HOUSE RESEARCH

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Information Brief

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METHODS FOR SETTING STATE USER FEES

This information brief is the third in a series on user fees. The others are:

- an information brief on user charges and legislative policy;
- an information brief on statutory provisions governing state agency fee setting; and
- an information brief on fee components, their operation and design.

Fees charged by state agencies to service users may be set in one of three ways:

1. by the Legislature in statute;
2. by an agency to recover the amount of an annual or biennial appropriation;
3. by an agency to support a service that is funded by dedicated fee receipts.

Which method is used to set a fee may have an important effect upon:

- the degree of legislative or executive branch flexibility in setting and changing a fee;
- the amount or proportion of the agency service costs that are recovered by the fee charged;
- the extent to which public input is allowed; and
- the level of legislative involvement in either
  - -- the oversight of an agency or
  - -- the scrutiny of a fee.

The three fee setting methods and their effects are described on pages 2 to 5. The chart on page 6 summarizes this information.

I. FEES SET IN STATUTE

Fees set in statute are set directly by the Legislature rather than an executive agency.

Examples: Dairy inspection fees (Minn.Stat. 32.075) and pesticide applicator licenses (Minn.Stat. 18A.26).

Flexibility

When setting a fee in statute, the Legislature can consider such policy factors as economic conditions and community needs and resources in addition to the agency costs of delivering the service supported by the fee. Legislative response to changing conditions and needs may be slow, however, since two years may elapse between periods of setting or adjusting fees.

Recovery of Program Costs

The result of incorporating policy factors into the calculation of a fee charge is that some fees such as the pesticide applicator licenses may under-recover the agency costs of providing the service. Any disparity between the service fee charged and the agency costs incurred comes out of the general fund unless the statute specifies another funding source. Other fees set in statute, including some commerce department fees, may over-recover costs. Any surplus generated by service fees in excess of agency costs is deposited in the general fund unless the statute directs the deposit elsewhere.

Public Comment

The Legislature may, at its discretion, seek public comment on a particular fee, but there is no requirement that it do so.

Reporting to the Legislature

In the past, the Finance Department reported to the Legislature on those fees under-recovering costs. A change in Minn.Stat. 16A.128 now requires the Finance Department to report on all fees over-recovering costs as well. At present, the number of fees set in statute, the amount of revenue generated from these fees and the proportion of these fees, compared to either the total number of fees charged or the total revenue generated, can only be determined through a time consuming manual accounting process.

Extent of Legislative Oversight

The Legislature retains the sole authority to set or adjust fees set in statute.

II. FEES ACCOMPANYING ANNUAL OR BIENNIAL APPROPRIATIONS

Fee receipts placed in nondedicated accounts, or "fees for accounts for which appropriations are made," are authorized in annual or biennial appropriations acts adopted by the Legislature and signed by the governor. Nondedicated fees are intended to recover their legislative appropriations.

Examples: Licensing fees of health boards.

Flexibility

The Legislature directly appropriates specified amounts of money to agencies to cover the operating costs of particular programs and may then require the agencies to recover the appropriation and other program-related costs through user fees deposited back into the fund from which the appropriation came. The effect of appropriating a specific amount for a program and mandating that an agency recover the appropriation by charging a fee to program users is to set the fee level: the number of program users divided by the appropriation to be recovered plus the indirect costs and attorney general costs related to the providing of the program is equal to the amount of the fee. By way of illustration, if the Legislature appropriates $95,000 for a program that is supported by a fee, and the agency has indirect costs and attorney general costs related to the program fee equal to $5,000, the agency must recover $100,000 from the payers of the fee. If the agency anticipates that 1,000 people will pay the fee, the fee will be $100.

Recovery of Program Costs

The authority to expend or encumber general fund monies expires at the end of each fiscal year for which the appropriation is made. Language in the appropriations act should indicate whether unencumbered funds cancel to the general fund or may be carried forward by the agency to the next fiscal year. Those encumbrances the Finance Department certifies as valid prior to the closing of a fiscal year may remain available until liquidated or cancelled. Should circumstances result in insufficient funds for a particular program, an agency may seek approval from the finance commissioner to seek an increase in a fee or to transfer general fund appropriations between programs. The Finance Department can respond quickly with fee level recommendations to agencies. (The finance commissioner may not, however, authorize the transfer of appropriations among funds.) Statutory restrictions, plus a mandate that the finance commissioner see that no more is spent than appropriated, act as checks on the executive branch's decision making process with respect to the setting of fees. Another recourse available to agencies is to request a supplemental appropriations from the Legislative Audit Commission.

Nondedicated fees are supposed to recover costs. Minnesota Statutes 16A.128 requires agencies to set fees equal to the sum of certain cost components:

(1) the direct costs an agency incurs in providing a service;

(2) the indirect costs an agency incurs incidental to providing that service;

(3) the statewide indirect costs charged to an agency by other agencies;

(4) attorney general costs.

In rare cases, the finance commissioner may approve fees for programs such as the licensing of child care facilities which, due to financial limits on fee payers, cannot recover costs.

Public Comment

Most fees not set by statute must be set by the rulemaking provisions of the Administrative Procedure Act (APA). No public hearing is required, however, for the setting or adjusting of non-dedicated fees unless 20 percent of those who must pay the fee submit a written request for a hearing to the appropriate agency within a 30 day period.

Reporting to the Legislature

Minnesota Statutes 16A.1281 directs the finance commissioner to review and report to the Legislature each biennium on fees collected by state agencies. Under Minn.Stat. 16 A.128, the commissioner may approve an agency's request for a fee or fee adjustment as long as the revenue generated from a fee is not greater than the appropriation for the fee function.

Extent of Legislative Oversight

General fund appropriations, including those supporting nondedicated fee functions, are usually authorized for one year or each year of the biennium. Executive budget officers from the Finance Department work with their assigned agencies in preparing the agencies' program budgets for presentation to the Legislature. Nondedicated fees may receive greater scrutiny than dedicated fees which are not directly dependent upon annual legislative appropriations. While the Finance Department's budget officers may do some program evaluation in the process of helping agencies to prepare program budgets and calculate expenditures, the Legislative Auditor's Program Evaluation Unit does the majority of external evaluating for the Legislature. The evaluation can be useful to the Legislature in determining program effectiveness and justifying the imposition of particular fees.

III. FEES SET THROUGH DEDICATED ACCOUNTS

Dedicated accounts are established by the Legislature through an open appropriation in a specified account other than the general fund. Dedicated fees, or "open appropriations of dedicated receipts," are commonly utilized where there is a relationship between a specific revenue source, an identifiable service and an identifiable user group. Dedicated accounts continue until liquidated or cancelled by the Legislature.

Examples: Fees for grain, milk and meat inspection.

Flexibility

While dedicated accounts are open ended appropriations in that an agency is permitted to expend all fee receipts it receives, the Finance Department scrutinizes agency receipts to ensure that the agency is recovering only the fee cost.

Recovery of Program Costs

Agencies with dedicated accounts set their yearly program budgets based on anticipated fee receipts. Carry forward provisions of unexpended monies are necessary since agency operating costs can be paid for only by cash and not by credit. Unless a statutory provision directs that excess dedicated revenue revert to a named fund such as the general fund or the special revenue fund, all monies continue to carry forward in the existing dedicated account. An agency must receive Finance Department approval of its budget plan prior to expending any fee receipts. This is done by having the agency submit a fee review form to the Finance Department containing information indicating the correlation between anticipated costs and the fee charge. The finance commissioner may approve a fee increase if the agency costs for a service are greater than the revenue received from the fee for that service.

Public Comment

Minnesota Statutes 16A.128 requires that a public hearing be held under APA rulemaking procedures to fix dedicated fees. This requirement is designed to ensure that people affected by a fee have some input in the fee setting process and to act as a check on agency discretion.

Reporting to the Legislature

Any fees over-recovering cost must now be reported to the Legislature.

Extent of Legislative Oversight

Legislative involvement tends to lessen once an open appropriation is made and the receipts are dedicated.

METHODS FOR SETTING STATE USER FEES

FEE SETTING PROCESSES	DEFINITION	EXAMPLES	FLEXIBILITY	RECOVERY OF PROGRAM COSTS	PUBLIC COMMENT	REPORTING TO THE LEGISLATURE	EXTENT OF LEGISLATIVE OVERSIGHT
FEES SET IN STATUTE	The Legislature, rather than an executive agency, sets and adjusts fees directly in statute	Dairy inspection fees (M.S. 32.075) pesticide applicator licenses (M.S. 18A.26	The Legislature can consider policy factors such as economic conditions and social needs in addition to the agency costs of providing a service; legislative response to changing conditions may be slow due to timing of session	Fees may under-recover costs (dairy inspection costs) or over-recover costs (commerce dept. fees)	The Legislature may seek public comment but there is no requirement that it do so	The Finance Dept. is now required to report to the legislature on all fees over-recovering and under-recovering costs (M.S.16A.128)	The Legislature has the sole authority to set or adjust fees
FEES FOR ACCOUNTS FOR WHICH APPROPRIATIONS ARE MADE	The Legislature and the governor authorize specific appropriations to agencies; revenue generated by agency fees is deposited in the general fund	Licensing fees of health boards	Nondedicated fees generally must recover direct and indirect agency operating costs, statewide indirect costs and attorney general costs; in rare cases the finance commissioner may approve fees which do not recover costs	The Legislature can require an agency to recover its appropriation for a particular program and the effect is to set the fee level: the number of program users divided by the appropriation to be recovered plus indirect costs and attorney general costs is equal to the program cost	Fees not set by statute are usually set by rule; no public hearing is required unless 20 percent of the people paying the fee request it	Each biennium the finance commissioner reviews the fees collected by state agencies and reports to the Legislature	State agencies are directly dependent upon the legislature for their annual and biennial appropriations
OPEN APPROPRIATIONS OF DEDICATED RECEIPTS	The Legislature establishes an account separate from the general fund and dedicates the fee receipts from an agency service to that account	Fees for grain, milk and meat inspection	A close correlation must exist between program costs and the fee charge; all agencies must seek the approval of the finance commissioner to increase a fee and may do so only if program costs are greater than fee receipts	While dedicated accounts are open ended appropriations in that an agency is permitted to expend all fee receipts it receives, the Finance Department scrutinizes agency fee receipts to ensure that the agency is recovering only the program cost	A public hearing under APA rule-making procedures must be held to fix dedicated fees	The Finance Department must report to the Legislature on all fees over-recovering and under-recovering costs	The Legislature's involvement tends to lessen once an appropriation is made and receipts are dedicated