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Information Brief

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STATUTORY PROVISIONS GOVERNING STATE AGENCY FEE-SETTING

Section 16A.128 of the Minnesota Statutes sets forth the process that state agencies must follow in establishing fees.

This information brief:

-- summarizes the current requirements of this section (pp. 1-2)

-- summarizes the changes made in this section by the legislature in 1985 (p. 2)

-- charts the historical development of this fee-setting provision (pp. 2-4)

CURRENT FEE SETTING PROCESS

Section 16A.128, as it currently stands, recognizes four different way that fees may be established:

(1) In statute by the legislature.

(2) After a public hearing under the Administrative Procedure Act.

If revenue from a fee is spent under an open appropriation of dedicated receipts, the fee must be established under this process. Dedicated accounts which do not require general fund dollars generally receive less legislative scrutiny than accounts for which appropriations are made.

(3) Under the Administrative Procedure Act's process for noncontroversial rules.

Under this process no public hearing is required. Fees other than those governed by paragraphs (1) and (2) may be set in this manner unless 20 percent of the people who will be required to pay the fee request a public hearing.

(4) Without following any rulemaking process.

Fees that may be set in this manner are:

-- Fees based on actual direct costs of a service;
-- One time fees;
-- Fees that produce insignificant revenue;
-- Fees billed within or between state agencies; and
-- Fees exempt from approval of the commissioner of finance.

Section 16A.128 directs the finance commissioner to review and approve fees receiving a direct legislative appropriation for a specified amount ("fees for accounts for which appropriations are made"). The law requires that the total amount collected from these fees must nearly equal the sum of:

-- the appropriation for the accounts;

-- the agency's general support costs;

-- statewide indirect costs; and

-- attorney general costs

attributable to the fee function.

Section 16A.1281 requires the finance commissioner to review and report to the legislature on fees collected by state agencies each biennium.

CHANGES IN THE 1985 LAW GOVERNING FEE SETTING

Four provisions in this current law are a result of 1985 legislative changes. The 1985 law:

-- Requires the finance commissioner to review fees each fiscal year instead of each six months.

-- Makes clear that the finance commissioner's discretion to approve a fee that is not equal to the appropriation for the accounts applies only to a fee that is lower, not higher.

-- Includes attorney general costs as a cost that should be recovered in setting a fee.

-- Amends rulemaking provisions to state that no public hearing need be held unless 20 percent of the persons who would be required to pay the fee submit a written request for a public hearing.

(See Appendix A for a summary of the development during the 1985 session of the house bill, H. F. 376, on state agency fee setting.)

CHARTING THE HISTORICAL DEVELOPMENT OF THE FEE SETTING PROCESS

The chart beginning on the following page displays the legislative development of the law governing the fee setting process.

Visible trends in the development of the fee-setting process include:

-- A continued effort to balance considerations of public participation and administrative expediency in the adjusting of fees;

-- An increased number of cost components to be covered by fees;

-- Expanded oversight and reporting responsibilities of the finance commissioner.

HISTORY OF STATUTORY PROVISIONS GOVERNING
STATE AGENCY FEE-SETTING
(Sections 16A.128 and 16A.1281)

	ADMINISTRATIVE REVIEW AND APPROVAL	FEE COMPONENTS	FEE-SETTING PROCEDURE	REPORT ON FEES
1985	finance commissioner must review fees each fiscal year instead of each six months finance commissioner's authority to approve a fee not equal to the appropriation for the accounts restricted to making the fee lower, not higher	attorney general costs included as costs to be recovered in setting a fee	no public hearing need be held unless 20 percent of the persons required to pay the fee submit a written request for a public hearing	required finance commissioner to report to Legislature on high or low fees collected by state agencies
1984			appeared to prohibit public hearing on fee setting (change resulted from an attempt made in the Revisor's bill to clarify ambiguous language)	required finance commissioner to report to Legislature on agency fees considered too low for the service provided; analysis to include cost of fee collection
1983	finance commissioner's approval of a fee or fee change that is required by law to be fixed by rule must be included in the agency's statement of need and reasonableness		certain fees exempted from rulemaking process: (1) fees based on the actual direct costs of a service (2) one-time fees (3) fees billed within or between state agencies (4) fees exempted from finance commissioner's approval all other fees, not set by law, must be set by rule use of the non-controversial rule making process for certain fee adjustments authorized, but without an opportunity for a public hearing exemption from public hearing requirement made inapplicable to adjustment of fees expended under an open appropriation of dedicated receipts	

	ADMINISTRATIVE REVIEW AND APPROVAL	FEE COMPONENTS	FEE-SETTING PROCEDURE	REPORT ON FEES
1981 3d Special Session			repealed the 110% standard enacted in 1981; allowed adjustments without a public hearing when total fees would not exceed the sum of all direct appropriation indirect costs, transfers in and salary supplements attributable to the fee functions	
1981 2d Special Session		finance commissioner allowed to exempt certain fees from requirement for fee components		
1981		fees required to recover agency general support costs and a portion of statewide indirect costs, in addition to the ammount appropriated for an account	fee adjustments allowed without a public hearing when the total fees estimated to be received during a biennium do not exceed 110 percent of the sum of all direct appropriations, transfers in and salary supplements attributable to the fee function	
1978			fee adjustments allowed without a public hearing when total fees do not exceed the amount of the direct appropriation	
1975				required finance commissioner to review agency fees and report to Legislature on those fees in which cost of service exceeds amount collected
1973	finance commissioner must review fees			
1971	commissioner of administration must review fees each 6 months; must approve a fee change	total fees received must nearly equal the amount appropriated for the fund	not specified	not required

DEVELOPMENT OF H.F. 376 (STATE AGENCY FEE-SETTING)

TOPIC	AS PASSED BY GOV. OP. COMMITTEE	AS PASSED BY HOUSE APPROPRIATIONS	FINAL ACT (Chapter 13)
Frequency of review of fees by Department of Finance	Each fiscal year	Each fiscal year	Each fiscal year
Ability of commissioner of finance to set fees lower than cost of providing the services	Yes	Yes	Yes
Components to be included in setting the fee, in addition to the appropriation for the account	Only general support costs and statewide indirect costs directly attributable to the fee function	Only general support costs and statewide indirects costs attributable to the fee function	General support costs, statewide indirect costs, and attorney general costs attributable to the fee function
Procedure for setting fees for accounts for which appropriations are made	Must be fixed by rule under chapter 14	Must be fixed by rule under chapter 14	Must be fixed by rule under chapter 14, except the non-controversial procedures (with no public hearing) may be used unless 20 percent of the persons who will be required to pay the fee submit a written request for a public hearing during the 30-day period allowed for comment. Public hearings are still required to fix fees spent under open appropriations of dedicated receipts.
Report on fees	Each biennium, not later than the date the governor submits the biennial budget to the legislature. Must include fees that are too high as well as too low	Same	Same

APPENDIX A