

Effective 5/3/2023

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 include:
 - (A) the Legislature or a committee or staff office of the Legislature; or
 - (B) the Judiciary, as that term is defined in Section 78A-2-310.
- (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.
- (c) "Fee agency" means an agency that is authorized to establish and charge a service fee or a regulatory fee.
- (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)

- (a) A fee agency that charges or intends to charge a service fee or regulatory fee shall adopt a fee schedule.
- (b) A service fee or regulatory fee that a fee agency charges shall:
 - (i) be reasonable and fair;
 - (ii) reflect and be based on the agency's cost for the fee; and
 - (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 (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 (8), submit the fee schedule to the Legislature as part of the agency's annual appropriations request; and
- (d) 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.
- (6)
- (a) A fee agency shall submit the fee agency's fee schedule 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.
- (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.
- (8)
- (a) A fee agency that 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 and total estimated annual revenue change that will result from the changed fee;

- (vi) the account or fund into which the fee will be deposited;
 - (vii) the reason for the change in the fee;
 - (viii) the estimated number of persons to be charged the fee;
 - (ix) the estimated agency's cost related to the fee;
 - (x) whether the fee is a service fee or a regulatory fee;
 - (xi) whether the fee is intended to cover the agency's cost related to the fee;
 - (xii) 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
 - (xiii) 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.
- (b)
- (i) The governor may review and approve, modify and approve, or reject the fee increases.
 - (ii) The governor shall transmit the list required by Subsection (8)(a), with any modifications, to the legislative fiscal analyst with the governor's budget recommendations.
- (c) Bills approving any fee change shall be filed before the beginning of the Legislature's annual general session, if possible.
- (9)
- (a) Except as provided in Subsection (9)(b), the School and Institutional Trust Lands Administration, established in Section 53C-1-201, is exempt from the requirements of this section.
 - (b) The following fees of the School and Institutional Trust Lands Administration are subject to the requirements of this section: application, assignment, amendment, affidavit for lost documents, name change, reinstatement, grazing nonuse, extension of time, partial conveyance, patent reissue, collateral assignment, electronic payment, and processing.

Amended by Chapter 428, 2023 General Session