

BUDGETARY PROCEDURES ACT - FEE AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ron Bigelow

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill modifies provisions of the Budgetary Procedures Act that address fees.

Highlighted Provisions:

This bill:

- ▶ provides definitions;
- ▶ makes technical and organizational modifications;
- ▶ clarifies that a fee agency may not create, change, or collect a fee that has not been established according to the requirements of the fee provisions of the act;
- ▶ clarifies that each fee agency shall submit its fee schedule and special assessment amounts to the Legislature for approval on an annual basis;
- ▶ exempts certain fees that involve financial processing charges that are assessed by a non-governmental third party from the requirement that fees be pre-approved by the Legislature;
- ▶ modifies procedures that are required for fee changes; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63J-1-504, as renumbered and amended by Laws of Utah 2009, Chapters 183 and 368

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

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

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

(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 the Legislature or its committees.

(b) "Fee agency" means any agency that is authorized to establish fees.

(c) "Fee schedule" means the complete list of fees charged by a fee agency and the amount of those fees.

(2) Each fee agency shall~~[(a)]~~ adopt a schedule of fees assessed for services provided by the fee agency that are:

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

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

(3) Except as provided in Subsection (6), 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:

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

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

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

60 (d) where necessary, modify the fee schedule to implement the Legislature's actions.

61 [~~(3) A fee agency may not:~~]

62 [~~(a) set fees by rule; or~~]

63 [~~(b) charge or collect any fee without approval by the Legislature unless the fee agency
64 has complied with the procedures and requirements of Subsection (5).]~~

65 (5) (a) Each fee agency shall submit its fee schedule or special assessment amount to
66 the Legislature for its approval on an annual basis.

67 [~~(4)~~] (b) The Legislature may approve, increase or decrease and approve, or reject any
68 fee submitted to it by a fee agency.

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

71 [(i)] (a) (i) the Legislature creates a new program that is to be funded by fees to be set
72 by the Legislature; [~~and~~]

73 (ii) the new program's effective date is before the Legislature's next annual general
74 session; [~~or~~] and

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

78 [(iii)] (b) the Division of Occupational and Professional licensing makes a special
79 assessment against qualified beneficiaries under the Residence Lien Restriction and Lien
80 Recovery Fund Act as provided in Subsection 38-11-206(1)[~~];~~ or

81 [~~(b) Each fee agency shall submit its fee schedule or special assessment amount to the~~
82 ~~Legislature for its approval at a special session, if allowed in the governor's call, or at the next~~
83 ~~annual general session of the Legislature, whichever is sooner.]~~

84 [(c) Unless the fee schedule is approved by the Legislature, the fee agency may not
85 collect a fee set according to this subsection after the adjournment of the annual general

86 ~~session following the session that established the new program.]~~

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

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

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

95 ~~[(6) (a) Each fee agency that wishes to increase any fee by 5% or more shall obtain~~
 96 ~~legislative approval for the fee increase as provided in this subsection before assessing the new~~
 97 ~~fee.]~~

98 ~~[(b)]~~ (7) (a) Each fee agency that wishes to ~~[increase]~~ change any fee ~~[by 5% or more]~~
 99 shall submit to the governor as part of the agency's annual appropriation request a list that
 100 identifies:

101 (i) the title or purpose of the fee;

102 (ii) the present amount of the fee;

103 (iii) the proposed new amount of the fee;

104 (iv) the percent that the fee will have increased if the Legislature approves the higher
 105 fee; ~~[and]~~

106 (v) the estimated total annual revenue change that will result from the change in the
 107 fee;

108 (vi) the account or fund into which the fee will be deposited; and

109 ~~[(v)]~~ (vii) the reason for the [increase] change in the fee.

110 ~~[(c)]~~ (b) (i) The governor may review and approve, modify and approve, or reject the
 111 fee increases.

112 (ii) The governor shall transmit the list required by Subsection ~~[(6)(b)]~~ (7)(a), with any
 113 modifications, to the Legislative Fiscal Analyst with the governor's budget recommendations.

114 [~~(d)~~] (c) Bills approving any fee [~~increases of 5% or more~~] change shall be filed before
115 the beginning of the Legislature's annual general session, if possible.