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To: Joint Committee on Ways and Means
From: Ken Rocco
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Subject: Fee Approval and Ratification Process

Statutory Requirements (ORS 291.050 to ORS 291.055):

The 1995 Legislative Assembly originally adopted changes to how agency fees were approved in SB 333, which was codified in ORS 291.050 and ORS 291.055. ORS 291.055 now requires, notwithstanding any other law granting state agencies the authority to establish fees (with several exceptions) 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; and
- Are rescinded upon adjournment of the next regular session of the Legislature, unless otherwise authorized by enabling legislation setting forth the approved fees.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.

This process only applies to fees established or increased by administrative rule and does not apply to fees set in statute. 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.

In certain cases, the original "SB 333" process required state agencies to have the same proposed fee increases be approved by two different Legislatures. For example, the agency presents proposed fee increases to the current Legislature in the form of a request to increase Other Funds expenditure limitation for a program due to the additional revenue from the proposed new fee or fee increase. The agency is then required to bring a "fee ratification" bill to the next Legislature

requesting approval of the fees that were implicitly approved by the previous Legislature by increasing the Other Funds expenditure limitation to accommodate the extra fee revenue. This unnecessarily complicated the budgeting process since agencies were required to include two packages in its next biennial budget request – one to eliminate the Other Funds expenditure limitation due to the need to ratify the previously approved fee or fee increase and one to add back the Other Funds expenditure limitation to address the requested restoration of the fee revenue.

In 2007, the Legislature adopted SB 1032 (Oregon Laws 2007, chapter 827, sections 2-3), which was added to ORS 291.055 in section 2(m) as an additional exclusion for the “SB 333” fee ratification process:

“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 statutory change still requires the fee ratification process created by SB 333 to apply to fees that were established or increased administratively without legislative review, or those that were modified from what was reviewed by the Legislature, but would exempt from ratification 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 acknowledged in the budget report by noting the additional revenue that would be generated for the agency by the fee increase.

In 2011, the Legislature adopted HB 3487 (Oregon Laws 2011, chapter 688, section 1), which changed ORS 291.055 from requiring the fee approval process for fees approved or increased after July 1 of any odd-numbered year to each regular legislative session to accommodate the change to annual regular sessions.