North Dakota Legislative Council
Prepared for the Government Finance Committee
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STATE AGENCY FEES - BACKGROUND MEMORANDUM

House Bill No. 1031 (2021) requires the Legislative Management to assign one or more interim committees the responsibility to study state agency fees. As codified in North Dakota Century Code Section 54-35-27, state agencies with 40 or fewer fees are required to submit a report to the Office of Management and Budget (OMB) by July 1, 2022, regarding details on each of the fees. By September 2022, OMB is required to compile the agency fee reports and submit a comprehensive report to the Legislative Management. State agencies with 40 or more fees are required to submit a report to the Legislative Management by July 1, 2024, regarding details on each of the fees. The report from each state agency must provide an analysis of each fee, including a comparison of the revenue generated by the fee, costs associated with the fee, and the appropriateness of the fee. After submission of the initial reports, all state agencies are required to submit updates to the Legislative Management by July 1st of every even-numbered year regarding any new fees, changes to existing fees, or the removal of any fees. The interim committee assigned to study state agency fees is required to make a recommendation for each fee, including allowing the fee to remain unchanged, removing the fee, or changing the fee. The Legislative Management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the 68th Legislative Assembly.

PREVIOUS STUDIES

2009-10 Interim

911 Fee Structure

Section 2 of House Bill No. 1412 (2009) provided for a study of the equity of the 911 fee structure, including consideration of fees, taxes, assessments for services, equity of services, and payments among residents within service areas; fee collection methods; and current and future funding of emergency services communications in the state. The Public Safety and Transportation Committee recommended Senate Bill No. 2046 (2011) to increase fees charged for the use of the law enforcement teletype system, which was not approved; however, fees were increased in Section 9 of Senate Bill No. 2016 (2011).

Penalty-Related Fees

House Concurrent Resolution No. 3051 (2009) provided for a study of the imposition of criminal and civil penalties, fines, fees, and forfeitures by administrative rule. The Administrative Rules Committee made no recommendation regarding the study of imposition of penalties by administrative rules. However, committee members suggested that the Legislative Assembly should act with more deliberation in the future with regard to statutory provisions delegating authority for administrative rules imposing penalties.

2011-12 Interim

Motor Vehicle Permit Fees

Section 3 of Senate Bill No. 2044 (2011) provided for a study of motor vehicle permit fees, including overweight and overwidth permit fees charged by cities and counties. The Advisory Commission on Intergovernmental Relations recommended House Bill No. 1048 (2013), which was approved by the 2013 Legislative Assembly, to increase speeding fees.

Autism Spectrum Disorder Fee Scale

Pursuant to Section 2 of Senate Bill No. 2268 (2011) the Human Services Committee studied the current system for the diagnosis of, early treatment of, care for, and education of individuals with autism spectrum disorder, including a review of a sliding fee scale for payment of services and the value of services provided. The committee recommended House Bill No. 1037 (2013) to continue the study of the autism spectrum disorder, and the 2013 Legislative Assembly approved the bill.

Higher Education Mandatory Fees

Section 2 of Senate Bill No. 2351 (2011) provided for a study of mandatory fees and fees for optional purposes or services by institutions under the control of the State Board of Higher Education, including the manner in which

fees are determined, identified, and justified and whether the programs, purposes, services, and activities supported by fees should be supported by tuition dollars, legislative appropriations, or other public or private funding sources. The Higher Education Committee did not make any recommendations.

Offender Sentencing Fees

Senate Concurrent Resolution No. 4001 (2011) provided for a study of the imposition of fees by courts at sentencing and other fees that are imposed upon offenders. The Commission on Alternatives to Incarceration reviewed and received testimony, but made no recommendations.

2013-14 Interim

Court Fees

Pursuant to Section 1 of Senate Bill No. 2078 (2013) the Judiciary Committee studied the assessment of fees by courts, the feasibility and desirability of combining various court fees, and whether courts should be mandated to impose fees established by statute. The committee did not make any recommendations.

2017-18 Interim

Behavioral Health Noncompliance Fees

Section 33 of House Bill No. 1012 (2017) provided for a study of state and federal laws and regulations relating to the care and treatment of individuals with developmental disabilities or behavioral health needs, including a review of the fees and penalties for noncompliance. The Health Services Committee made no recommendations related to fees and penalties for noncompliance.

Industrial Water Use Fees

Section 26 of House Bill No. 1020 (2017) provided for a study of industrial water use of the oil and gas industry, including taxes or fees other states charge for water used in the oil and gas industry. The Water Topics Overview Committee made no recommendations related to taxes or fees for industrial water use.

Fleet Service Fees

Pursuant to Section 9 of Senate Bill No. 2001 (2017), the Government Finance Committee reviewed fleet services rates charged to state agencies, but made no recommendations as a result of the study.

Road Maintenance Fees

Section 12 of Senate Bill No. 2012 (2017) provided for a study of the funding mechanisms and options available to the Department of Transportation, political subdivisions, and public transportation providers, for road construction, maintenance, other transportation infrastructure needs, and transit services. During the interim, the Government Finance Committee received information regarding fees charged and costs incurred for certain department functions. The committee learned that several fees set in statute do not cover the cost to produce or provide the service being purchased, but made no recommendations.

Survey of State Agency Fees

In August 2018 the Legislative Council staff conducted a survey of state agencies regarding fees charged by each agency. Agencies were asked to provide information regarding the type and amount of each fee charged, statutory authority for charging the fee, where the fee revenue is deposited, 2015-17 biennium actual fee collections, and estimated 2017-19 biennium fee collections. See the memorandum entitled *Survey of State Agency Fees* for details regarding fees charged by various agencies.

2019-20 Interim

State Agency Fees Study

Section 1 of Senate Bill No. 2130 (2019) directed the Legislative Management, in coordination with the State Auditor, to study the provisions of the Century Code relating to state agency fees. The study was assigned to the Government Finance Committee and included a review of the dates state agency fee provisions were created and modified, the revenue generated by the fee as compared to the expenditures related to the purpose or purposes for which the fee is imposed, and the fund or funds in which fee revenue is deposited and from which fee revenue is expended. The study also included consideration of 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.

The committee received a performance audit of state agency fees conducted by the State Auditor's office (appendix) and a list of state agency fees from the State Auditor's office. The audit period covered the 2017-19 biennium and the audit identified over 1,200 fees. The audit included North Dakota University System institutions' mandatory and other fees. The State Auditor's office defined a fee as "a fixed charge, or a sum paid or charged

for a service" and the definition excludes any charges for taxes, fines, or penalties. For the University System, the State Auditor's office used the definition of fees from the North Dakota State Board of Higher Education Policy Manual, Policy 805.3 and those mandatory fees are defined as student fees, technology fees, North Dakota Student Association fees, and ConnectND fees.

As a result of the study, the Government Finance Committee recommended House Bill No. 1031 (2021) to create a new section to Chapter 54-35 establishing a process to study each state agency fee every 10 years. The bill was amended during session, and the final version approved by the Legislative Assembly removed the requirement to study each fee every 10 years and instead required an interim committee to study the fees after agencies submit reports regarding details and an analysis for each fee.

RECENT CHANGES TO STATE AGENCY FEES

2017 Legislative Session

The 2017 Legislative Assembly approved the following special fund fee changes:

Bill No.	Description
HB 1002	**Secretary of State** - Established a fee of $40 for request of lists or compilations of information recorded or filed with the Secretary of State, rather than an amount equal to the cost of each request.
HB 1015	**Various state agencies** - Allowed state agencies to charge a reasonable fee to those who request to have a publication printed or mailed if that publication is available electronically.
HB 1019	**Parks and Recreation Department** - Increased the annual park entrance fee from $25 to $35 and increased the daily park entrance fee from $5 to $7.
HB 1178	**Information Technology Department and Adjutant General** - Increased the fee on assessed communications services ($9.6 million) and increased the emergency 911 fee on prepaid wireless services ($463,000).
HB 1217	**Aeronautics Commission** - Removed the scheduled reductions in aircraft registration fees for aircraft and increased the permanent registration fee from $85 to $125.
HB 1255	**Department of Transportation** - Created a large truck primary highway network and a monthly or annual permit for overweight vehicles using the network.
HB 1288	**Department of Transportation** - Created an annual permit fee for overlength loads and increased the permit fee for overwidth loads.
SB 2011	**Highway Patrol** - Allowed the Highway Patrol to charge a fee of $10 to nonstate employees that are eligible to receive a Capitol building access card. The bill also allowed the Highway Patrol to charge a fee of up to $15, rather than $15, for the issuance of an electronic oversized vehicle permit.
SB 2210	**Secretary of State** - Increased the fee on combative sports gross revenue from 3 to 5 percent.
SB 2344	**State Department of Health** - Provided for various fees associated with the manufacture and distribution of medical marijuana.

2019 Legislative Session

The 2019 Legislative Assembly approved the following special fund fee changes:

Bill No.	Description
HB 1004	**State Department of Health** - Increased the fees for vital records, which are deposited in the department's operating fund ($1,923,000) and the children's trust fund ($2,000).
HB 1100	**Department of Human Services** - Established a nonrefundable application fee of up to $300 for administering and enforcing licensing and certification activities related to behavioral health services.
HB 1219	**Insurance Commissioner** - Established application and renewal fees for public adjuster licenses issued by the Insurance Commissioner.
HB 1291	**Department of Transportation** - Established a fee for an optional one-time permanent trailer registration.
HB 1349	**Agriculture Commissioner** - Changed the industrial hemp license fee structure resulting in a decrease in licensing fees collected by the commissioner.
HB 1391	**Insurance Commissioner** - Established licensing fees related to self-service storage insurance.
SB 2061	**Department of Transportation** - Established an annual road use fee of $120 for electric vehicles, $50 for plug-in hybrid vehicles, and $20 for electric motorcycles.
SB 2090	**State Engineer** - Changed the fee structure for water permit applications increasing the deposits in the resources trust fund.
SB 2093	**Department of Financial Institutions** - Increased the annual licensing fee for financial institutions from $450 to .25 percent of the institution's transactions, not to exceed $2,500, and provides for a minimum fee of $500.
SB 2102	**Insurance Commissioner** - Required discount medical plan organizations to register with the Insurance Commissioner and establishes a registration fee of $500 and a renewal fee of $250 per year.

Bill No.	Description
SB 2210	**State Department of Health** - Authorized an additional certification fee to grow more medical marijuana plants.
SB 2244	**Department of Transportation** - Increased various driver's license fees, which are deposited into the state highway fund. ***This bill was vetoed by the Governor.***
SB 2293	**Game and Fish Department** - Increased the fee on motorboat and fishing licenses and deposits the collections into the aquatic nuisance species program fund.

2021 Legislative Session

The 2021 Legislative Assembly approved the following special fund fee changes:

Bill No.	Description
HB 1012	**Department of Human Services** - Authorizes the department to charge fees for early childhood workforce training and development courses to defray the cost of the courses.
HB 1032	**Insurance Commissioner** - Deposits prescription drug wholesaler license fees in a newly created drug pricing fund.
HB 1067	**Public Service Commission** - Authorizes a fee for the cost of investigating a public utility's integrated resource plan.
HB 1080	**Department of Trust Lands** - Reduces the maximum fee for late oil and gas royalty payments.
HB 1168	**Department of Transportation** - Authorizes a fee for users to access an electronic version of the knowledge portion of the driver's test.
HB 1278	**Job Service North Dakota** - Increases unemployment insurance tax rates to provide unemployment insurance for military spouses related to a military transfer.
HB 1417	**Information Technology Department** - Allows the department to collect fees for services provided in response to a cybersecurity incident.
SB 2014	**Industrial Commission** - Allows the commission to charge fees for the carbon dioxide storage facility fund and the carbon dioxide trust fund based on the impact of a storage facility and the source of carbon dioxide.
SB 2024	**Department of Environmental Quality** - Increases the fee for boiler inspections from $20 to $35.
SB 2111	**Department of Transportation** - Authorizes the department to lease space to public or private entities on the department's radio towers or on the land on which the towers are located.
SB 2241	**State Department of Health** - Authorizes the department to collect a fee related to the review of construction plans for health care facilities.

PROPOSED STUDY PLAN

The following is a proposed study plan for the committee's consideration:

1. Review and discuss the timing of the required reports and timing of the recommendations required for the committee.
2. Develop a template for agencies to use for submitting information on each of their fees and inform agencies of the deadline for submitting their reports.
3. Receive a report from OMB by September 2022 regarding details of the fees imposed by state agencies that have 40 or fewer fees, including an analysis of each fee.
4. Identify potential state agency fees to be reviewed during the subsequent biennium.
5. Make a recommendation for each fee identifying whether the fee should remain unchanged or be eliminated, increased, decreased, or modified and the rationale for the recommendation.
6. Develop recommendations and any necessary legislation to implement the recommendations.
7. Prepare a final report for presentation to the Legislative Management.

ATTACH:1