which Fees Should Agencies Be Required To Hold Public Hearings? What Constitutes a Public Hearing?

Currently, Utah Code requires each agency to conduct a public hearing on any proposed new regulatory fee and to adjust the fee based on the results from that public hearing. During the 2007 General Session three agencies received Legislative approval for a total of thirty new fees. In accordance with current code, the Department of Commerce held two public hearings to review its three new fees. No members of the public attended the meetings, so no changes to the proposed fees were made. The Department of Health and Department of Public Safety had the remaining twenty seven new fees. Both agencies did not hold public hearings and indicated that they considered the appropriations subcommittee meetings, where the new fees were presented to the Legislature, as their public hearings.

During the 2008 General Session three agencies received approval for a total of twenty-seven new fees. The Department of Commerce held a public hearing to review its six new fees. No members of the public attended the meetings, so no changes to the proposed fees were made. The Department of Health did not hold public hearings and indicated that it considered the appropriations subcommittee meeting as its public hearing. The Department of Agriculture changed its two new fees based on requests from the public, but not in a public hearing, and considered the appropriations subcommittee meeting as its public hearing.

UCA 52-4-102 states that the purpose for state agencies is to conduct the people's business, which must be done openly. It defines that a meeting is a convening of a public body with a quorum present to discuss or act on a matter under its jurisdiction or advisory power. A public body is any administrative, advisory, executive, or legislative body that is created by constitution, law rule or resolution. Additionally, they must expend or receive support in whole or part by tax revenue. A public meeting requires that a public notice is posted at least 24 hours prior to the meeting being held, provided to a newspaper or local media correspondent, posted at the principal office, and other requirements. There must be written minutes and recording that must be kept of the proceedings.

In public hearings on fees, an agency is required to solicit input from the public on proposed changes in fee schedules. From this feedback an agency can then make adjustments or keep the proposed fee the same before submitting fees the Legislative Fiscal Analyst and Governor's Office of Planning and Budget. This is a requirement that must be adhered to separately from an appropriations meeting.

An appropriations subcommittee meeting is typically held during each annual legislative session in which agencies come before the Legislature for the formal budgetary process. It is conducted after a public meeting is held by an agency to solicit public input on proposed changes to regulatory fees. The current definition needs to clarify that proposed regulatory fees are subject to public hearing requirements prior to legislative appropriations subcommittees.

To What Degree Are Agency Budgets Impacted By Fee Revenues? How Accurate Are Agency Estimates?

From FY 1995 – FY 2007, the agencies listed in the following table collected over $2.1 billion in fee revenue. In FY 2007, agencies collected around $263 million. As one can see in Table 2, the percentage of expenditures that comes from fees varies widely by agency. Agencies such as the Department of Natural Resources or the Department of Public Safety cover a significant portion of their budget through fees, whereas other agencies lack such ability. Table 2 also includes non-fee revenue to General Fund Restricted accounts and Dedicated Credits – this column includes interest income, sales of capital assets, and revenue from public agencies.

FY 2007 Fee Revenue to General Fund Restricted or Dedicated Credits[1]

Agency	FY 2007 Actual Expenditures	Fee Revenue as Percent of Actual Expenditures	Sum of Fee Revenue	Sum of Nonfee Revenue[3]
Legislative Printing	$762,900	23.2%	$176,640	$0
Judicial Branch	$118,393,500	10.6%	$12,504,139	$2,723,342
Capitol Preservation Board	$2,864,600	10.6%	$302,467	$17,715
State Treasurer	$2,325,700	0.0%	$0	$1,470,256
Governor's Office	$20,707,100	4.0%	$827,573	$11,039,240
Attorney General	$43,862,300	0.1%	$30,410	$17,018,778
State Auditor	$4,533,500	0.0%	$0	$1,199,396
Dept of Administrative Service	$23,081,300	0.0%	$10,928	$246,148,556
Dept of Technology Services[2]	$4,789,800	1.3%	$60,000	$126,351,731
Tax Commission	$74,838,600	11.4%	$8,526,578	$15,757,113
Department of Human Resour	$3,393,200	0.0%	$0	$11,576,824
Department of Public Safety	$139,084,500	28.1%	$39,043,044	$12,031,321
Utah National Guard	$31,915,000	0.0%	$0	$252,909
Department of Human Service	$534,177,600	0.8%	$4,203,725	$16,418,197
Department of Health	$1,811,148,600	1.6%	$29,274,115	$94,020,859
Medical Education Council	$770,800	0.0%	$0	$2,586,496
Board of Education	$437,428,900	2.0%	$8,702,871	$54,530,497
Department of Corrections	$243,653,000	13.1%	$31,944,971	$471,517
Dept of Environmental Quality	$78,811,300	17.3%	$13,649,833	$6,828,901
School & Inst Trust Lands Ad	$17,553,300	0.1%	$14,093	$16,148,627
Dept of Natural Resources	$189,351,300	29.3%	$55,397,507	$21,262,402
Department of Agriculture	$27,327,600	9.9%	$2,716,863	$3,989,563
Dept of Workforce Services	$276,536,800	0.4%	$1,090,917	$16,647,302
Alcoholic Beverage Control	$24,902,700	7.3%	$1,806,974	$193,475,389
Labor Commission	$10,239,200	23.9%	$2,442,532	$54,749,204
Department of Commerce	$21,909,400	154.6%	$33,870,473	$2,278,847
Financial Institutions	$5,617,300	103.7%	$5,825,820	$0
Insurance Department	$33,779,600	2.7%	$901,681	$32,411,000
Public Service Commission	$10,709,600	76.3%	$8,176,144	$0
Dept of Community & Culture	$105,221,000	0.4%	$415,448	$7,459,092
Utah Dept of Transportation	$1,330,372,200	0.1%	$950,567	$146,996,080
Total	$5,630,062,200		$262,866,313	$1,115,861,153

[1] These numbers represent both regulatory and nonregulatory fees. Only fee revenue charged to the public is included in fee revenue. A number of fees are imposed on other state agencies, that may be passed through to the public. These are not included

[2] The Department of Technology Services does receive fee revenue from sales of goods and services. The number represented here is understated. Also, the Dept. of Technology Services and the Dept. of Administrative Services has internal service fund revenue.

[3] Nonfee revenue includes such things as interest income, sales of capital assets, and revenue from public agencies.

Table 2

Each year when agencies appear before their appropriations subcommittees and request fee changes, they are required to provide an estimate of the revenue change as a result of the fee changes. If subcommittees recommend the fee changes to the Executive Appropriations Committee, the changes are summarized in a report prepared by the Legislative Fiscal Analyst entitled, "Consolidated Fee Changes Summary." The following chart compares total estimated growth from fee changes, as reported in the consolidated summary (not including internal service fund rate changes), to total actual growth. A significant disparity begins to appear in 2004 due largely to demand growth in services for which a fee didn't change, but also perhaps due to underestimation of revenue from new fees and changed fees.

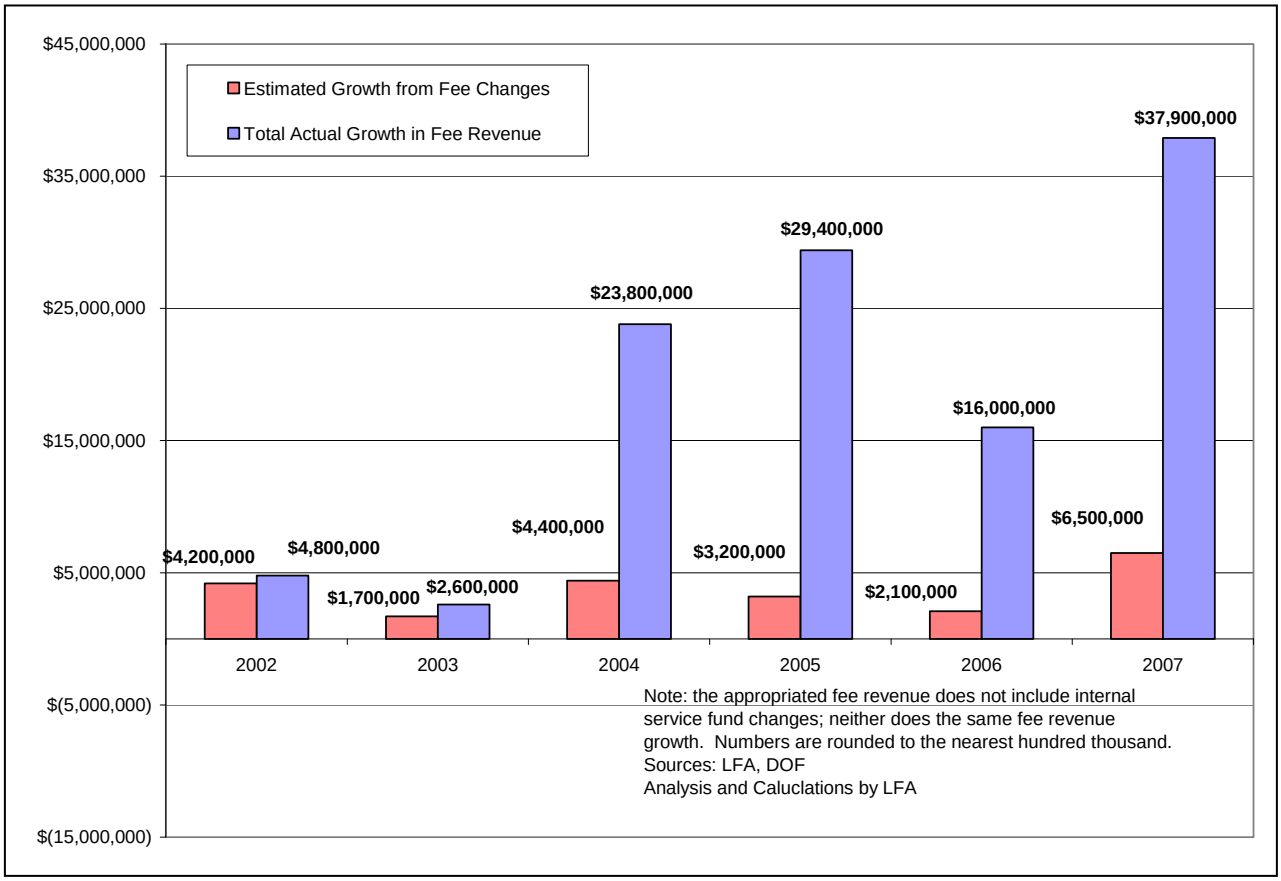


Figure 2

Below are some of the top fee increases for the years 2004 – 2007. Fees increased significantly in the past three fiscal years for the following reasons: population growth, and to cover the increased costs of providing certain services.

	2004		2005		2006		2007	
	Fee	Absolute Growth (Y/Y)	Fee	Absolute Growth (Y/Y)	Fee	Absolute Growth (Y/Y)	Fee	Absolute Growth (Y/Y)
1	Electronic Payment Fees	$3,199,090	Nursing Facil Assess Coll	$10,104,763	Fish & Game Licenses	$2,048,816	Fish & Game Licenses	$1,796,376
2	Fish & Game Licenses	$1,943,812	Psc Univ Tele Surcharge	$3,374,251	NR Obm O&G Conservation Tx Fee	$1,928,486	Nursing Facil Assess Coll	$1,595,916
3	DNR Park Entrance Fees	$1,899,770	DPS Unified E911 Phone Fee	$2,800,086	OPL Barber/Cosmet/Electr	$1,260,464	Driver's License Fees	$1,512,950
4	Psc Univ Tele Surcharge	$1,752,769	Juvenile Courts Security Fees	$1,840,685	Uninsured Penalty	$1,222,223	Off Hwy Vehicle Registn Fees	$1,081,366
5	Court Security Fees	$1,620,735	Uninsured Penalty	$1,043,447	OPL Physician Licensing	$1,203,919	FI Supervision Indstral Loan	$1,013,573
6	DNR Camping Fees	$1,498,689	NR Obm O&G Conservation Tx Fee	$935,713	DOH Metabolic Screening	$1,163,183	OPL Nursing Licensing	$839,362
7	DNR Greens Fees	$1,380,761	Justice Ct Tec/Sec/Trning Fees	$920,343	Driver's License Reinstatment	$1,017,862	DOH Metabolic Screening	$826,169
8	Security Contracts	$1,277,691	DPS Emergency Serv Phone Fee	$888,300	DPS Unified E911 Phone Fee	$921,124	DPS Uhp Escort Services	$751,911
9	OPL Physician Licensing	$1,205,995	OPL Nursing Licensing	$783,150	Psc Univ Tele Surcharge	$885,981	Driver's License Reinstatment	$692,111
10	OPL Barber/Cosmet/Electr	$1,108,005	Court Security Fees	$761,067	Radioactive Waste Disp Fee	$750,001	Electronic Payment Fees	$589,182

Note: listed above are examples as to why revenues were up from 2004 - 2007. It is important to note that the following are not listed above, although having experienced growth: contracts for services, sales of good & materials, rental revenue. These are not listed because of the nature of the coding; it was difficult to decifer when, on a given occassion, whether something was a fee or not.

Table 3

Figure 3 depicts growth in fee revenue on an absolute basis. As one can see, fee revenue has a business cycle, somewhat comparable to the business cycle for Utah. In the year 2001, economic growth slowed significantly in the United States and shortly thereafter Utah followed. Fees relating to publication sales, licensing fees, and outdoor fees are among those fees that decreased in absolute revenue amount. The magnitudes and timing vary, but the general pattern is similar to the economy. From FY 1995 to FY 2007 the total growth in fee revenue has been 148%.

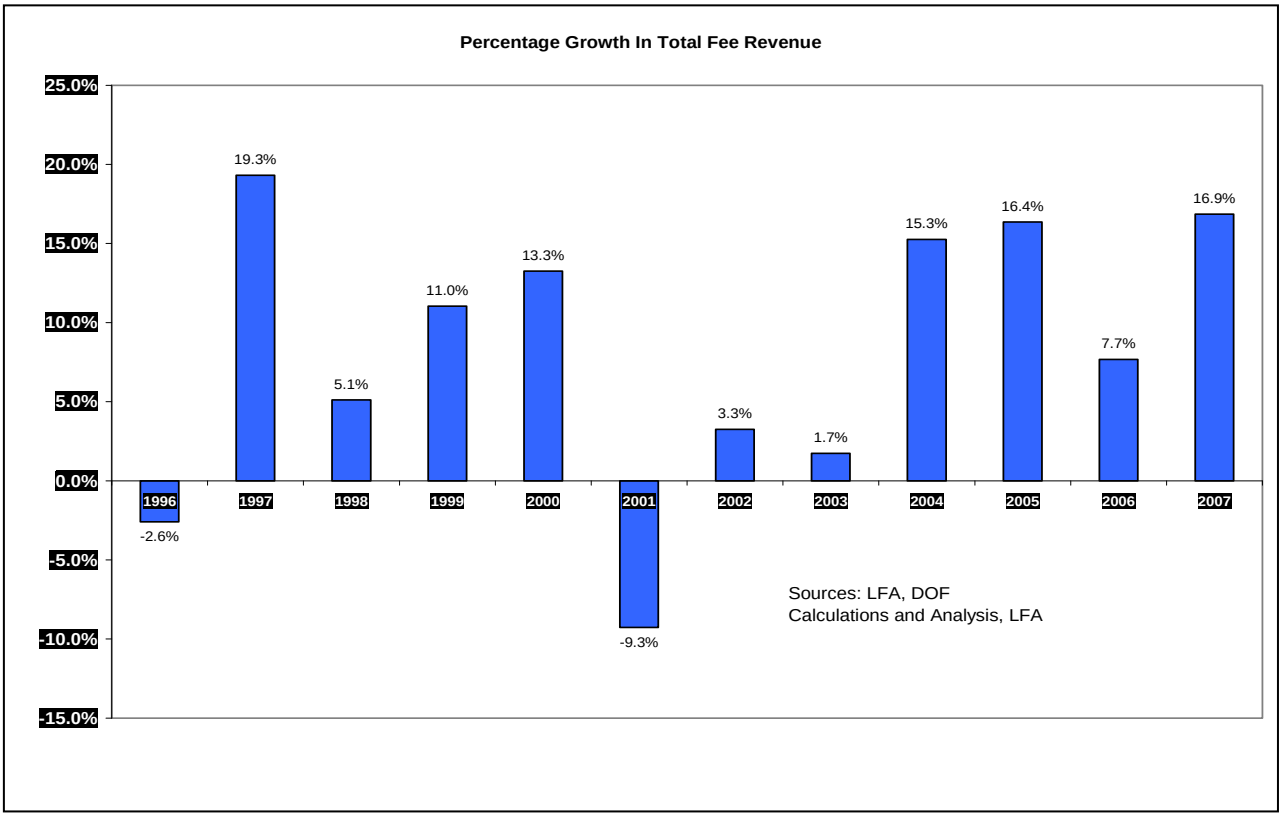


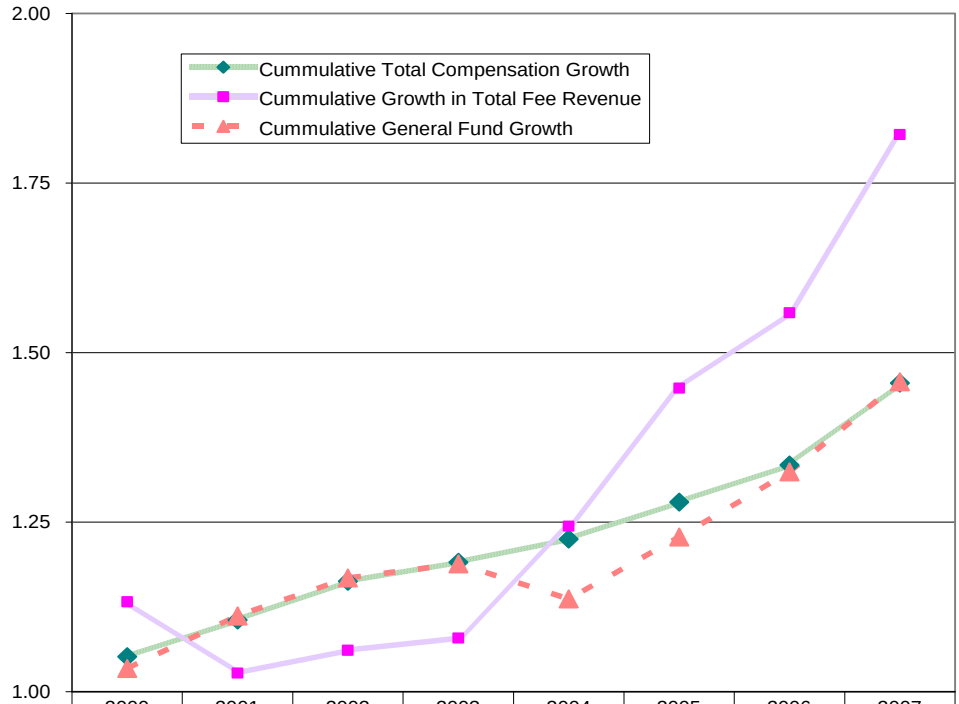
Figure 3

The Legislative Fiscal Analyst Office recommends the Executive Appropriations Committee direct the Legislative Fiscal Analyst, Governor's Office of Planning and Budget, and agencies to determine a more consistent method for projecting revenue from fees.

Has Fee Revenue Growth Been Sufficient To Cover Compensation Increases?

Figure 4 shows fee revenue amounts as they relate to compensation growth over time from FY 2000 to FY 2007. This chart represents what $1 of fee would have grown to starting in the year 1999. The chart demonstrates that, since 2004, statewide there has been sufficient fee revenue to account for compensation increases, however this may vary from department to department. Yet there have also been increasing requests from agencies for additional General Fund revenue to help offset increasing fees to handle compensation increases.

In essence, this chart represents what $1 of fee would have grown to starting in the year 1999. Fee revenue has grown the fastest (82%), followed by compensation growth (46%), and general fund (46%), which over the time period covered, grew at the same cummulative rate.
One note: the growth in compensation includes actual total compensation growth from 2003 onward. If one allows for average total compensation growth of 5.2% for the years 2000 - 2002, growth in compensation is equal to general fund growth. COLA and merit increases for these years were 4%, 2.5%, and 0% for the years 2000, 2001, and 2002 respectively.
Sources: LFA, DHRM, DOF
Calculations and Analysis by LFA



	2000	2001	2002	2003	2004	2005	2006	2007
Cummulative Total Compensation Growth	1.05	1.11	1.16	1.19	1.23	1.28	1.33	1.46
Cummulative Growth in Total Fee Revenue	1.13	1.03	1.06	1.08	1.24	1.45	1.56	1.82
Cummulative General Fund Growth	1.03	1.11	1.17	1.19	1.14	1.23	1.32	1.46

Figure 4

Currently, the timeline of the appropriations process during an annual General Session has each appropriation subcommittee meeting during the first few weeks of the session. This is when each agency comes before one of the nine appropriations subcommittees to present funding requests for special projects, new programs, and program expansions. Appropriations subcommittees also will hear from agencies on their proposed fee schedules for the new fiscal year. The end product of this process is recommended changes in fee revenue appropriations, recommended changes in fees, and a prioritized list of General and Education Funds requests. This process is completed before any compensation decisions have been determined.

For General and Education Fund priorities, funding lists will then go to the Executive Appropriations Committee. The Executive Appropriations Committee determines statewide compensation at the same time it weighs other priorities. Total General and Education fund expenditure are balanced against revenue. Compensation decisions are typically not finalized until the closing weeks of an annual legislative session. Thus the current process does not allow an appropriations subcommittee to address fee revenue funding priorities along with compensation issues.

An illustration of this current practice may be found with the Department of Financial Institutions, which is funded with General Funded Restricted monies. The Department of Financial Institutions will submit its funding requests for special projects, new programs, and program expansions to the Commerce and Workforce Services appropriations subcommittee. The requests will then be prioritized along with other agencies requests. The Commerce and Workforce Services appropriations subcommittee will then balance this request to available funds for the department, but will not be able to address any compensation increases that may eventually compete with other funding requests.

Because appropriations subcommittees approve fee-based building blocks absent consideration of fee-based compensation increases, and because the Executive Appropriations Committee does not balance fee-based revenue estimates against expenditures, remaining available fee revenue after building blocks may sometimes be insufficient to fund compensation increases. In such cases, agencies can spend only what is appropriated, or what is collected, which ever is less.

If in balancing fee revenue against expenditures, appropriations subcommittees predict lower available fee revenue due to compensation increases, the subcommittees may change their building block priorities, or subcommittees may recommend fee changes.

For the above reasons, the Legislative Fiscal Analyst recommends that subcommittees set-aside fee revenue sufficient to fund compensation increases prior to considering building blocks from fee revenue. The subcommittees should then report fee revenue, compensation assumptions, and fee-based building block appropriations to the Executive Appropriations Committee.

Recommendations

Based on the information and research gathered as noted in the report above, the Legislative Fiscal Analyst recommends the following improvements to the review and approval of fees:

1. Legislators clarify in statute that all fees charged by an agency must be submitted to the Legislature and approved in an appropriations act;
2. The Legislature require that agencies provide to the Legislature reports to show how fee revenues will compare with all direct and indirect costs;
3. The Legislature clarify that regulatory fees are subject to public hearing requirements prior to legislative appropriations subcommittee meetings as defined in statute;
4. The Executive Appropriations Committee direct the Legislative Fiscal Analyst, Governor's Office of Planning and Budget, and agencies to better forecast fee revenue prior to an annual general session;
5. Appropriations subcommittees set-aside new fee based revenue sufficient to pay compensation increases prior to approving fee revenue appropriations for expanded programs and/or projects and that subcommittees report projected revenue, presumed fee-based compensation increases, and fee-based building block appropriations to the Executive Appropriations Committee.

Appendix

How do Other States Approve Their Fees?		
Category	Definition	State Examples
Statute	All fees and accompanying fee details are contained in the state's statutes. Any fee changes must be approved through statutory changes.	Oregon Michigan New Mexico Nebraska Maine Ohio Florida
Statute/Agency	Some fees are contained in the state's statute while other fees can be set by an agency.	Arizona North Dakota Mississippi Colorado Maryland Rhode Island Connecticut South Dakota
Statue/Agency/Other	Some fees are contained in the state's statute while other fees can be set by an agency. Still other fees have a third route they take to get approval.	Massachusetts North Carolina
Statute/Agency w/ Legislative Review	Some fees are contained in the state's statute while other fees can be set by an agency, but the agency decisions are subject to Legislative review.	West Virginia Nevada Wisconsin
Statue/Legislation	Some fees are set in statute while others must be approved through legislation.	Montana
Legislation	All fees must be approved through legislation.	Minnesota New York Washington Delaware Vermont Arkansas
Legislation/Agency w/ Legislative Review	Some fees must be approved through legislation while other fees can be set by the agency, but are subject to legislative review.	Illinois
Agency w/ Legislative Review	All fees can be set by an agency, but are subject to legislative review.	Idaho
Agency w/ Legislative Money goal	The state sets a money target for fees and the agency has authority to change fees as needed throughout the year to meet the revenue goal.	Texas