

# HB0383S01 compared with HB0383

~~{deleted text}~~ shows text that was in HB0383 but was deleted in HB0383S01.

inserted text shows text that was not in HB0383 but was inserted into HB0383S01.

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Representative Kay J. Christofferson proposes the following substitute bill:

## AGENCY FEE ASSESSMENT AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kay J. Christofferson**

Senate Sponsor: \_\_\_\_\_

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### LONG TITLE

#### General Description:

This bill modifies provisions relating to the assessment of fees by state agencies.

#### Highlighted Provisions:

This bill:

- ~~{~~ → modifies the comprehensive state accounting system that the director of the Division of Finance is required to establish and that agencies are required to install and maintain to include a fee accounting system;
- requires the Division of Finance to establish reporting procedures, criteria, and forms to implement fee reporting requirements;
- ~~}~~ ▶ modifies provisions relating to a fee agency's charging of a new service fee or regulatory fee ~~{, including:~~
- • a requirement for a fee agency to submit to };

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- ▶ modifies definitions applicable to provisions related to fees of state agencies;
- ▶ requires the Governor's Office of Planning and Budget and the Division of Finance to submit a report summarizing agency fee information ~~{ in the agency's fee accounting system; and~~
  - ~~• providing for the Division of Finance's review and approval of the report;~~
  - ~~▶ prohibits fee revenue from being spent unless the fee agency uses an approved fee accounting system and until a fee agency has submitted an approved report}; and~~
- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**53-2a-1102**, as last amended by Laws of Utah 2021, Chapter 395

~~{ **63A-3-202**, as renumbered and amended by Laws of Utah 1993, Chapter 212~~

~~**63A-3-203**, as last amended by Laws of Utah 2017, Chapter 56~~

~~‡ **63J-1-504**, as last amended by Laws of Utah 2021, Chapter 382~~

~~{ENACTS:~~

~~**63A-3-200.5**, Utah Code Annotated 1953~~

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **53-2a-1102** is amended to read:

**53-2a-1102. Search and Rescue Financial Assistance Program -- Uses --**

### **Rulemaking -- Distribution.**

(1) As used in this section:

(a) "Assistance card program" means the Utah Search and Rescue Assistance Card Program created within this section.

(b) "Card" means the Search and Rescue Assistance Card issued under this section to a participant.

(c) "Participant" means an individual, family, or group who is registered pursuant to

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this section as having a valid card at the time search, rescue, or both are provided.

(d) "Program" means the Search and Rescue Financial Assistance Program created within this section.

(e) (i) "Reimbursable base expenses" means those reasonable expenses incidental to search and rescue activities.

(ii) "Reimbursable base expenses" include:

(A) rental for fixed wing aircraft, snowmobiles, boats, and generators;

(B) replacement and upgrade of search and rescue equipment;

(C) training of search and rescue volunteers;

(D) costs of providing life insurance and workers' compensation benefits for volunteer search and rescue team members under Section 67-20-7.5; and

(E) any other equipment or expenses necessary or appropriate for conducting search and rescue activities.

(iii) "Reimbursable base expenses" do not include any salary or overtime paid to an individual on a regular or permanent payroll, including permanent part-time employees of any agency of the state.

(f) "Rescue" means search services, rescue services, or both search and rescue services.

(2) There is created the Search and Rescue Financial Assistance Program within the division.

(3) (a) The financial program and the assistance card program shall be funded from the following revenue sources:

(i) any voluntary contributions to the state received for search and rescue operations;

(ii) money received by the state under Subsection (11) and under Sections 23-19-42, 41-22-34, and 73-18-24;

(iii) money deposited under Subsection 59-12-103(14);

(iv) contributions deposited in accordance with Section 41-1a-230.7; and

(v) appropriations made to the program by the Legislature.

(b) All money received from the revenue sources in Subsections (3)(a)(i), (ii), and (iv), and 90% of the money described in Subsection (3)(a)(iii), shall be deposited into the General Fund as a dedicated credit to be used solely for the program.

(c) 10% of the money described in Subsection (3)(a)(iii) shall be deposited into the

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General Fund as a dedicated credit to be used solely to promote the assistance card program.

(d) All funding for the program is nonlapsing.

(4) Subject to Subsections (3)(b) and (c), the director shall use the money described in this section to reimburse counties for all or a portion of each county's reimbursable base expenses for search and rescue operations, subject to:

(a) the approval of the Search and Rescue Advisory Board as provided in Section 53-2a-1104;

(b) money available in the program; and

(c) rules made under Subsection (7).

(5) Money described in Subsection (3) may not be used to reimburse for any paid personnel costs or paid man hours spent in emergency response and search and rescue related activities.

(6) The Legislature finds that these funds are for a general and statewide public purpose.

(7) The division, with the approval of the Search and Rescue Advisory Board, shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with this section:

(a) specifying the costs that qualify as reimbursable base expenses;

(b) defining the procedures of counties to submit expenses and be reimbursed;

(c) defining a participant in the assistance card program, including:

(i) individuals; and

(ii) families and organized groups who qualify as participants;

(d) defining the procedure for issuing a card to a participant;

(e) defining excluded expenses that may not be reimbursed under the program, including medical expenses;

(f) establishing the card renewal cycle for the Utah Search and Rescue Assistance Card Program;

(g) establishing the frequency of review of the fee schedule;

(h) providing for the administration of the program; and

(i) providing a formula to govern the distribution of available money among the counties for uncompensated search and rescue expenses based on:

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- (i) the total qualifying expenses submitted;
- (ii) the number of search and rescue incidents per county population;
- (iii) the number of victims that reside outside the county; and
- (iv) the number of volunteer hours spent in each county in emergency response and search and rescue related activities per county population.

(8) (a) The division shall, in consultation with the Outdoor Recreation Office, establish the fee schedule of the Utah Search and Rescue Assistance Card Program under Subsection ~~[63J-1-504(6)]~~ 63J-1-504(8+7).

(b) The division shall provide a discount of not less than 10% of the card fee under Subsection (8)(a) to a person who has paid a fee under Section 23-19-42, 41-22-34, or 73-18-24 during the same calendar year in which the person applies to be a participant in the assistance card program.

(9) Counties may not bill reimbursable base expenses to an individual for costs incurred for the rescue of an individual, if the individual is a current participant in the Utah Search and Rescue Assistance Card Program at the time of rescue, unless:

- (a) the rescuing county finds that the participant acted recklessly in creating a situation resulting in the need for the county to provide rescue services; or
- (b) the rescuing county finds that the participant intentionally created a situation resulting in the need for the county to provide rescue services.

(10) (a) There is created the Utah Search and Rescue Assistance Card Program. The program is located within the division.

(b) The program may not be utilized to cover any expenses, such as medically related expenses, that are not reimbursable base expenses related to the rescue.

(11) (a) To participate in the program, a person shall purchase a search and rescue assistance card from the division by paying the fee as determined by the division in Subsection (8).

(b) The money generated by the fees shall be deposited into the General Fund as a dedicated credit for the Search and Rescue Financial Assistance Program created in this section.

(c) Participation and payment of fees by a person under Sections 23-19-42, 41-22-34, and 73-18-24 do not constitute purchase of a card under this section.

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(12) The division shall consult with the Outdoor Recreation Office regarding:

- (a) administration of the assistance card program; and
- (b) outreach and marketing strategies.

(13) Pursuant to Subsection 31A-1-103(7), the Utah Search and Rescue Assistance Card Program under this section is exempt from being considered insurance as that term is defined in Section 31A-1-301.

Section 2. Section ~~63A-3-200.5~~ is enacted to read:

~~**63A-3-200.5. Definitions.**~~

~~As used in this part:~~

~~(1) "Agency's cost" means the same as that term is defined in Section 63J-1-504.~~

~~(2) "Fee accounting system" means a system:~~

~~(a) for the accounting, as described in Subsection 63A-3-203(5)(b), of each service fee or regulatory fee that a fee agency charges or proposes to charge; and~~

~~(b) that interfaces with or is a part of the comprehensive state accounting system established under Subsection 63A-3-202(1).~~

~~(3) "Fee agency" means the same as that term is defined in Section 63J-1-504.~~

Section 3. Section ~~63A-3-202~~ is amended to read:

~~**63A-3-202. Comprehensive state accounting system -- Approval of agency accounting systems -- Cost accounting systems required.**~~

~~(1) The director of the Division of Finance shall establish a comprehensive state accounting system, including a fee accounting system for fee agencies.~~

~~(2) Officers, departments, agencies, and institutions of Utah may create and maintain accounting systems only with the approval of the director.~~

~~(3) The director may, with the approval of the executive director, require any department or institution to install and maintain a cost accounting system that will disclose the unit cost of material or service produced or performed by a department.~~

Section 4. Section ~~63A-3-203~~ is amended to read:

~~**63A-3-203. Accounting control over state departments and agencies -- Prescription and approval of financial forms, accounting systems, and fees.**~~

~~(1) The director of the Division of Finance shall:~~

~~(a) exercise accounting control over all state departments and agencies except~~

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~~institutions of higher education; and~~

~~—— (b) prescribe the manner and method of certifying that funds are available and adequate to meet all contracts and obligations.~~

~~—— (2) The director shall audit all claims against the state for which an appropriation has been made.~~

~~—— (3) (a) The director shall prescribe:~~

~~—— (i) all forms of requisitions, receipts, vouchers, bills, or claims to be used by all state departments and agencies; and~~

~~—— (ii) all forms to be used by the division.~~

~~—— (b) Before approving the forms in Subsection (3)(a), the director shall obtain approval from the state auditor that the forms will adequately facilitate the post-audit of public accounts.~~

~~—— (4) Before implementation by any state agency, the director of the Division of Finance shall review and approve any accounting system developed by a state agency.~~

~~—— (5) (a) (i) Subject to Subsection (5)(a)(ii), a fee agency shall use a fee accounting system to account for a service fee, as defined in Section 63J-1-504, or a regulatory fee, as defined in Section 63J-1-504, that the fee agency charges.~~

~~—— (ii) Before implementing a fee accounting system, a fee agency shall obtain the approval of the director of the Division of Finance for the fee accounting system.~~

~~—— (b) A fee accounting system shall include accounting and computations related to:~~

~~—— (i) the amount of the fee;~~

~~—— (ii) the number of persons charged the fee;~~

~~—— (iii) the annual cumulative revenue from the fee; and~~

~~—— (iv) the annual agency's cost for the fee.~~

~~—— (c) Subsection (5)(a) may not be construed to require a fee agency to implement a new fee accounting system or buy software for a new fee accounting system if the fee agency already uses a fee accounting system approved by the director of the Division of Finance.~~

~~—— Section 5. Section ~~63J-1-504~~ is amended to read:~~

~~‡ 63J-1-504 is amended to read:~~

**63J-1-504. Fees -- Adoption, procedure, and approval -- Establishing and assessing fees without legislative approval.**

(1) As used in this section:

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(a) (i) "Agency" means each department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.

(ii) "Agency" does not ~~[mean]~~ include the Legislature or ~~[its committees.]~~ a committee or staff office of the Legislature.

(b) "Agency's cost" means all of a fee agency's direct and indirect costs and expenses for providing the goods or service for which the fee agency charges a fee or for regulating the industry in which the persons paying the fee operate, including:

(i) salaries, benefits, contracted labor costs, travel expenses, training expenses, equipment and material costs, ~~{capital expense, }~~ depreciation expense, utility costs, and other overhead costs; and

(ii) costs and expenses for administering the fee.

~~{~~ ~~—~~ (c) "Fee accounting system" means the same as that term is defined in Section 63A-3-200.5.

~~}~~ ~~(b)~~ ~~(f+d)~~ "Fee agency" means [any] an agency that is authorized to establish [fees] and charge a service fee or a regulatory fee.

~~(c)~~ ~~(f+d)~~ "Fee schedule" means the complete list of service fees and regulatory fees charged by a fee agency and the amount of those fees.

~~(f+f)~~ "Regulatory fee" means a fee that a fee agency charges to cover the agency's cost of regulating the industry in which the persons paying the fee operate.

~~(f+g+f)~~ "Service fee" means a fee that a fee agency charges to cover the agency's cost of providing the goods or service for which the fee is charged.

(2) [Each] (a) A fee agency that charges or intends to charge a service fee or regulatory fee shall adopt a fee schedule [of fees assessed for services provided by the fee agency that are:].

(b) A service fee or regulatory fee that a fee agency charges shall:

~~(a)~~ (i) be reasonable~~[- fair, and reflect the cost of services provided;]~~ and fair;

(ii) reflect and be based on the agency's cost for the fee;~~;~~

~~—~~ ~~(iii)~~ be properly accounted for under the fee agency's fee accounting system;~~;~~ and

~~(b)~~ ~~(fiv+iii)~~ be established according to a cost formula determined by the executive director of the Governor's Office of Planning and Budget and the director of the Division of



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Finance in conjunction with the fee agency seeking to establish the fee.

~~{ (c) An agency may not charge a fee other than a service fee or a regulatory fee.~~

~~† (3) Except as provided in Subsection [(6)] (~~{8}~~ 7), a fee agency may not:~~

~~(a) set fees by rule; or~~

~~(b) create, change, or collect any fee unless the fee has been established according to the procedures and requirements of this section.~~

~~(4) Each fee agency that is proposing a new fee or proposing to change a fee shall:~~

~~(a) present each proposed fee at a public hearing, subject to the requirements of Title 52, Chapter 4, Open and Public Meetings Act;~~

~~(b) increase, decrease, or affirm each proposed fee based on the results of the public hearing;~~

~~(c) except as provided in Subsection [(6)] (8), submit the fee schedule to the Legislature as part of the agency's annual appropriations request; and~~

~~(d) [~~where necessary~~]; modify the fee schedule as necessary to implement the Legislature's actions.~~

~~(5) (a) ~~{(i)}~~ No later than ~~{September 15 of each year, a fee agency shall submit to the Division of Finance a written report summarizing the information in the fee accounting system for each service fee and regulatory fee that the fee agency charges or proposes to charge.~~~~

~~—— (ii) A report under Subsection (5)(a)(i) shall include:~~

~~—— (A) for the most recent fiscal year, the amount of revenue attributable to each service fee and regulatory fee that the fee agency charges;~~

~~—— (B) for the most recent fiscal year, the agency's cost for each service fee and regulatory fee that the fee agency charges, broken down by individual cost and expense category;~~

~~—— (C) the anticipated amount of revenue for a service fee or regulatory fee that the fee agency proposes to charge; and~~

~~—— (D) the anticipated agency's cost for each service fee and regulatory fee that the fee agency proposes to charge, broken down by individual cost and expense category.~~

~~(b) In consultation with the Office of the Legislative Fiscal Analyst and November 30, 2022, the Governor's Office of Planning and Budget ~~{,}~~ and the Division of Finance shall ~~{establish reporting procedures, criteria, and forms to implement the fee reporting requirements of Subsection (5)(a).~~~~

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~~(c) If the amount of revenue generated or projected to be generated by a service fee or regulatory fee is not substantially equivalent to the agency's cost for that fee, a report under Subsection (5)(a) shall include the fee agency's explanation of the reason for the variance.~~

~~(d) The Division of Finance shall:~~

~~(i) determine whether a report submitted under Subsection (5)(a) is adequate and complete;~~

~~(ii) approve a report submitted under Subsection (5)(a) that the Division of Finance determines to be adequate and complete;~~

~~(iii) allow a fee agency to revise and resubmit a report that the Division of Finance determines not to be adequate and complete; and~~

~~(iv) no later than December 1 of the year in which the report is submitted, report on the adequacy and completeness of the~~ submit a report to the Infrastructure and General Government Appropriations Subcommittee of the Legislature, ~~the Governor's Office of Planning and Budget, and the Office of the Legislative Fiscal Analyst.~~

~~(6) (a) For a fiscal year that begins on or after July 1, 2024, a fee agency may not use or spend revenue from the fee agency's service fee or regulatory fee:~~

~~(i) unless the fee agency uses a fee accounting system approved by the director of the Division of Finance, as provided in Subsection 63A-3-203(5); and~~

~~(ii) until the fee agency submits a~~ .

~~(b) A report under Subsection (5)(a) that the Division of Finance approves as adequate and complete:~~

~~(b) Money not spent because of Subsection (6)(a) lapses to the General Fund at the end of the fiscal year~~ shall:

(i) provide a summary of:

(A) the types of service fees and regulatory fees included in the fee schedules of all fee agencies;

(B) the methods used by fee agencies to determine the amount of fees;

(C) each estimated agency's cost related to each fee;

(D) whether a fee is intended to cover the agency's cost related to the fee;

(E) whether the fee agency intends to subsidize the fee to cover the agency's cost related to the fee and, if so, the fee agency's justification for the subsidy;

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(F) whether the fee agency set the fee at an amount that exceeds the agency's cost related to the fee and, if so, the fee agency's justification for the excess fee; and

(ii) include any recommendations for improving the process described in this section.

~~[(5)(a) Each]~~ ~~(~~7~~6)~~ (a) A fee agency shall submit the fee agency's fee schedule [~~or special assessment amount~~] to the Legislature for the Legislature's approval on an annual basis.

(b) The Legislature may approve, increase or decrease and approve, or reject any fee submitted to it by a fee agency.

~~[(6)]~~ ~~(~~8~~7)~~ After conducting the public hearing required by this section, a fee agency may establish and assess fees without first obtaining legislative approval if:

(a) (i) the Legislature creates a new program that is to be funded by fees to be set by the Legislature;

(ii) the new program's effective date is before the Legislature's next annual general session; and

(iii) the fee agency submits the fee schedule for the new program to the Legislature for its approval at a special session, if allowed in the governor's call, or at the next annual general session of the Legislature, whichever is sooner; or

(b) (i) the fee agency proposes to increase or decrease an existing fee for the purpose of adding or removing a transactional fee that is charged or assessed by a non-governmental third party but is included as part of the fee charged by the fee agency;

(ii) the amount of the increase or decrease in the fee is equal to the amount of the transactional fee charged or assessed by the non-governmental third party; and

(iii) the increased or decreased fee is submitted to the Legislature for the Legislature's approval at a special session, if allowed in the governor's call, or at the next annual session of the Legislature, whichever is sooner.

~~[(7)]~~ ~~(~~9~~8)~~ (a) [~~Each~~] A fee agency that [~~wishes~~] intends to change any fee shall submit to the governor, as part of the agency's annual appropriation request a list that identifies:

(i) the title or purpose of the fee;

(ii) the present amount of the fee;

(iii) the proposed new amount of the fee;

(iv) the percent that the fee will have increased if the Legislature approves the higher fee;

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(v) the estimated total annual revenue [~~change~~] and total estimated annual revenue change that will result from the [~~change in the {fee}~~] changed fee; ~~including the estimated total annual revenue change that will result from the change in the fee~~;

(vi) the account or fund into which the fee will be deposited; [~~and~~]

(vii) the reason for the change in the fee[-];

(viii) the estimated number of persons to be charged the fee; ~~and~~

(ix) the estimated agency's {costs} cost related to the fee; ~~and~~

~~and~~

(x) whether the fee is a service fee or a regulatory fee;

(xi) whether the fee is intended to cover the agency's cost related to the fee;

(xii) whether the fee agency intends to subsidize the fee to cover the agency's cost related to the fee and, if so, the fee agency's justification for the subsidy; and

(xiii) whether the fee agency set the fee at an amount that exceeds the agency's cost related to the fee and, if so, the fee agency's justification for the excess fee.

(b) (i) The governor may review and approve, modify and approve, or reject the fee increases.

(ii) The governor shall transmit the list required by Subsection [(7)] ~~(9)~~(a), with any modifications, to the legislative fiscal analyst with the governor's budget recommendations.

(c) Bills approving any fee change shall be filed before the beginning of the Legislature's annual general session, if possible.

[(8)] ~~(10)~~(a) Except as provided in Subsection [(8)] ~~(10)~~(b), the School and Institutional Trust Lands Administration, established in Section 53C-1-201, is exempt from the requirements of this section.

(b) The following fees of the School and Institutional Trust Lands Administration are subject to the requirements of this section: application, assignment, amendment, affidavit for lost documents, name change, reinstatement, grazing nonuse, extension of time, partial conveyance, patent reissue, collateral assignment, electronic payment, and processing.