

AGENCY FEE ASSESSMENT AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kay J. Christofferson

Senate Sponsor: Lincoln Fillmore

LONG TITLE

General Description:

This bill modifies provisions relating to the assessment of fees by state agencies.

Highlighted Provisions:

This bill:

- ▶ modifies provisions relating to a fee agency's charging of a new service fee or regulatory fee;
- ▶ modifies definitions applicable to provisions related to fees of state agencies;
- ▶ requires the Governor's Office of Planning and Budget and the Division of Finance to submit a report summarizing agency fee information; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53-2a-1102, as last amended by Laws of Utah 2021, Chapter 395

63J-1-504, as last amended by Laws of Utah 2021, Chapter 382

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **53-2a-1102** is amended to read:

53-2a-1102. Search and Rescue Financial Assistance Program -- Uses --

Rulemaking -- Distribution.

(1) As used in this section:

(a) "Assistance card program" means the Utah Search and Rescue Assistance Card Program created within this section.

(b) "Card" means the Search and Rescue Assistance Card issued under this section to a participant.

(c) "Participant" means an individual, family, or group who is registered pursuant to this section as having a valid card at the time search, rescue, or both are provided.

(d) "Program" means the Search and Rescue Financial Assistance Program created within this section.

(e) (i) "Reimbursable base expenses" means those reasonable expenses incidental to search and rescue activities.

(ii) "Reimbursable base expenses" include:

(A) rental for fixed wing aircraft, snowmobiles, boats, and generators;

(B) replacement and upgrade of search and rescue equipment;

(C) training of search and rescue volunteers;

(D) costs of providing life insurance and workers' compensation benefits for volunteer search and rescue team members under Section [67-20-7.5](#); and

(E) any other equipment or expenses necessary or appropriate for conducting search and rescue activities.

(iii) "Reimbursable base expenses" do not include any salary or overtime paid to an individual on a regular or permanent payroll, including permanent part-time employees of any agency of the state.

(f) "Rescue" means search services, rescue services, or both search and rescue services.

(2) There is created the Search and Rescue Financial Assistance Program within the division.

(3) (a) The financial program and the assistance card program shall be funded from the following revenue sources:

- 58 (i) any voluntary contributions to the state received for search and rescue operations;
59 (ii) money received by the state under Subsection (11) and under Sections 23-19-42,
60 41-22-34, and 73-18-24;
61 (iii) money deposited under Subsection 59-12-103(14);
62 (iv) contributions deposited in accordance with Section 41-1a-230.7; and
63 (v) appropriations made to the program by the Legislature.
- 64 (b) All money received from the revenue sources in Subsections (3)(a)(i), (ii), and (iv),
65 and 90% of the money described in Subsection (3)(a)(iii), shall be deposited into the General
66 Fund as a dedicated credit to be used solely for the program.
- 67 (c) 10% of the money described in Subsection (3)(a)(iii) shall be deposited into the
68 General Fund as a dedicated credit to be used solely to promote the assistance card program.
- 69 (d) All funding for the program is nonlapsing.
- 70 (4) Subject to Subsections (3)(b) and (c), the director shall use the money described in
71 this section to reimburse counties for all or a portion of each county's reimbursable base
72 expenses for search and rescue operations, subject to:
- 73 (a) the approval of the Search and Rescue Advisory Board as provided in Section
74 53-2a-1104;
- 75 (b) money available in the program; and
76 (c) rules made under Subsection (7).
- 77 (5) Money described in Subsection (3) may not be used to reimburse for any paid
78 personnel costs or paid man hours spent in emergency response and search and rescue related
79 activities.
- 80 (6) The Legislature finds that these funds are for a general and statewide public
81 purpose.
- 82 (7) The division, with the approval of the Search and Rescue Advisory Board, shall
83 make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and
84 consistent with this section:
- 85 (a) specifying the costs that qualify as reimbursable base expenses;

- (b) defining the procedures of counties to submit expenses and be reimbursed;
- (c) defining a participant in the assistance card program, including:
- (i) individuals; and
- (ii) families and organized groups who qualify as participants;
- (d) defining the procedure for issuing a card to a participant;
- (e) defining excluded expenses that may not be reimbursed under the program, including medical expenses;
- (f) establishing the card renewal cycle for the Utah Search and Rescue Assistance Card Program;
- (g) establishing the frequency of review of the fee schedule;
- (h) providing for the administration of the program; and
- (i) providing a formula to govern the distribution of available money among the counties for uncompensated search and rescue expenses based on:
- (i) the total qualifying expenses submitted;
- (ii) the number of search and rescue incidents per county population;
- (iii) the number of victims that reside outside the county; and
- (iv) the number of volunteer hours spent in each county in emergency response and search and rescue related activities per county population.
- (8) (a) The division shall, in consultation with the Outdoor Recreation Office, establish the fee schedule of the Utah Search and Rescue Assistance Card Program under Subsection ~~63J-1-504(6)~~ 63J-1-504(7).
- (b) The division shall provide a discount of not less than 10% of the card fee under Subsection (8)(a) to a person who has paid a fee under Section 23-19-42, 41-22-34, or 73-18-24 during the same calendar year in which the person applies to be a participant in the assistance card program.
- (9) Counties may not bill reimbursable base expenses to an individual for costs incurred for the rescue of an individual, if the individual is a current participant in the Utah Search and Rescue Assistance Card Program at the time of rescue, unless:

(a) the rescuing county finds that the participant acted recklessly in creating a situation resulting in the need for the county to provide rescue services; or

(b) the rescuing county finds that the participant intentionally created a situation resulting in the need for the county to provide rescue services.

(10) (a) There is created the Utah Search and Rescue Assistance Card Program. The program is located within the division.

(b) The program may not be utilized to cover any expenses, such as medically related expenses, that are not reimbursable base expenses related to the rescue.

(11) (a) To participate in the program, a person shall purchase a search and rescue assistance card from the division by paying the fee as determined by the division in Subsection (8).

(b) The money generated by the fees shall be deposited into the General Fund as a dedicated credit for the Search and Rescue Financial Assistance Program created in this section.

(c) Participation and payment of fees by a person under Sections 23-19-42, 41-22-34, and 73-18-24 do not constitute purchase of a card under this section.

(12) The division shall consult with the Outdoor Recreation Office regarding:

(a) administration of the assistance card program; and

(b) outreach and marketing strategies.

(13) Pursuant to Subsection 31A-1-103(7), the Utah Search and Rescue Assistance Card Program under this section is exempt from being considered insurance as that term is defined in Section 31A-1-301.

Section 2. Section 63J-1-504 is amended to read:

63J-1-504. Fees -- Adoption, procedure, and approval -- Establishing and assessing fees without legislative approval -- Report summarizing fees.

(1) As used in this section:

(a) (i) "Agency" means each department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,

unit, bureau, panel, or other administrative unit of the state.

(ii) "Agency" does not ~~[mean]~~ include the Legislature or ~~[its committees.]~~ a committee or staff office of the Legislature.

(b) "Agency's cost" means all of a fee agency's direct and indirect costs and expenses for providing the goods or service for which the fee agency charges a fee or for regulating the industry in which the persons paying the fee operate, including:

(i) salaries, benefits, contracted labor costs, travel expenses, training expenses, equipment and material costs, depreciation expense, utility costs, and other overhead costs; and

(ii) costs and expenses for administering the fee.

~~[(b)]~~ (c) "Fee agency" means [any] an agency that is authorized to establish [fees] and charge a service fee or a regulatory fee.

~~[(c)]~~ (d) "Fee schedule" means the complete list of service fees and regulatory fees charged by a fee agency and the amount of those fees.

(e) "Regulatory fee" means a fee that a fee agency charges to cover the agency's cost of regulating the industry in which the persons paying the fee operate.

(f) "Service fee" means a fee that a fee agency charges to cover the agency's cost of providing the goods or service for which the fee is charged.

~~(2) [Each]~~ (a) A fee agency that charges or intends to charge a service fee or regulatory fee shall adopt a fee schedule [of fees assessed for services provided by the fee agency that are:].

(b) A service fee or regulatory fee that a fee agency charges shall:

~~[(a)]~~ (i) be reasonable~~[- fair, and reflect the cost of services provided;]~~ and fair;

(ii) reflect and be based on the agency's cost for the fee; and

~~[(b)]~~ (iii) be established according to a cost formula determined by the executive director of the Governor's Office of Planning and Budget and the director of the Division of Finance in conjunction with the fee agency seeking to establish the fee.

(3) Except as provided in Subsection ~~[(6)]~~ (7), a fee agency may not:

(a) set fees by rule; or

(b) create, change, or collect any fee unless the fee has been established according to the procedures and requirements of this section.

(4) Each fee agency that is proposing a new fee or proposing to change a fee shall:

(a) present each proposed fee at a public hearing, subject to the requirements of Title 52, Chapter 4, Open and Public Meetings Act;

(b) increase, decrease, or affirm each proposed fee based on the results of the public hearing;

(c) except as provided in Subsection ~~[(6)]~~ (8), submit the fee schedule to the Legislature as part of the agency's annual appropriations request; and

(d) ~~[where necessary,]~~ modify the fee schedule as necessary to implement the Legislature's actions.

(5) (a) No later than November 30, 2022, the Governor's Office of Planning and Budget and the Division of Finance shall submit a report to the Infrastructure and General Government Appropriations Subcommittee of the Legislature.

(b) A report under Subsection (5)(a) shall:

(i) provide a summary of:

(A) the types of service fees and regulatory fees included in the fee schedules of all fee agencies;

(B) the methods used by fee agencies to determine the amount of fees;

(C) each estimated agency's cost related to each fee;

(D) whether a fee is intended to cover the agency's cost related to the fee;

(E) whether the fee agency intends to subsidize the fee to cover the agency's cost related to the fee and, if so, the fee agency's justification for the subsidy; and

(F) whether the fee agency set the fee at an amount that exceeds the agency's cost related to the fee and, if so, the fee agency's justification for the excess fee; and

(ii) include any recommendations for improving the process described in this section.

~~[(5) (a) Each]~~ (6) (a) A fee agency shall submit the fee agency's fee schedule [or special assessment amount] to the Legislature for the Legislature's approval on an annual basis.

(b) The Legislature may approve, increase or decrease and approve, or reject any fee submitted to it by a fee agency.

~~[(6)]~~ (7) After conducting the public hearing required by this section, a fee agency may establish and assess fees without first obtaining legislative approval if:

(a) (i) the Legislature creates a new program that is to be funded by fees to be set by the Legislature;

(ii) the new program's effective date is before the Legislature's next annual general session; and

(iii) the fee agency submits the fee schedule for the new program to the Legislature for its approval at a special session, if allowed in the governor's call, or at the next annual general session of the Legislature, whichever is sooner; or

(b) (i) the fee agency proposes to increase or decrease an existing fee for the purpose of adding or removing a transactional fee that is charged or assessed by a non-governmental third party but is included as part of the fee charged by the fee agency;

(ii) the amount of the increase or decrease in the fee is equal to the amount of the transactional fee charged or assessed by the non-governmental third party; and

(iii) the increased or decreased fee is submitted to the Legislature for the Legislature's approval at a special session, if allowed in the governor's call, or at the next annual session of the Legislature, whichever is sooner.

~~[(7)]~~ (8) (a) ~~[Each]~~ A fee agency that ~~[wishes]~~ intends to change any fee shall submit to the governor, as part of the agency's annual appropriation request a list that identifies:

(i) the title or purpose of the fee;

(ii) the present amount of the fee;

(iii) the proposed new amount of the fee;

(iv) the percent that the fee will have increased if the Legislature approves the higher fee;

(v) the estimated total annual revenue ~~[change]~~ and total estimated annual revenue change that will result from the ~~[change in the]~~ changed fee;

- 226 (vi) the account or fund into which the fee will be deposited; ~~[and]~~
227 (vii) the reason for the change in the fee~~[-]~~;
228 (viii) the estimated number of persons to be charged the fee;
229 (ix) the estimated agency's cost related to the fee;
230 (x) whether the fee is a service fee or a regulatory fee;
231 (xi) whether the fee is intended to cover the agency's cost related to the fee;
232 (xii) whether the fee agency intends to subsidize the fee to cover the agency's cost
233 related to the fee and, if so, the fee agency's justification for the subsidy; and
234 (xiii) whether the fee agency set the fee at an amount that exceeds the agency's cost
235 related to the fee and, if so, the fee agency's justification for the excess fee.
236 (b) (i) The governor may review and approve, modify and approve, or reject the fee
237 increases.
238 (ii) The governor shall transmit the list required by Subsection ~~[(7)]~~ (8)(a), with any
239 modifications, to the legislative fiscal analyst with the governor's budget recommendations.
240 (c) Bills approving any fee change shall be filed before the beginning of the
241 Legislature's annual general session, if possible.
242 ~~[(8)]~~ (9) (a) Except as provided in Subsection ~~[(8)]~~ (9)(b), the School and Institutional
243 Trust Lands Administration, established in Section 53C-1-201, is exempt from the
244 requirements of this section.
245 (b) The following fees of the School and Institutional Trust Lands Administration are
246 subject to the requirements of this section: application, assignment, amendment, affidavit for
247 lost documents, name change, reinstatement, grazing nonuse, extension of time, partial
248 conveyance, patent reissue, collateral assignment, electronic payment, and processing.