

BUDGETARY PROCEDURES ACT - FEE AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ron Bigelow

Senate Sponsor: _____

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;
- ▶ exempts financially self-supporting higher education business entities from the fee requirements of the Budgetary Procedures Act;
- ▶ 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 financial processing fees that are charged or 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:



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **63J-1-504**, as renumbered and amended by Laws of Utah 2009, Chapters 183 and 368



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

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

35 **63J-1-504. Fees -- Adoption, procedure, and approval -- Establishing and**
36 **assessing fees without legislative approval.**

37 (1) As used in this section:

38 (a) (i) "Agency" means each department, commission, board, council, agency,
39 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
40 unit, bureau, panel, or other administrative unit of the state.

41 (ii) "Agency" does not mean the Legislature or its committees.

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

43 (ii) "Fee agency" does not mean a higher education enterprise operation.

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

46 (d) "Higher education enterprise operation" means a business unit of a state institution
47 of higher education that is financially self-supporting.

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

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

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

54 (3) Except as provided in Subsection (6), a fee agency may not:

55 (a) set fees by rule; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

89 ~~[(c) Unless the fee schedule is approved by the Legislature, the fee agency may not~~

90 collect a fee set according to this subsection after the adjournment of the annual general session
91 following the session that established the new program.]

92 (c) (i) the fee is a new, or a change to an existing, financial processing fee that is
93 charged or assessed by a non-governmental third party in addition to other governmental fees;
94 and

95 (ii) the new total or changed fee is submitted to the Legislature for its approval at a
96 special session, if allowed in the governor's call, or at the next annual general session of the
97 Legislature, whichever is sooner.

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

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

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

105 (ii) the present amount of the fee;

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

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

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

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

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

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

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

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

Legislative Review Note

as of 2-22-10 11:32 AM

Office of Legislative Research and General Counsel

H.B. 425 - Budgetary Procedures Act - Fee Amendments

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
