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State Agency Fee Approval and Ratification Process

State agency fees are generally set either at a specific level in statute, provided a cap in statute with an allowance for an agency to increase fees up to the cap through administrative rule, or allowed to be set by administrative rule without a statutorily set cap.

The 1995 Legislative Assembly originally adopted changes to how agency fees were approved in Senate Bill 333 (Oregon Laws 1995, chapter 576), which was codified in ORS 291.050 and ORS 291.055. ORS 291.055 now requires that all new fees or fee increases adopted during the period beginning on the date of adjournment sine die of a regular session of the Legislature and ending on the date of adjournment sine die of the next regular session of the Legislature:

- Are not effective until approved in writing by the Director of the Department of Administrative Services (DAS) for executive branch agencies (President and Speaker for legislative branch agencies; Chief Justice for Judicial branch agencies).
- Must be reported by the state agency to the Director of DAS within 10 days of their adoption.
- Are rescinded upon adjournment of the next regular session of the Legislature, unless otherwise authorized by enabling legislation setting forth the approved fees.

The term “enabling legislation” means what the Joint Committee on Ways and Means refers to as “fee ratification” bills.

ORS 291.055 applies “notwithstanding any other law that grants to a state agency the authority to establish fees.” That is, ORS 291.055 applies even if it conflicts with another law that establishes some other fee authorization process for a particular state agency.

ORS 291.055 also contains a list of fees, charges, and assessments that are not subject to the fee ratification process.

The fee ratification process only applies to fees established or increased by administrative rule and does not apply to fees set in statute. In other words, fee ratification is necessary only when an agency has discretion to adopt or increase fees and has exercised that discretion.

Fees are defined as an amount imposed and collected by a state agency to defray or recover the costs of administering the law, but does not include fines, civil penalties, or court judgments; proceeds from the sale of produces or charges for rent, leases, or other real estate transactions; interest and other charges for bonding and loan transactions; assessments between agencies; copying charges for public records; or charges for attendance at informational seminars.

The 2007 Legislative Assembly adopted an additional exception to the fee ratification process for fees that are included in an agency's legislatively adopted budget. This avoids requiring a state agency to have one Legislature approve the inclusion of the fees in an agency's budget and the next Legislature approve the actual adoption of the fees. (See Senate Bill 1032; Oregon Laws 2007, chapter 827, sections 2-3.) The exception is codified in ORS 291.055 2(m) and applies to:

“New or increased fees that are anticipated in the legislative budgeting process for an agency, revenues from which are included, explicitly or implicitly, in the legislatively adopted budget for the agency.”

This exception does not apply to fees that were established or increased administratively without legislative review, or those that were modified from what was reviewed by the Legislature. The exception exempts only those fees that had been implicitly or explicitly approved by the Legislature and included in the agency's legislatively adopted budget from the previous biennium, either through the approval of a policy option package requesting additional Other Funds expenditure limitation or acknowledgement during presentation of the budget in the hearings before the Joint Committee on Ways and Means. Fee changes should be identified in the budget report by noting the additional revenue that would be generated for the agency by the fee establishment, increase, or change.

The 2011 Legislative Assembly further changed the fee ratification process to accommodate the move to annual regular legislative sessions. (See House Bill 3487; Oregon Laws 2011, chapter 688.) Now, all fees established or increased after the end of one regular legislative session are rescinded unless approved by the Legislature before the end of the next regular legislative session the following calendar year. This means that state agencies may need fee ratification bills for fees adopted by rule in legislative sessions held in both even-numbered and odd-numbered years.

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