



Economic Affairs Interim Committee

64th Montana Legislature

SENATE MEMBERS

GORDON VANCE--Vice Chair
TOM FACEY
RICK RIPLEY
LEA WHITFORD

HOUSE MEMBERS

RYAN LYNCH--Chair
MIKE LANG
NATE MCCONNELL
VINCE RICCI

COMMITTEE STAFF

PATRICIA MURDO, Lead Staff
JAMESON WALKER, Staff Attorney
KRISTINA LIMING, Secretary

as of Aug. 21, 2015

The Philosophy for Using Taxes, Fees to Fund Occupational Licensing Boards, Board of Livestock

This briefing paper provides some thoughts for Economic Affairs Committee members to consider in the FY 2015-FY 2016 interim as they handle two assigned tasks:

- a study under Senate Bill 390 on how occupational licensing boards and the Department of Labor and Industry, to which those boards are administratively attached, develop their costs and determine "fees commensurate with the costs"; and
- a requirement under House Bill 2 that the Economic Affairs Committee, at meetings after each fiscal year has started, hear from the Department of Livestock as to its structural balance, or whether the money coming in is sufficient to cover expenditures.

The Department of Livestock uses per capita fees¹ to fund 66% of the department's entire budget. The general fund pays about 20%, and the remainder comes from federal funding. As pressure has increased on Department of Livestock expenditures, the Board of Livestock, which serves as the department head, has begun to consider whether public health and safety are reasons for the general fund to cover more of the activities that have health and safety of the general public--rather than protection of the livestock industry itself--as a primary goal. Increases in per capita fees are limited in statute to no more than 110% of the average annual revenue from the fee in the previous 3 years.

General Philosophy of When to Tax and When to Charge Fees

A Tax Foundation [blog](#) quotes a 2009 *New York Times* article by David Segal in explaining taxes vs. fees.

Politicians tend to regard fees as more palatable than taxes, and more focused too. If a state needs to finance an infrastructure to oversee fishing, why shouldn't fishermen foot the bill? But groups like the nonpartisan Tax Foundation in Washington worry that governments are now using fees to shore up budget shortfalls rather than cover specific costs incurred by specific users.

"When it comes to paying for bananas, you've got the market as a mechanism to make sure you're paying a fair price," says Josh Barro, a staff economist at the Tax Foundation. "But when it comes to getting your driver's license renewed, the government has a monopoly, and you have no idea what it costs the state or what it's doing with the money."

¹See 15-24-922. **Board of livestock to prescribe per capita fee -- refunds.** (1) The board of livestock shall annually prescribe the amount of the per capita fee to be made against livestock of all classes for the purpose indicated in 15-24-921.

(2) The per capita fee must be calculated each year to provide not more than 110% of the average annual revenue that was generated in the 3 previous years. The calculation must apply a reasonable factor for nonpayment and late payment of fees and for reimbursement to the department pursuant to 15-24-925 for collection of the fee.

(3) (a) A livestock owner who moves livestock between states is entitled to a refund of the per capita fee collected under 15-24-921 based on the number of months that the livestock have situs in Montana. The amount of the refund is equal to the ratio of the number of months that the livestock do not have situs in the state to the number of months in the year, multiplied by the original per capita fee due. A taxpayer shall apply to the board of livestock on a form prescribed by the board for a refund allowed under this subsection by January 31 of the following year. The application must include a statement showing the date when the livestock were moved out of the state.

(b) For the purposes of 15-24-921 and this section, the per capita fee may not be prorated.

The blog further said:

...Any assessment that raises money in excess of what is needed to defray costs is a tax. As Josh has previously stated... "A fee increase is appropriate if it is needed to keep up with the cost of the service provided for the fee, but not if it is diverted to provide general revenue."

A perspective on fees funding services

David Brunori, in [State Tax Policy: A Political Perspective](#) (p. 120) wrote: "User fees and charges cannot be levied on public safety and public health services." In [Local Tax Policy: A Federalist Perspective](#) (2nd ed., pp. 107-108), Brunori wrote: "Most residents and policymakers agree that it is patently unfair to charge fees for such essential services as police, fire protection, and other public safety services."

Livestock

In 2001, the Legislature reworded to "per capita fee" the term "per capita tax" previously used for an assessment on livestock values. Prior to that change, there was debate over whether to levy a property tax on animals, like inventories subject to the business tax. The statutes that described and prescribed uses of the per capita fee also changed from paying for enforcing animal health, brands enforcement, or predatory animal control functions (as listed in 15-24-924, MCA, in 1985; now repealed) to the 15-24-921, MCA, purpose of "aiding in the payment of the salaries and all expenses connected with the enforcement of livestock laws of the state and for the payment of bounties on wild animals as provided in 81-7-104."

In many cases, governments assign user fees under a pay-for-what-you-use philosophy, as for example, in Seattle where recycling efforts led to higher charges for larger trash barrels. The Diagnostic Laboratory in the Department of Livestock charges a set fee for most tests, although a public safety concern related to brucellosis testing has resulted in some general fund money used to supplement the lab's resources.

Occupational licensing

Prior to the 2015 legislative session, the law regarding occupational licensing said that fees were to be "commensurate with costs" but referenced fewer costs than generally were involved in regulation by the boards and by the department to which the boards were administratively attached. SB 79 in the 2015 session changed the term "commensurate with costs" to specify that the fees were to cover the "amount of money usually needed for the operation of the board for services." The department also may set administrative fees for its services, which the boards have to cover. Licensees themselves benefit from having a license and a board that regulates behavior within a profession or occupation, but in some cases a licensed professional also provides a public benefit. One example is the public safety component provided by morticians who oversee burials in the proper manner and places. That was an argument behind HB 223 in the 2015 session, which authorized an increased cost of death certificates to help fund the Board of Funeral Service.

Summary

Various terms and purposes cover how people pay for government services:

- Taxes - Require the Legislature to impose taxes, uniformly, for any lawful government use, not necessarily specified at the time taxes are levied.
- User Charges - Must be uniform within a class of customers and may not exceed the customer's allocable cost. (Think water and sewer bills.) Must be deposited into a special fund and may not be diverted to the general fund or other special funds.
- License Processing and Regulatory Fees - Must be specific to the costs of processing licenses and conducting regulatory activities.
- Special Assessments - Must be fairly allocated among all benefited properties and may not exceed the value of the improvement to the property. Must go into a special fund and used for the specified improvements.²

²Information from Hugh D. Spitzer, "Taxes vs. Fees: A Curious Confusion," in a Gonzaga University [blog](#).