

HB0531S01 compared with HB0531

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inserted text shows text that was not in HB0531 but was inserted into HB0531S01.

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Senator Curtis S. Bramble proposes the following substitute bill:

COURT FEE MODIFICATIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kay J. Christofferson

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill addresses court fees.

Highlighted Provisions:

This bill:

- ▶ defines terms related to fees;
- ▶ requires the Judicial Council to provide a report on fees to the Legislature;
- ▶ addresses the collection of a licensing fee for the practice of law by the Supreme Court; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

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None

Utah Code Sections Affected:

AMENDS:

63J-1-504, as last amended by Laws of Utah 2022, Chapter 73

78A-3-103, as renumbered and amended by Laws of Utah 2008, Chapter 3

ENACTS:

78A-2-310, Utah Code Annotated 1953

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 -- 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.

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(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;

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(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;

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- (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.

Section 2. Section **78A-2-310** is enacted to read:

78A-2-310. Report by Judicial Council on court fees.

(1) As used in this section:

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(a) "Cost" means the direct and indirect costs and expenses for providing the good or service for which a fee is charged, including:

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

(ii) costs and expenses for administering the fee.

(b) (i) "Judiciary" means the Judicial Council, the Supreme Court, the Court of Appeals, a district court, or a juvenile court.

(ii) "Judiciary" includes any board, committee, or staff office of the Judicial Council, the Supreme Court, the Court of Appeals, a district court, or a juvenile court.

(2) Before November 30 of each year, the Judicial Council shall submit a report to the Infrastructure and General Government Appropriations Subcommittee of the Legislature that:

(a) includes details on:

(i) the types of fees charged and collected by the Judiciary;

(ii) the methods used to determine the amount of each fee charged and collected by the Judiciary;

(iii) the Judiciary's estimated cost related to each fee;

(iv) whether each fee is intended to cover the Judiciary's cost related to the fee; and

(v) the number of fee waivers granted by the Judiciary for each type of fee charged and collected by the Judiciary; and

(b) include any recommendations regarding fees charged and collected by the Judiciary.

(3) If the Judicial Council recommends that the Legislature create a fee or modify an existing fee under Subsection (2)(b), the Judicial Council shall include the following information with the recommendation:

(a) the title or purpose of the fee;

(b) the present amount of the fee;

(c) the proposed amount of the fee;

(d) the percent that the fee will have increased or decreased if the Legislature approves the modification of the fee;

(e) the estimated total annual revenue and total estimated annual revenue change that

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will result from the creation or modification of the fee;

(f) the account or fund into which the fee will be deposited;

(g) the reason for the creating or modifying the fee;

(h) the estimated number of persons to be charged the fee;

(i) the Judiciary's estimated cost related to the fee; and

(j) whether the fee is intended to cover the Judiciary's cost related to the fee.

Section 3. Section 78A-3-103 is amended to read:

78A-3-103. Supreme Court -- Rulemaking, judges pro tempore, and practice of law.

(1) (a) The Supreme Court shall adopt rules of procedure and evidence for use in the courts of the state and shall by rule manage the appellate process.

(b) The Legislature may amend the rules of procedure and evidence adopted by the Supreme Court upon a vote of two-thirds of all members of both houses of the Legislature.

(2) (a) Except as otherwise provided by the Utah Constitution, the Supreme Court [by rule] may authorize, by rule, retired justices and judges and judges pro tempore to perform any judicial duties.

(b) Judges pro tempore shall be citizens of the United States, Utah residents, and admitted to practice law in Utah.

(3) The Supreme Court shall, by rule, govern the practice of law, including admission to practice law and the conduct and discipline of persons admitted to the practice of law.

(4) (a) If the Supreme Court requires a person to pay a fee to be licensed to practice law in this state, the Supreme Court shall collect or direct the collection of the licensing fee.

(b) The Supreme Court may request that the Division of Professional Licensing, created under Section 58-1-103, collect the licensing fee on behalf of the Supreme Court.

(c) The Division of Professional Licensing shall provide all licensing fees collected under Subsection (4)(b) to the Supreme Court.

(5) (a) The Supreme Court shall report the total amount of licensing fees collected annually under Subsection (4) to the Division of Finance, created under Section 63A-3-101.

(b) The Division of Finance shall record the amount reported by the Supreme Court under Subsection (5)(a) as revenue in the state accounting system.