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## State Agency Fee-Setting

This information brief describes a new law that applies to new fees or increased fees set by state agencies.

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Effective July 1, 2001, an executive branch state agency may not impose a new fee or increase an existing fee unless the new fee or fee increase is approved by law. Fees may be reduced under the new law without legislative approval. The law establishing this new system for fee-setting was enacted in 1999, but with a delayed effective date of July 1, 2001 ([Laws 1999, ch. 250, art. 1, § 49](#), codified as [Minn. Stat. § 16A.1283](#)).

The fee law applies to “any charge for goods, services, regulation, or licensure.” However, the law does not apply to:

- charges billed within or between state agencies, or billed to federal agencies
- Minnesota State Colleges and Universities
- charges for goods and services provided for the direct and primary use of a private individual, business, or other entity (however, the law does apply to charges for admission to or for use of public facilities owned by the state)
- constitutional officers

Under the former law, most fees that were not established in statute were set by rule.

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## **Executive branch implementation process**

Under Department of Finance budget instructions to state agencies, an agency that is proposing a new or increased fee will have to present this proposal as a change item in the biennial budget document. Each proposal will have to note if the fee increase requires legislative approval or if it is exempt from legislative approval. If it is not clear if the fee increase requires legislative approval, the Department of Finance presumably will make an initial determination, at least for purposes of presenting budget information to the legislature.

## **Legislative review process**

The legislature will have to decide how it will deal with proposals for fee increases or new fees. The legislature can reject a proposal by doing nothing, because fee increases require legislative approval before taking effect. If the legislature wants to approve a proposed increase or new fee, options might include:

- write fees into statute; or
- have individual budget bills approve specified new fees or fee increases by reference to the budget document, without writing the fees into statute.

Some fees are already set in statute, and in these instances it is clear that the statute must be amended if the fee is to be changed.

## **Potential ambiguities in the law**

- In some cases, it is not clear if a fee is for the direct and primary use of a private individual or entity, and thus exempt from legislative approval.
- It may not be clear if fees imposed in state correctional and human services institutions are exempt from the new law as “for the direct and primary use of a private individual” or covered by the new law as “charges for admission to or for use of public facilities owned by the state.”
- Some statutes require fee-supported programs to be self-sustaining, or otherwise prescribe the formula or basis for establishing the fee. The new law may override these statutes and forbid fee increases except those approved by the legislature. However, this is not clear in all cases. For example, if a statute or rule prescribes a formula for determining a fee and the formula does not change, the new law might not require legislative approval if application of the formula results in a higher fee.