

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Ways and Means Committee

BILL: CS/CS/SB 1678

INTRODUCER: Governmental Oversight and Productivity Committee, Governmental Efficiency Appropriations Committee and Governmental Efficiency Appropriations Committee

SUBJECT: Governmental Operations/Agency Fees

DATE: April 4, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gilreath</u>	<u>Johansen</u>	<u>GE</u>	<u>Fav/CS</u>
2.	<u>Wilson/Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>Herring</u>	<u>Coburn</u>	<u>WM</u>	<u>Favorable</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

CS/CS/SB 1678 requires that state agencies review the fees charged for providing regulatory services or regulating businesses and professions consistent with legislative budget instructions (to be developed). The bill also requires each agency, as part of its legislative budget request, to provide the Governor and Legislature with a proposal for making the regulatory service or program self-sufficient or to provide justification for a subsidy from other state funds.

This bill creates section 216.036 of the Florida Statutes.

II. Present Situation:

To promote public health, safety, and welfare, the Legislature has authorized programs to regulate various professions, businesses, and products. These programs generally set standards for goods and services, license individuals and businesses that offer them, conduct inspections, and take enforcement actions to ensure compliance with state standards.

Regulatory Program Funding

In December 2005, the Office of Program Policy Analysis and Government Accountability (OPPAGA) issued Report No. 05-57, *Legislature Should Consider Uniform Process to Determine Appropriate Regulatory Program Funding Levels*. The report noted that currently, Florida administers 190 regulatory programs. Of the \$677 million in total funding for these programs in Fiscal Year 2004-05, general revenue provided \$29 million. The report provided the following background information:

- Funding for regulatory programs is derived from three major sources—user charges, federal funds, and general revenue.
- Several factors should be considered in determining how regulatory programs should be funded, including the distribution of benefits, the feasibility of collecting user fees, and the impact of various types of fees on regulated entities.
- In general, user charges should be the primary source of funding for the state’s regulatory programs and should be sufficient to cover all of the associated direct and indirect costs, because this helps to reduce demands for general revenue funding, recognizes the benefits that regulation provides to regulated entities, and increases accountability as regulated entities help to monitor agency activities to ensure that the services they are funding are cost-effective.

OPPAGA’s findings included:

- There is no overall policy for determining appropriate regulatory program funding sources and most regulatory programs in Florida are not currently required to be self-supporting. Less than half (81, or 43%) of the state’s 190 regulatory programs are statutorily required to be supported solely by user fees and federal funds and, in some cases, programs that are required to be self-supporting receive general revenue anyway.
- Current state accounting methods hinder the determination of appropriate funding levels for regulatory programs because the state’s accounting system does not identify the total direct costs for all regulatory programs and because agencies are using different methodologies to calculate the indirect costs of these programs.

OPPAGA’s report identified several policy options for consideration by the Legislature, including:

- Establishing a uniform policy governing the funding of regulatory programs.
- Eliminating statutory caps on regulatory fees since these limits can become outdated if not periodically addressed by the Legislature to reflect the effects of inflation.
- Revising the legislative budget request instructions to require agencies to provide written justification when they request general revenue for a regulatory program. This would help the Legislature determine whether the program provides sufficient broad public benefits to justify general revenue funding.
- Revising the legislative budget request instructions to establish a uniform methodology for calculating the cost of regulatory programs.

Regulatory Fee Structure

In December 2002, Senate Interim Project Report No. 2003-139, titled *Fee Equity – Examining the Fairness of Florida’s Regulatory Fee Structure* was issued. The report noted that within Florida’s annual budget of over \$50 billion (along with separate fiduciary accounts of almost another \$120 billion) are scores of separate revenue raising and spending streams. The report provided the following background issues:

- Regulatory fees pose unique sets of issues for the institutions and persons affected by government action through its police power or commerce regulating functions.
- Fees charged for services and for regulation of businesses and professions are set in statute as 1) flat fees, 2) fee caps, or 3) authorization for an agency or board to charge a fee to “cover the cost of such service.”
- Many fees are capped and can be increased only through legislation.
- Recently (2002) some fees are set at levels inadequate to cover the true cost of regulation.
- Concerns have been raised about fees that do not completely cover the cost of the benefits provided and about the seemingly disparate treatment of those regulated.

The Interim Project report included the following key findings:

- The corresponding costs of providing the regulation of service should be identifiable and relate back to the agency function.
- Generally, the fees set forth in the statute are to pay for certain costs accrued for the regulation of a profession or provision of a service. Based on policy considerations, the fees may not entirely cover the cost of regulating the profession or of providing the service.
- Prescribing that all costs of providing a service or of regulating a profession must be covered by fees requires that all costs be defined and allocated.
- The statutory language for cost recovery varies among agencies.
- State agencies perform a broad spectrum of services that can directly benefit a particular entity and at the same time benefit the public as a whole.

The Interim Report made the following recommendations:

- Fee structures should be reviewed to insure consistency with stated policy. Further, consistent with the concept of cost recovery, the appropriateness of fee caps should be reviewed to make sure these upper limits are sufficient to cover all included costs.
- Any review should be tied to a systematic and periodic review process. The review should consider all costs of providing a service for which a fee is charged and should take into account the public policy issues involved in regulating professionals. This would assure that all costs are borne solely by those receiving the service or regulation. Sharing the cost among broader sources would have to be justified.

State Trust Fund Administration Structure

In February 2002, the Office of the Auditor General issued Report No. 02-147 titled *A Review of the Administration of State Trust Funds*. The report provided recommendations relevant to determining the costs of providing a service for which a fee is charged and of regulating professions. The report included the following recommendations:

- The state accounting system should establish certain cost accounting capabilities to accumulate both the direct and indirect costs of each activity.
- The Legislature should authorize the Governor’s Office and the Chief Financial Officer to develop policies and related guidelines for identification and classification of direct and indirect costs.

- State law does not currently require state agencies to develop and implement cost allocation plans. Therefore, in support of maintenance of cost records, each agency should adopt and periodically thereafter update a plan for allocating to each activity an appropriate share of the agency's indirect costs.

Trust Fund Review Process

Section 216.023, F.S., directs state agencies to submit a legislative budget request to the Legislature and the Governor. It also requires the Governor and the Legislature to develop legislative budget instructions for agencies to follow. Numerous forms are required to be submitted for this review process, including specific trust fund review information.

The Legislative Budget Instructions require state agencies to report detailed trust fund data. This data includes detail of fees and related costs, cash balances, and reconciliation of cash balances. For each fund, the agency has to include a request to create, re-recreate, modify or terminate the trust fund. Agencies are required to prepare proposed legislation to enact any proposed new trust funds or to make any modifications to existing trust funds. No specific process or policy is established for the detailed review of the actual fees and revenues deposited into each trust fund.

III. Effect of Proposed Changes:

Section 1: This bill creates s. 216.0236, F.S., to provide legislative intent that all costs of providing a regulatory service or regulating a profession or business be borne solely by those who receive the service or who are subject to regulation. The bill provides legislative intent that the fees imposed be reasonable and take into account the differences in the types of professions or businesses being regulated, and that the responsible agencies operate efficiently.

The bill also requires that, in accordance with legislative budget request instructions, each state agency must examine the fees it charges for regulatory services and oversight to businesses or professions, including whether:

- Operational efficiencies can be achieved in the underlying program,
- The regulatory activity is an appropriate function that ought to be continued at its current level by the state, and
- The fees charged for each regulatory program are adequate to cover both direct and indirect costs and take into account differences between the types of professions or businesses being regulated.

The bill provides that if any of the fees charged for regulatory services or oversight are not adequate to cover program costs, the agency must present to the Governor and Legislature, as part of its legislative budget request, information regarding alternatives for realigning revenues or costs to make the regulatory program totally self-sufficient, or must demonstrate that the program provides substantial benefits to the general public to justify a partial subsidy from other state funds, for review by the Legislature at its next regular session.

The bill also provides that the Legislature is to review the regulatory fee structure for all businesses and professions at least once every 5 years and permits inclusion of the schedule for review in legislative budget instructions developed pursuant to s. 216.023, F.S.

Section 2: Provides an effective date of July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

This bill could result in fee increases for some regulatory programs that are not currently self-supporting.

B. Private Sector Impact:

This bill could result in fee increases that will affect some consumers of the various goods or services provided by regulatory programs that are not currently self-supporting.

C. Government Sector Impact:

This bill is expected to reduce the amount of general revenue that is currently used to support regulatory programs by increasing revenues deposited in state regulatory trust funds or by reducing the expenditure needs of regulatory programs to be within current fee revenues.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
