



STATE AGENCY FEE STUDY - RECOMMENDATION OPTIONS

This memorandum provides information on options the committee may wish to consider when developing a recommendation as a result of its study of state agency fees.

CURRENT STUDY REQUIREMENTS

The 2019 Legislative Assembly directed the Legislative Management to study state agency fees and required the study to include the following:

- Review of the dates state agency fee provisions were created and modified.
- Review revenue generated by the fee as compared to the expenditures related to the purposes for which the fee is imposed.
- Review the fund or funds in which fee revenue is deposited and from which fee revenue is expended.
- Consider whether the fees should be changed and whether the imposition of a fee is appropriate or if other government revenues should be used to fund the provision of services.

CURRENT STUDY STATUS

The Government Finance Committee has received the following information:

- A background memorandum regarding state agency fees which includes historical information related to legislative changes to state agency fees;
- A survey of state agency fees that lists state agency fees by agency and includes information such as the fee amount and its deposit location;
- Updates from State Auditor's office regarding its performance audit of state agency fees; and
- Information from the State Auditor's office that approximately 1,200 state agency fees have been identified.

POSSIBLE COMMITTEE RECOMMENDATION

Due to the number of state agency fees and the amount of time required to conduct an adequate evaluation of each, the committee may wish to consider recommending the Legislative Assembly establish a process to allow for a periodic review, analysis, and evaluation of each agency fee. The recommendation could provide that an interim committee be assigned the duty to review a selected number of fees each interim on a rotational basis, similar to the process used by the Taxation Committee in its review of state tax incentives. The tax incentive review process is established in North Dakota Century Code Section 54-35-26 ([appendix](#)). The statute requires each incentive be reviewed at least once every 6 years and provides a list of eight items that may be considered when evaluating each incentive. The statute also lists all incentives that must be reviewed. The process for reviewing agency fees could be similar; however, the number of agency fees that need to be reviewed far exceeds the number of tax incentives; therefore, each agency fee would not need to be listed in statute.

OPTIONS FOR SELECTING AGENCY FEES TO REVIEW

Based on the State Auditor's identification of approximately 1,200 state agency fees, the committee may wish to develop a process for selection of the fees to be reviewed each interim and to determine the frequency of the review of each fee. For example, if the committee would choose to recommend each fee be reviewed every 10 years, 240 fees would need to be selected during each interim, which would result in an average of 40 fees being reviewed at each committee meeting assuming a total of 6 committee meetings each interim. The determination of which agency's fees are reviewed each interim could be:

- Established in statute by listing the agencies in review order; or
- Made by the Legislative Assembly or the interim committees conducting the reviews. Potentially, the interim committee reviewing the fees in one interim could recommend the agency fees to be reviewed during the next interim.

POTENTIAL CRITERIA FOR REVIEWING FEES

The committee may wish to develop criteria to be considered in the review of each fee. The criteria may include:

- Reviewing revenue generated by the fee compared to the expenditures or cost incurred to provide the service for which the fee is charged. The committee should consider whether fee revenue should cover the cost of the service provided or if the service should be subsidized through a different revenue source.
- Reviewing the fund or funds in which fee revenue is deposited and from which fee revenue is expended. The committee may wish to consider the average balance of the fund and review cashflows of the fund to determine the adequacy of the fee revenue deposited into the fund and ensure the expenditures of the revenue are related to the services for which the fee is being charged.
- Reviewing the date the fee was created and when last modified. If a significant amount of time has elapsed since the fee was created or since last modified, the committee may consider the relevance of the fee, the fee structure, and how the fee is being charged.
- Considering whether the fee should be changed and whether the imposition of a fee is appropriate or if other government revenues should be used to fund the provision of services. The committee also should consider the impact of using other revenues to pay for the provision of services.
- Seeking input from state agency representatives and the public regarding the fee.

REVIEW OPTIONS

Options for reviewing each of the fees include:

- Requiring the interim committee to directly conduct the review, analysis, and evaluation of each of the fees; or
- Requiring the agency charging the fee to conduct the review, analysis, and evaluation of each of the fees and report to the interim committee.

COMMITTEE ACTION

If the committee chooses to proceed with the proposed recommendation of establishing a process of studying agency fees on a rotational basis, the committee could request the Legislative Council staff to prepare a bill draft with selected provisions for the committee's consideration at the next meeting.

ATTACH:1