

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE DRH70141-RO-1* (1/5)

Short Title: Clarification of Legis. Oversight of Fees.

(Public)

Sponsors: Representative Brubaker.

Referred to:

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~~

1 on the amount and purpose of the fee or charge to be established or
2 increased.

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

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

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

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

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

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

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

29 (3) Reasonable registration fees covering the cost of a conference or
30 workshop.

31 (4) Reasonable user fees covering the cost of providing data processing
32 services.

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

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