

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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SENATE BILL 701

Short Title: Clarification of Legis. Oversight of Fees.

(Public)

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Sponsors: Senators Nesbitt; and Hartsell.

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Referred to: Judiciary I.

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March 21, 2005

A BILL TO BE ENTITLED

1 AN ACT TO IMPLEMENT A RECOMMENDATION OF THE JOINT  
2 LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE  
3 TO CLARIFY THE LAW PROVIDING LEGISLATIVE OVERSIGHT OF  
4 AGENCY FEES AND CHARGES.  
5

6 The General Assembly of North Carolina enacts:

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

8 "**§ 12-3.1. Fees and charges by agencies.**

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

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

23 (2) ~~The General Assembly has enacted general authorization for the~~  
24 ~~agency to establish or increase the fee or charge, and the agency has~~  
25 ~~consulted with a rule adopted by an agency to establish or increase a~~  
26 fee or charge shall not go into effect until the agency has consulted  
27 with the Joint Legislative Commission on Governmental Operations  
28 on the amount and purpose of the fee or charge to be established or  
29 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 report stating the statutory authority and a detailed explanation of the need  
5 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) of this section, the North  
32 Carolina State Ports Authority shall report the establishment or increase of any fee to  
33 the Joint Legislative Commission on Governmental Operations as provided in  
34 G.S. 143B-454(a)(11)."

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