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New Hampshire State Fees

A Study of the Current Fee Creation System

**Presented to the Executive Departments and Administration
Committee of the New Hampshire House of Representatives**

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EXECUTIVE SUMMARY

New Hampshire legislators recently considered House Bill 624, which would have mandated that the legislature establish all state fees and fines through statute. This measure would have shifted control over the establishment and adjustment of fee amounts from state agencies to the legislature, except for those fees already set in statute. This report accompanies a list and description of all fees in the Department of Environmental Services—a randomly selected pilot case for fee identification—and examines the potential impact of this measure on the efficiency and effectiveness of the fee-setting process. It concludes that this measure would increase voter representation in the fee-making process, but it could also politicize the process and potentially increase the variance of the fee from its market cost. In addition, we find that the process of collecting all of the various fees, understanding their purpose and fair cost, and passing them in statute, could be resource-prohibitive for the NH House of Representatives.

1. INTRODUCTION

In New Hampshire every source of revenue counts in the budgetary process, including a wide array of fines and fees. Under current law, individual state agencies can create or increase most fines and fees for their services through administrative rule, which requires legislative approval. These fees fall into three basic categories: penalties, fees to cover actual costs, such as copying and shipping, and fees that go toward an agency's mandate to collect revenue equal to a certain percentage of their budget, depending on the agency. For the purposes of this report, "fee" is used to refer to all three types of state charges, unless specifically referring to a subtype (e.g., "administrative fees"). The agencies then allocate this money to different funds from which agency executives manage their budgets. In addition, some fees go to the state's general fund. Extra money from agencies goes toward covering some of the government's other overhead costs. Administrative rules, including those setting fees, expire and are reviewed by the legislature every ten years—the statutory period of expiration for administrative rules since September 2011—and any changes to fees prior to expiration must be approved by the legislature.

Nationwide, the rulemaking process for fees usually takes one of two approaches: either individual state agencies are given the power to set and adjust fees, as is the case with most fees in New Hampshire (with legislative approval), or the fees are codified by state legislatures themselves. Strong arguments can be made for each method. On the one hand, state agencies are generally better equipped to research and establish a price for a fee that reflects market costs or the appropriate and/or just value of an effective deterrent or fine, in the case of a penalty. This is true in part because agencies typically possess specialized knowledge in their field of work and possess resources needed to conduct market research and compare their fees and penalties to those of other states. Moreover,



the agency-based fee adjustment and establishment process, while subject to legislative review and oversight, is not subject to the same legislative process as ordinary bills, nor is it subject to as much political debate as typical bills. However, critics of this method note that leaders of state agencies are not democratically elected and thus citizens have extremely limited control over fee amounts. While the legislature approves fees set in rules every ten years, and amendments to those rules, the establishment of fees by state agencies could be seen as executive encroachment on the constitutionally-vested power of the legislature, which is elected every two years to control the budget. Given the power associated with budgetary control, this is not a minor point.

New Hampshire House Bill 624 would require all fees to be approved by the state legislature through statute, rather than administrative rule. We were initially tasked with identifying and researching all fees and fines charged by the State of New Hampshire, but the size of this task and the resources it would require caused us to narrow our scope to a pilot study. The fees and fines we identified for this case are available in an appendix. The remainder of this report outlines the methodology we used to identify and describe all of the fees in the Administrative Rules for the Department of Environmental Services—a randomly selected pilot case—and examines the tradeoffs between the two fee-setting process alternatives as well as conducts a brief cost-benefit analysis of each.

2. FEE ANALYSIS METHODOLOGY

Currently, each state department and agency is responsible for setting and adjusting its fees, subject to decennial legislative approval associated with rule expiration. Some fees are adjusted “automatically” by formula, if specified as such in the governing rule or statute, but most require legislative approval to be amended. The fees cover a wide range of purposes but generally fall into the broad categories of license/permit fees, administrative fees, and fines. Fees for licenses or permits allow people to perform specific functions, such as the work of a plumber or electrician, or to take on an environmental conservation project. Fees listed as administrative are used for support services; for example, almost every department has a fee set aside for the cost of printing documents and retrieving files. Finally, fines are issued in order to deter or penalize a specified behavior. For example, the Environmental Services Department has established fines for damaging wetlands or stream areas, which act to deter such activities.

The first step in our analysis was to identify and describe every fee of each type in the administrative rules of the Department of Environmental Services, which we selected as a pilot case. For each of these fees, we recorded the *agency, rule, fee amount, description of fee, statutory authority, date effective, date expired, and category*. This section describes the method we used to find, describe and record these four types of fees. The



purpose of this section is to allow replication of our methods for future fee collection, or verification of our findings.

2.1 Finding Fees and Fines

In order to identify fees, we went to the New Hampshire State Office of Legislative Services Administrative Rules webpage. This webpage lists all of the New Hampshire state executive agencies along with links to rules for these agencies and is located at http://www.gencourt.state.nh.us/rules/about_rules/listagencies.htm. In order to explore the rules of the agencies, we clicked on the agency code link under the **Title/Subtitle** section on the home page that reflected the appropriate agency for our study: ENV. These links lead to the table of contents for the agency's rules; rule records were accessed by clicking the "CHAPTER" link on the top left of the screen.

We experimented with several ways of searching for fees. After this trial and error process we decided that the most effective search method would be a simple webpage search (using CTRL+F to launch a search window) through each webpage of rules with the keywords: \$, **fee**, and **percentage**. After finding the fees using this method, we visually skimmed each webpage of rules in order to ensure: (1) the paragraphs identified with our keyword searches were actually fees, and (2) that we had not missed any fees. Such instances were extremely rare.

Through this search method we discovered that most fees in the agency rules are simple and easy to identify, understand, and cross-reference with relevant statutes, such as the following excerpt from Administrative Rule AUC 104.3, of the New Hampshire State Board of Auctioneers:

Auc 104.03 Copies of Records. Persons desiring copies of board records shall submit such request, during the normal hours of the board office, identifying as particularly as possible the information being sought and agreeing to pay a copying fee of \$.25 per page.

However, other fees are complex, in the sense that one sentence or paragraph may identify a fee or penalty for which there are varying amounts or types. For example, licensing fees for craftsmen are available at apprentice, journeyman, and master levels. This could be considered one "complex fee" or three distinct fees. Our analysis identifies each of the possible permutations or combinations of fee types and levels as a distinct fee. Thus, for the craftsman license example, each level of license would be recorded as a separate fee.



2.2 Recording the Fees

Most fees are simple and straightforward; they were easily found and recorded. We recorded the fees that we found in a simplified spreadsheet format that can be located at:

https://docs.google.com/spreadsheet/ccc?key=0AsoN6Dh9CuRWdGRRdUZNX0kyMGVUeVdIYnNMM2JVamc&hl=en_US#gid=0

For each fee, we recorded the *agency, rule, fee amount, description of fee, statutory authority, date effective, date expired, and category*. All of these categories were organized as headers of separate columns in the spreadsheet.

The *agency* column records the abbreviation of the agency affiliated with the rules in which the fee was found. These abbreviations are the same ones mentioned earlier (that link to the agency rules) and are found under the **Title/Subtitle** section. For example, the abbreviation for the Department of Environmental Services is ENV and is recorded under the Agency column as such.

For the *rule* column, we recorded the rule number but not the letter of the fee. It is important to note that two unique fees can have the same rule number. In fact, we found as many as ten unique fees as part of the same rule.

For the *fee amount* column, we recorded the dollar amount of the fee. At times, this amount was unspecified and depended on several conditions set in the rule. For these instances, we merely listed each condition and explained how this would affect the fee's amount.

For the *description of fee* column, we recorded a qualitative explanation of the fee. Often, we copied a specific sentence or phrase from the agency rules that best highlighted what purpose the fee serves. Our purpose here was not to thoroughly explain the fee, but rather to provide enough information to assist a casual researcher to understand the basic purpose of the fee.

For the *statutory authority* column, we recorded the chapter, section, and article of the New Hampshire Revised Statutes Annotated that authorizes the creation of the fee. This was found in the appendix table at the bottom of the agency rules document in which the fee was found.



For the *date effective* column, we recorded the most recent date that the fee's legality was established. This could be found directly under the rule's description in the agency rules document after either the Source or New listings.

For the *date expired* column, which was created to fulfill a client request to find fees that have expired but are still listed in the rules and therefore may be illegally enforced, we found nothing. Although by our assessment no expired fees exist in the agency rules we examined, an expired fee would be marked after either the Source or New listings by the word EXPIRED.

For the *category* column, we described the type of fee using our three distinct classifications listed earlier. As mentioned earlier, fees generally fall into the four broad categories of licenses, permits, administrative, and fines. As we were searching only for fees in the Environmental Services Department, we slightly adjusted these fee classifications to better suit our specific purposes, listing them as administrative fees, licensing fees, or environmental penalties.

In sum, we recorded information for every fee, including every discrete combination or permutation of all fees and fines, in all of these categories, for both our pilot study (DES) and a select set of randomly selected, smaller, agencies and boards. We identified 799 such fees and fines, again including all combinations and permutations of complex fees and fines as discrete fees, in the DES, located in the ENV-A, ENV-C, ENV-HW, ENV-SW, ENV-OR, ENV-WR, ENV-WS, ENV-DW, ENV-WQ, and ENV-WT sections. Among the smaller set of non-DES sections, we identified 48 fees in the AC, ACP, ADM, and AGR agencies.

Collecting all of these fees required a considerable amount of time and effort – approximately thirty person-hours of labor went into simply finding and recording these fees. However, it is worth noting that the Environmental Services department likely has a greater density of fees and fines specified by its administrative code than other agencies due to the abundance of environmental penalties, the broad scope of the department's responsibilities, and the complexity of many of the environmental penalties. Therefore, the DES may not provide a wholly accurate picture of the time it would take to compile fees for many of the other departments.

Some drawbacks to this methodology do exist. The New Hampshire Code of Administrative Rules contains very detailed information on all standards and possible courses of action set into place by the agencies and departments of the state. Due to the very specialized issues that each department focuses on, the language of these rules is complex and written to address the smallest details. Therefore, the descriptions accompanying many of the fees are difficult for non-expert readers such as us to



understand and often reference specific legislation or programs that are not well known to those outside of the agency. Many fees in the ENV-A and ENV-C sections reference standards for operation of facilities or construction of projects in very technical terms that were also difficult to comprehend exactly. Most legislators would likely need further elaboration and intense study, or well-trained available research staff, in order to comprehend the specific purpose and appropriate cost of each fee. Providing this information would require significant external research into the operation of specific programs in order to describe in layman's terms the purpose and reasoning behind the creation or adjustment of the fee. While this is not necessarily an insurmountable obstacle, it is certainly an important aspect to keep in mind.

3. FEE AND FINE ANALYSIS: DEPARTMENT OF ENVIRONMENTAL SERVICES

Using our methodology, and recording every combination within complex fees and fines, we identified 799 fees and fines within the 152 sections of administrative rules of the Department of Environmental Services. The vast majority of these fees are listed within the ENV-C section of rules, which describes the Cross-Program rules. This section contains the bulky subsections of *Laboratory Accreditation* and *Administrative Fines*; most of the fees in this section come from the *Administrative Fines* subsection and are listed as either operational administrative fines or penalties charged for some type of environmental damage. These penalties make up 84.1% of all fees and fines in the DES rules. Of the 670 penalties, 667 of them are in ENV-C and the remaining three are in ENV-A. Tables 1 and 2 and Figure 1 provide an analysis of fees collected within the DES.

Table 1: DES Fees by Type

Type	Number of Fees
Administrative	29
Penalty	672
Licensing	98

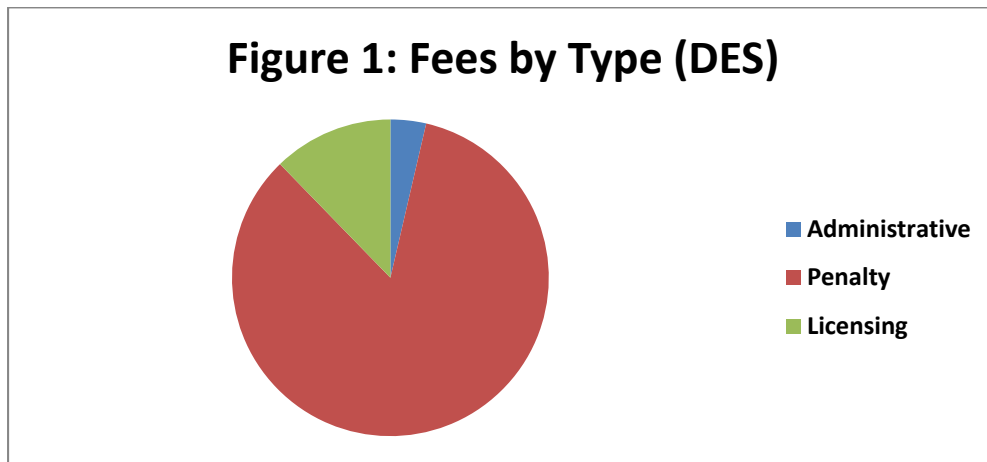




Table 2. DES Fees by Section

ENV – A	Air Related Programs	45
ENV – C	Cross-Program Rules	699
ENV – DW	Drinking Water Programs	3
ENV – HW	Hazardous Waste Programs	6
ENV – OR	Oil and Remediation Programs	2
ENV – SW	Solid Waste Programs	8
ENV – WQ	Water Quality and Quantity Programs	24
ENV – WR	Dam-Related Programs	1
ENV – WS	Division of Water	4
ENV – WT	Wetlands Program	7

Most of the fees in the DES rules are penalties, with much smaller proportions of licensing fees (12.3%) and administrative fees (3.6%). The large proportion of penalties in the DES is tied to the unique role of the department—detering environmental damage—and seems reasonable as fines play an important role in enforcing standards of environmental protection. The large number of potential fines that can be charged for violation of environmental standards might deter such behavior, meaning that very little revenue actually comes into the department from these penalties. In general, other state agencies and departments will probably have fewer penalties defined in administrative rule, unless these serve as a deterrent against other undesirable behaviors, such as speeding. Some of these penalties also have statutory limits imposed by the legislature.

Most of the fees in the DES sections outside of ENV-C were licensing fees required for undertaking a specific project or investment relating to the agency’s domain. For example, fees in the ENV-A (Air Related Programs) section often were paid as application fees for parties wishing to utilize industrial technologies or devices that could affect air quality. Most of the small amount of administrative fees we found were listed in the sections outside of the DES, probably because the operations of the DES do not involve a large amount of administrative activities for which fees is charged; the few such fees that do exist are incurred for expediting review processes for applications and for inspection costs.

Recognizing that fees and fines associated with DES are likely to be composed of penalties to a greater degree than most agencies, due to that agency’s responsibilities in deterring environmental damage, we also examined the distribution of fee and fine types among a few small, randomly-selected, executive agencies outside of DES. Tables 3 and 4 provide analyses of these fees we collected outside of the DES. As expected, most fees we identified outside of DES are administrative or licensing fees. The mission of DES



makes it somewhat unique in its high proportion of penalties and, in retrospect, not the most representative case of fee types and distributions.

Table 3: Fees by Agency (Non-DES)

Agency	Agency – Full Name	Number of Fees
AC	Board of Accountancy	11
ACP	Board of Acupuncture Licensing	6
ADM	Commissioner Department of Administrative Services	2
AGR	Commissioner, Department of Agriculture, Markets, and Food	29

Table 4: Fees by Type (Non-DES)

Type	Number of Fees
Admin.	8
Licensing	40

4. FEES IN OTHER STATES

Having collected data on each fee in our pilot case of DES, we turned to analysis of the potential impact of changing the current fee structure in New Hampshire. In order to do this, we examined the methods of several other states that rely significantly on user fees to generate state revenue and compared the relative advantages and disadvantages of each fee-setting technique.

In 2001, Minnesota enacted a law stating that “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 only be reduced under the new law without legislative approval.” Under this legislation, almost identical to New Hampshire’s House Bill 624, the state legislature must authorize every proposed fee increase or new fee creation. Under this system the legislature can reject a proposal simply by doing nothing, because fee increases require legislative approval before taking effect. It can approve a proposed increase or new fee by either writing fees into statute or having individual budget bills approve specified new fees or fee increases by reference to the budget document.¹ Since the law was enacted, the legislature has, for the most part, elected to follow the first of these two options, specifically writing new fees into statute.

In 2010, after ten years with this law in place, scholars at the Morrison Institute at Arizona State University included Minnesota in a research study along with Arizona, comparing two separate states that both set fees solely by statute. Arizona has a legislative history similar to that of Minnesota, as a law explicitly prohibiting the establishment or adjustment of fees by any method other than statute was passed in



Arizona in 1999. Before these laws were passed, both states set and adjusted fees using an administrative agency rulemaking process similar to that currently used in New Hampshire. The study compared the relative merits of these two fee-making methods (agency rule vs. statute) by examining the efficiency of the fee adjustment structures in each state before and after their respective laws were enacted.

The study found that the experiences of these two states had been difficult since the laws were passed; in both cases legislators have often struggled to set precise fee amounts that accurately cover the costs of services. Although user fees can push state governments to act more like private companies by charging citizens for specific services, the costs of these services are constantly rising and falling in a dynamic marketplace and the state legislatures in both of these cases often did not have the flexibility to change so swiftly. The study showed that this was a significant problem: sometimes, setting and adjusting fees could take up to several years.²

The study noted that the state agencies in these two states, which were responsible for setting and adjusting fees before the law changed, also had experienced a slight problem with efficient fee adjustment, as they sometimes needed to follow a lengthy rule-making process in order to modify a fee. However, the study compared the average length of time it took to adjust fees by agency rule before the law passed with the average time it took to change fees by statute since that time and concluded that the rule-making process was not nearly as cumbersome as passing new legislation.

The study showed that after the implementation of the new law in Minnesota, fees were, on average, either higher or lower than the estimated costs of their associated services by approximately five percent. When the agency rulemaking process was responsible for setting and adjusting fees, this gap was estimated to be only two percent.³ In Arizona, the numbers were similar, moving from an average gap of three percent to seven percent.⁴ The study concluded that fees determined by individual agencies were adjusted, presumably to reflect actual service costs, much more frequently than fees that were determined by statute. This data indicates that at least for these two states, the rule-making model appears to be more effective than the statutory model at monitoring and adjusting fees in order to keep pace with the true cost of the service.

The study also noted that when states build in formulae to monitor the precision of specific fees, as is the case with some environmental fees in Arizona, they become even more effective at quickly adjusting fees in order to reflect the appropriate cost levels.⁵ While this study was the only research we found comparing the two methods, the concern it raises appears to be a legitimate one. Legislatures, especially those that are divided and polarized, can take a long time to come to agreement. Legislatures, especially citizen-legislatures like that of NH, are also resource-deprived and understaffed, while market



research requires both ample time, resources, and research staff. Considering the complexity and volume of fees and fines in DES, it is likely that taking the time to adjust each individual fee so that it keeps pace with the market and appropriately reflects the cost of the services that it provides would be a prohibitively time-consuming and costly endeavor for the legislature, whereas the agency has greater resources and staff to conduct market and other research.

5. POLICY OPTIONS

5.1 Require all fees to be set by statute

New Hampshire could require all fees to be codified by the legislature, as proposed in HB 624. Each fee would be voted on and approved by the legislature before it is put into place, and no changes could be made until they are voted on. If state fees are approved by the legislature the fee process will likely be more transparent and representative of popular views, because elected officials will have the ability to represent constituents' interests in establishing fees. Fee increases or decreases that are unpopular could be acted on by the public in the electoral process.

However, the Morrison Institute study suggests that, if state fees are set by the legislature, fee-making will take more time for fees to be changed and adjusted, slowing responsiveness to market forces. Also, given the lack of resources in support of research within the NH House of Representatives, it will be difficult for the legislature to get an accurate picture of the appropriate, or market-value, cost for each individual fine, penalty, or fee. Under this approach the state legislature would need to codify fees in all agencies ranging from The Amusement Ride Safety Bureau to The New Hampshire State Veterans Cemetery, encompassing very complex and challenging topical areas to understand. There is also a possibility that fee levels could become a political issue, or tied to other, more controversial issues, which might further differentiate the amount of a fee from its true cost. This could become especially problematic since several agencies use fees, fines, and licenses to cover operating costs and remain revenue neutral.

5.2 Maintain the current system: allow state agencies to set fees

New Hampshire could continue to allow state agencies the responsibility to establish their own fees, with legislative review upon amendment or expiration. Compared to the model proposed in HB 624, this would allow for fees to be more easily adjusted to changes in related costs. States agencies should also have more experience with determining what fees they needed to charge and what the cost of the process was for them than the state legislature. Alternatively, the legislature could require, on an annual basis, that state agencies submit a listing of all of their fees, and commentary/analysis on the extent to



which these fees are covering costs, if relevant, or are serving as effective deterrents. This method would reduce the amount of direct involvement elected officials would have in determining fee amounts, compared to the statutory model, instead relegating that authority to unelected officials, but would enhance opportunities for legislative oversight.

6. CONCLUSION

Fees, fines, and penalties in the state of New Hampshire collect money for a wide range of provided services and deter behaviors considered undesirable, such as pollution, littering, or speeding on highways. The fee-making process is complicated and, understandably, the subject of some scrutiny.

This report demonstrated and analyzed the process of fee collection and research through a pilot case using the Department of Environmental Services. The state fees from the DES have been both found and recorded in a format that is simple to navigate and understand. While completing this process, we discovered several key insights that may prove helpful to the legislature in deciding future policy options concerning state fees. These takeaways include the considerably daunting amount and extent of the various fees listed under New Hampshire state agency rules, the potential inefficiency of setting fees through statute, and the presence of a democratic process in establishing and adjusting fees. These are all important factors that the legislature may want to carefully consider before deciding whether or not to get involved more intimately in the fee creation process.



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