

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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SENATE BILL 701  
Judiciary I Committee Substitute Adopted 4/20/05

Short Title: Clarification of Legis. Oversight of Fees.

(Public)

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Sponsors:

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Referred to:

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March 21, 2005

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE JOINT  
LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE  
TO CLARIFY THE LAW PROVIDING LEGISLATIVE OVERSIGHT OF  
AGENCY FEES AND CHARGES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 12-3.1 reads as rewritten:

**"§ 12-3.1. Fees and charges by agencies.**

(a) Authority. – Only the General Assembly has the power to authorize an agency to establish or increase a fee or charge for the rendering of any service or fulfilling of any duty to the public. In the construction of a statute, unless that construction would be inconsistent with the manifest intent of the General Assembly or repugnant to the context of the statute, the legislative grant of authority to an agency to ~~make and promulgate~~ adopt rules shall not be construed as a grant of authority to the agency to establish by rule a fee or a charge for the rendering of any service or fulfilling of any duty to the public, unless the statute expressly provides for the grant of authority to establish a fee or charge for that specific service. Notwithstanding any other law, ~~an agency's establishment or increase of a fee or charge shall not go into effect until one of the following conditions has been met:~~

(1) ~~The General Assembly has enacted express authorization of the amount of the fee or charge to be established or increased and the purpose of that fee or charge.~~

(2) ~~The General Assembly has enacted general authorization for the agency to establish or increase the fee or charge, and the agency has consulted with a rule adopted by an agency to establish or increase a fee or charge shall not go into effect until the agency has consulted with the Joint Legislative Commission on Governmental Operations on the amount and purpose of the fee or charge to be established or increased.~~

1       (a1) If an agency is unable to conduct the consultation required by subsection (a)  
2 of this section within 90 days after publishing the notice of text of the rule due to the  
3 failure of the Commission to meet, the consultation requirement shall be met by  
4 submitting a written report stating the statutory authority and a detailed explanation of  
5 the need for the establishment or increase of the fee or charge to the Joint Legislative  
6 Commission on Governmental Operations.

7       (b) Definitions. – The following definitions apply in this section:

8           (1) Agency. – Every agency, institution, board, commission, bureau,  
9           department, division, council, member of the Council of State, or  
10           officer of the legislative, executive or judicial branches of State  
11           government. The term does not include counties, cities, towns,  
12           villages, other municipal corporations or political subdivisions of the  
13           State or any agencies of these subdivisions, the University of North  
14           Carolina, community colleges, hospitals, county or city boards of  
15           education, other local public districts, units, or bodies of any kind, or  
16           private corporations created by act of the General Assembly.

17           (2) Rule. – Every rule, regulation, ordinance, standard, and amendment  
18           thereto adopted by any agency, including rules and regulations  
19           regarding substantive matters, standards for products, procedural rules  
20           for complying with statutory or regulatory authority or requirements  
21           and executive orders of the Governor.

22       (c) Exceptions. – This section does not apply to any of the following:

23           (1) Rules establishing fees or charges to State, federal or local  
24           governmental units.

25           (2) A reasonable fee or charge for copying, transcripts of public hearings,  
26           State publications, or mailing a document or other item.

27           (3) Reasonable registration fees covering the cost of a conference or  
28           workshop.

29           (4) Reasonable user fees covering the cost of providing data processing  
30           services.

31       (d) In lieu of the requirements of ~~subdivision (a)(2)~~ subdivisions (a) and (a1) of  
32 this section, the North Carolina State Ports Authority shall report the establishment or  
33 increase of any fee to the Joint Legislative Commission on Governmental Operations as  
34 provided in G.S. 143B-454(a)(11)."

35       **SECTION 2.** This act is effective when it becomes law.