



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

HB3647

Introduced 2/24/2005, by Rep. Bob Biggins

#### SYNOPSIS AS INTRODUCED:

New Act

15 ILCS 405/16.2 rep.

30 ILCS 5/3-8.5 rep.

Creates the Illinois Fee Management and Transparency Act. Provides that a user charge or fee assessed shall be charged against each identifiable recipient for special benefits derived from State activities beyond those received by the general public. Sets forth procedures for determining fee amounts. Sets forth requirements for legislation that imposes fees. Sets forth requirements for State agencies to implement fees. Requires the State Comptroller to submit an annual report to the General Assembly concerning State agency fees. Requires each State agency to review its fees every 2 years. Requires the Auditor General to evaluate each agency fee at least once every 5 years. Amends the State Comptroller Act to repeal a Section concerning the reporting of agency fees. Amends the Illinois State Auditing Act to repeal a Section concerning Agency Fee Imposition Report Forms. Effective immediately.

LRB094 09163 BDD 39395 b

FISCAL NOTE ACT  
MAY APPLY

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the  
5 Illinois Fee Management and Transparency Act.

6 Section 5. State objective. The purpose of this legislation  
7 is to implement a uniform management and oversight program for  
8 the administration and assessment of State-imposed fees and  
9 user charges. The use of fees to fund State programs and  
10 services is a positive tool and one that has distinct  
11 advantages over general tax increases. Fees can register public  
12 demand for a service or program, improve operating efficiency  
13 of government agencies, and prevent waste of State services or  
14 resources. Fees should not be imposed to fund general public  
15 services unrelated to the program or service for which the fee  
16 is imposed but should be used to recover the full cost to the  
17 State of providing special benefits and services beyond those  
18 that accrue to the general taxpaying public. It is the  
19 objective of the State of Illinois to ensure that each service,  
20 sale, or use of State goods or resources provided by an agency  
21 to specific recipients be self-sustaining and promote  
22 efficient allocation of the State's resources by establishing  
23 user charges or fees for special benefits provided to the  
24 recipient that are at least as great as costs to the State of  
25 providing the special benefit and that allow the private sector  
26 to compete with State government without disadvantage in  
27 supplying comparable services, resources, or goods where  
28 appropriate. This Act establishes State policy regarding fees  
29 assessed for government services and for the sale or use of  
30 government goods or resources.

31 Section 10. General policy.

1 (a) A user charge or fee shall be assessed against each  
2 identifiable recipient for special benefits derived from State  
3 activities beyond those received by the general public.

4 (b) Determining when special benefits exist. When a service  
5 (or privilege) provides special benefits to an identifiable  
6 recipient beyond those that accrue to the general public, a  
7 charge shall be imposed to recover the full cost to the State  
8 for providing the special benefit or to compensate the State  
9 for the market price of the good or service rendered. A special  
10 benefit is considered to accrue and a user charge shall be  
11 imposed when a State service:

12 (i) enables the beneficiary to obtain more immediate or  
13 substantial gains or values (which may or may not be  
14 measurable in monetary terms) than those that accrue to the  
15 general public (e.g., receiving a license to carry on a  
16 specific activity or specific business or for use of public  
17 lands);

18 (ii) provides business stability or contributes to  
19 public confidence in the business activity of the  
20 beneficiary by regulating competencies (e.g., insuring  
21 deposits in commercial banks or setting and monitoring  
22 compliance with educational requirements and competencies  
23 for specific skills rendered to the public); or

24 (iii) is performed at the request of or for the  
25 convenience of the recipient and is beyond the services  
26 regularly received by other members of the same industry or  
27 group or by the general public (e.g., receiving expedited  
28 or after hour services).

29 Section 15. Exemptions. In general, user charges or fees  
30 should not be assessed where it is not cost effective to do so,  
31 where it is inconsistent with government policy objectives, or  
32 where it would unduly stifle competition or industry  
33 innovation. The following State charges or assessments are not  
34 considered a user charge or fee subject to the provisions of  
35 this Act:

- 1 (a) general taxes;
- 2 (b) any form of inter-agency or inter-governmental
- 3 charge;
- 4 (c) any government business enterprise operating in a
- 5 competitive or potentially competitive market;
- 6 (d) repayments of loans to the State;
- 7 (e) asset sales, rental of property, or royalties;
- 8 (f) fines and pecuniary assessments or penalties; and
- 9 (g) fees charged by courts and tribunals.

10 Section 20. Determining the amount of user charge to  
11 assess.

12 (a) Except as otherwise provided by this Act, user charges  
13 or fees assessed by a State agency must be sufficient to  
14 recover the full cost to the State of providing the service,  
15 resource, or good when the State is acting in its governmental  
16 capacity. Partial cost recovery may apply where new programs,  
17 services, or resources are being phased in, where there are  
18 government-endorsed community service obligations, or for  
19 explicit government policy purposes contained in the  
20 implementing legislation.

21 (b) User charges must be based on market prices when the  
22 State, not acting in its governmental capacity, is leasing or  
23 selling goods or resources or is providing a service (e.g.,  
24 leasing space in a State-owned building). Under these business  
25 conditions, user charges need not be limited to the recovery of  
26 full cost and may yield net revenues.

27 (c) User charges shall be collected in advance of, or  
28 simultaneously with, the rendering of services unless  
29 appropriations and authority are provided in advance to allow  
30 reimbursable services.

31 (d) No charge may be made for a service when the  
32 identification of the specific beneficiary is obscure, and the  
33 service can be considered primarily as benefiting broadly the  
34 general public.

35 (e) Charges shall be made to the direct recipient of the

1 special benefit even though all or part of the special benefits  
2 may then be passed on to others.

3 Section 25. Determining full cost.

4 (a) "Full cost" includes all direct and indirect costs to  
5 any part of the State government of providing a good, resource,  
6 or service. These costs include, but are not limited to, an  
7 appropriate share of all of the following:

8 (1) Direct and indirect personnel costs, including  
9 salaries and fringe benefits such as medical insurance and  
10 retirement. Retirement costs include all (funded or  
11 unfunded) accrued costs not covered by employee  
12 contributions.

13 (2) Physical overhead, consulting, and other indirect  
14 costs including material and supply costs, utilities,  
15 insurance, travel, and rents or imputed rents on land,  
16 buildings, and equipment. If imputed rental costs are  
17 applied, they must include:

18 (A) depreciation of structures and equipment,  
19 based on official Internal Revenue Service  
20 depreciation guidelines unless better estimates are  
21 available; and

22 (B) an annual rate of return (equal to the average  
23 long-term Treasury bond rate) on land, structures,  
24 equipment, and other capital resources used.

25 (3) Management and supervisory costs.

26 (4) The costs of enforcement, collection, research,  
27 establishment of standards, and regulation, including any  
28 required environmental impact statements.

29 (b) Full cost shall be determined or estimated from the  
30 best available records of the agency, and new cost accounting  
31 systems need not be established solely for this purpose.

32 Section 30. Determining market price.

33 (a) "Market price" means the price for a good, resource, or  
34 service that is based on competition in open markets and

1 creates neither a shortage nor a surplus of the good, resource,  
2 or service.

3 (b) When a substantial competitive demand exists for a  
4 good, resource, or service, its market price shall be  
5 determined using commercial practices, for example:

6 (i) by competitive bidding; or

7 (ii) by reference to prevailing prices in competitive  
8 markets for goods, resources, or services that are the same  
9 or similar to those provided by the government with  
10 adjustments as appropriate that reflect demand, level of  
11 service, and quality of the good or service.

12 (c) In the absence of substantial competitive demand,  
13 market price shall be determined by taking into account the  
14 prevailing prices for goods, resources, or services that are  
15 the same or substantially similar to those provided by the  
16 government, and then adjusting the supply made available or  
17 price of the good, resource, or service so that there is  
18 neither a shortage nor a surplus.

19 Section 35. Implementing user charges by legislation.  
20 Legislation to impose a new user charge or fee must:

21 (1) Clearly define the program or service to be funded  
22 and its scope and intent.

23 (2) Contain a fiscal note that forecasts first-year  
24 start up costs and estimates annual costs of the program or  
25 service. The fiscal note must be public and readily  
26 accessible.

27 (3) State whether the proposed fee or user charge is  
28 intended to cover the full cost of the program or service  
29 or offset only a portion of the program or service costs.

30 (4) Whenever possible, not specify the precise fee  
31 amount, but allow for the fee amount to be developed by  
32 rulemaking of the administering State agency to allow  
33 administrative updating of fees to reflect changing costs  
34 and market values and for input of the affected public  
35 through the rulemaking process.

1           (5) Take into consideration other programs that  
2 provide special benefits to the same or similar user  
3 populations and design proposals to avoid the duplication  
4 of collection efforts and costs and ease the burden on  
5 users.

6           (6) Consider the fiscal and competitive impact of the  
7 user charge or fee on those subject to the user charge or  
8 fee. User charges or fees imposed in other states shall be  
9 considered only in determining whether proposed user  
10 charges or fees or increases in existing user charges or  
11 fees would be fiscally or competitively detrimental to  
12 those subject to the assessment and not to justify user  
13 charge or fee amounts in excess of the full cost of the  
14 program, service, or resource.

15           Section 40. Agency implementation of user charges or fees.  
16 Agencies are responsible for the initiation and adoption of  
17 user charge or fee schedules consistent with the provisions of  
18 this Act. Each agency must complete a Fee Imposition Report  
19 Form for each current user charge or fee imposed or for any new  
20 user charge or fee proposed by the agency. The Fee Imposition  
21 Report Form shall be filed with the Comptroller at the time the  
22 Comptroller specifies by rule. The Comptroller shall submit to  
23 the General Assembly by September 1 of each year a report  
24 detailing, by agency, the information required under the Agency  
25 Fee Imposition Report Form. The Fee Imposition Report Form  
26 shall include a list and description of all fees imposed by the  
27 agency. For each fee, the agency shall:

28           (1) state the special benefit conferred by the State  
29 justifying the imposition of the fee or user charge  
30 pursuant to this Act;

31           (2) provide the statutory authority for the fee;

32           (3) identify the population affected by the fee;

33           (4) determine the full cost or market price of the  
34 special benefit in accordance with this Act. The  
35 information used to establish the amount of the fee or user

1 charge and the specific methodology used to compute the  
2 amount of the fee shall be maintained by the agency and be  
3 made readily accessible to the public;

4 (5) identify all funds into which the fees are  
5 deposited;

6 (6) identify the specific use of the funds generated by  
7 the fee; and

8 (7) state whether the fee pays for the full cost of the  
9 State program, resource, or service provided as a special  
10 benefit to the users or whether the fee pays only partial  
11 costs or generates revenues in excess of the full cost of  
12 the program.

13 Section 45. Biennial review of agency fees. Each agency  
14 shall review all fees assessed and collected by the agency  
15 every 2 years to determine whether the existing fee amount  
16 should be adjusted to reflect unanticipated changes in costs or  
17 market value. If an adjustment to the user charge or fee merits  
18 review and adjustment, the agency head shall request an Auditor  
19 General review of the user charge or fee pursuant to Section 50  
20 of this Act. If the Auditor General's evaluation of the user  
21 charge or fee pursuant to Section 50 of this Act recommends an  
22 adjustment to the user charge or fee, the agency shall proceed  
23 with the rulemaking process or recommend necessary  
24 legislation.

25 Section 50. Auditor General evaluation of fees and user  
26 charges. Unless requested sooner by an agency, the Auditor  
27 General shall evaluate each agency user charge or fee no less  
28 often than every 5 years. The Auditor General shall determine  
29 whether an adjustment to increase or decrease the user charge  
30 or fee amount is warranted after an audit of the agency program  
31 or service as provided by this Section. As part of the user  
32 charge or fee evaluation, the Auditor General shall:

33 (1) evaluate the methodology used to compute the fee  
34 amount;

1           (2)     analyze     administrative     efficiencies     in  
2     administering     the     program     and     agency     processes     for  
3     reporting     revenues     and     expenditures     and     recommend     where  
4     agency     efficiencies     or     cost     reductions     could     be  
5     implemented; and

6           (3)     analyze     the     effectiveness     of     the     program     or     service  
7     in     terms     of     legislative     intent.

8           If     revenues     exceed     the     full     cost     of     the     program     or     service  
9     by     more     than     20%     for     3     consecutive     years,     the     Auditor     General  
10    shall     recommend     a     fee     decrease     to     more     accurately     reflect     the  
11    full     cost     of     administering     the     program     or     service.

12          If     moneys     from     the     General     Revenue     Fund     are     necessary     to  
13    subsidize     a     particular     program     or     service,     the     Auditor     General  
14    shall     determine     the     amount     of     those     moneys     used     per     year     to  
15    support     the     program     and     make     a     recommendation     as     to     whether     the  
16    fee     or     user     charge     should     be     increased     to     recover     the     full     cost  
17    of     the     program.

18          Section     55.     Severability.     The     Provisions     of     this     Act     are  
19    severable     under     Section     1.31     of     the     Statute     on     Statutes.

20          (15 ILCS 405/16.2 rep.)

21          Section     900.     The     State     Comptroller     Act     is     amended     by  
22    repealing     Section     16.2.

23          (30 ILCS 5/3-8.5 rep.)

24          Section     905.     The     Illinois     State     Auditing     Act     is     amended     by  
25    repealing     Section     3-8.5.

26          Section     999.     Effective     date.     This     Act     takes     effect     upon  
27    becoming     law.