



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004

Introduced 2/5/2004, by Peter J. Roskam

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 State agencies may assess user charges or fees against identifiable recipients of special benefits that derive from State activities that are beyond the benefits that the general public receives so that the State can recover the cost of providing the benefit. Sets conditions for imposing user charges or fees. Creates exceptions. Provides that legislation to implement a user charge or fee must meet certain conditions. Requires each agency to file a Fee Imposition Report Form with the Comptroller that details user charges or fees imposed by the agency. Provides that each agency must review its user charges and fees every 2 years to determine whether they should be adjusted. Provides that the Auditor General must evaluate each agency user charge and fee at least every 5 years and determine whether those charges and fees should be adjusted. Provides that the provisions of the Act are severable. Amends the State Comptroller Act to repeal a Section concerning Agency Fee Imposition Report Forms. Amends the Illinois State Auditing Act to repeal a Section concerning Agency Fee Imposition Report Forms. Effective immediately.

LRB093 18374 LRD 44081 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning fees.

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. Purpose. The purpose of this Act is to implement
7 a uniform management, reporting, and oversight program for the
8 administration and assessment of State-imposed fees and user
9 charges. The use of fees and user charges to fund special State
10 programs and services can be a positive funding tool and one
11 that can have distinct advantages over general fund support.
12 This Act establishes State policy regarding fees and user
13 charges assessed for government services and for the sale or
14 use of government goods or resources.

15 Section 10. General policy.

16 (a) A State agency may assess a user charge or fee against
17 identifiable recipients of special benefits derived from State
18 activities beyond those received by the general public.

19 (b) If a service or privilege provides special benefits to
20 an identifiable recipient beyond those that accrue to the
21 general public, a charge may be imposed to recover the
22 appropriate cost to the State for providing the special benefit
23 or to compensate the State for the market price of the good or
24 service rendered. A special benefit will be considered to
25 accrue and a user charge may be imposed when a State service:

26 (i) enables the beneficiary to obtain more immediate or
27 substantial gains or values, which may or may not be
28 measurable in monetary terms, than those that accrue to the
29 general public, including, but not limited to receiving a
30 license to carry on a specific activity or specific
31 business or for use of public lands; or

1 (ii) provides business stability or contributes to
2 public confidence in the business activity of the
3 beneficiary by regulating competencies, including, but not
4 limited to, insuring deposits in commercial banks or
5 setting and monitoring compliance with educational
6 requirements and competencies for specific skills rendered
7 to the public; or

8 (iii) is performed at the request of or for the
9 convenience of the recipient, and is beyond the services
10 regularly received by other members of the same industry or
11 group or by the general public, including, but not limited
12 to, receiving expedited or after hour services.

13 Section 15. Exemptions from Act. User charges or fees
14 shall not be assessed if it is not cost effective to do so, if
15 it is inconsistent with government policy objectives, or if it
16 would unduly stifle competition or industry innovation. The
17 following State charges or assessments are not considered a
18 user charge or fee subject to the provisions of this Act:

19 (1) General taxes;

20 (2) Any form of inter-agency or inter-governmental
21 charge;

22 (3) Any government business enterprise operating in a
23 competitive or potentially competitive market;

24 (4) Repayments of loans to the State; and

25 (5) Asset sales, rental of property, or royalties.

26 Section 20. Determining the amount of the user charge or
27 fee to assess.

28 (a) Except as otherwise provided in this Act, user charges
29 or fees assessed by the State shall not exceed the full cost to
30 the State of providing the service, resource, or good when the
31 State is acting in its governmental capacity. Partial cost
32 recovery may apply if new programs, services, or resources are
33 being phased in, if there are government-endorsed community
34 service obligations, or to achieve explicit government policy

1 purposes contained in the implementing legislation.

2 (b) User charges shall be based on market prices if the
3 State, while not acting in its governmental capacity, is
4 leasing or selling goods or resources or is providing a
5 service, including but not limited to, leasing space in a
6 State-owned building. Under these business-type conditions,
7 user charges need not be limited to the recovery of full cost
8 and may yield net revenues.

9 (c) User charges shall be collected in advance of or
10 simultaneously with the rendering of services, unless
11 appropriations and authority are provided in advance to allow
12 reimbursable services.

13 (d) No charge shall be made for a service if the
14 identification of the specific beneficiary is obscure and the
15 service can be considered as primarily benefiting the general
16 public.

17 (e) Charges may be made to the direct recipient of the
18 special benefit even though all or part of the special benefit
19 may then be passed on to others.

20 Section 25. Determining full cost.

21 (a) For the purposes of this Act, the term "full cost"
22 includes all direct and indirect costs to any entity of State
23 government associated with providing a good, resource, or
24 service. These costs include an appropriate share of:

25 (1) Direct and indirect personnel costs, including
26 salaries and fringe benefits such as medical insurance and
27 retirement. Retirement costs include all funded or
28 unfunded accrued costs not covered by employee
29 contributions.

30 (2) Physical overhead, consulting, and other indirect
31 costs including material and supply costs, utilities,
32 insurance, travel, and rents or imputed rents on land,
33 buildings, and equipment. If imputed rental costs are
34 applied, they shall include:

35 (i) depreciation of structures and equipment,

1 based on official Internal Revenue Service
2 depreciation guidelines unless better estimates are
3 available; and

4 (ii) an annual rate of return that is equal to the
5 average long-term Treasury bond rate on land,
6 structures, equipment and other capital resources
7 used.

8 (3) Management and supervisory costs.

9 (4) The costs of enforcement, collection, research,
10 establishment of standards, and regulation, including any
11 required environmental impact statements.

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

15 Section 30. Determining market price.

16 (a) For the purposes of this Act, the term "market price"
17 means the price for a good, resource, or service that is based
18 on competition in open markets, and creates neither a shortage
19 nor a surplus of the good, resource, or service.

20 (b) If a substantial competitive demand exists for a good,
21 resource, or service, its market price shall be determined
22 using one of the following commercial practices:

23 (i) competitive bidding; or

24 (ii) reference to prevailing prices in competitive
25 markets for goods, resources, or services that are the same
26 or similar to those provided by the State, with adjustments
27 as appropriate that reflect demand, level of service, and
28 quality of the good or service.

29 (c) In the absence of substantial competitive demand,
30 market price shall be determined by taking into account the
31 prevailing prices for goods, resources, or services that are
32 the same or substantially similar to those provided by the
33 State and then adjusting the supply made available and price of
34 the good, resource, or service so that there will be neither a
35 shortage nor a surplus.

1 Section 35. Implementing user charges by legislation.

2 Legislation to impose a new user charge or fee must:

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

5 (2) Prepare a fiscal note that forecasts first-year
6 start-up costs and estimates annual costs of the program or
7 service. The methodology for preparing the fiscal note must
8 be made public and readily accessible. No legislation shall
9 progress past second reading in the General Assembly unless
10 a fiscal note is filed.

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

14 (4) Take into consideration other programs that
15 provide special benefits to the same or similar user
16 populations and design proposals that will avoid the
17 duplication of collection efforts and costs and ease the
18 burden on users.

19 (5) Consider the fiscal and competitive impact of the
20 user charge or fee on persons or entities that are subject
21 to the user charge or fee.

22 Section 40. Agency implementation of user charges or fees.
23 Agencies are responsible for the initiation and adoption of
24 user charge or fee schedules consistent with the provisions of
25 this Act. Each agency must complete a Fee Imposition Report
26 Form that details each current user charge or fee imposed and
27 any new user charge or fee. The Fee Imposition Report Form
28 shall be filed with the Comptroller at the time and in the
29 manner the Comptroller specifies by rule. The Comptroller must
30 submit to the General Assembly by September 1 of each year a
31 report detailing, by agency, the information required under the
32 Agency Fee Imposition Report Form. The Fee Imposition Report
33 Form must include a list and description of all fees imposed by
34 the agency. For each fee, the agency shall:

1 (1) State the special benefit conferred by the State
2 justifying the imposition of the fee or user charge
3 pursuant to Section 10;

4 (2) Provide the statutory authority for the fee;

5 (3) Identify the population affected by the fee;

6 (4) Determine the full cost or market price of the
7 special benefit in accordance with Sections 20 and 25. The
8 information used to establish the amount of the fee or user
9 charge and the specific methodology used to compute the
10 amount of the fee shall be maintained by the agency and be
11 made readily accessible to the public;

12 (5) Identify all funds into which the fees are
13 deposited;

14 (6) Identify the specific use of the moneys generated
15 by the fee; and

16 (7) State whether the fee pays for the full cost of the
17 State program, resource, or service provided as a special
18 benefit to the users or whether the fee pays only partial
19 costs or generates revenues in excess of the full cost of
20 the program.

21 Section 45. Biennial review of agency fees. Each agency
22 shall review all fees assessed and collected by the agency
23 every 2 years to determine whether the existing fee amount
24 should be adjusted to reflect unanticipated changes in costs or
25 market value. If the user charge or fee merits review and
26 adjustment, the agency head shall request an Auditor General
27 review of the user charge or fee pursuant to Section 50. If the
28 Auditor General's evaluation of the user charge or fee under
29 Section 50 recommends an adjustment to the user charge or fee,
30 the agency shall proceed with the rulemaking process, which
31 shall include a public hearing on the recommended change or
32 recommend necessary legislation.

33 Section 50. Auditor General evaluation of fees and user
34 charges. Unless requested sooner by an agency, the Auditor

1 General shall evaluate each agency user charge and fee at least
2 every 5 years. The Auditor General shall determine whether an
3 adjustment to increase or decrease the user charge or fee
4 amount is warranted after an audit of the agency program or
5 service as provided by this Section. As part of the user charge
6 or fee evaluation, the Auditor General shall:

7 (1) Evaluate the methodology used to compute the fee
8 amount;

9 (2) Analyze administrative efficiencies in
10 administering the program and agency processes for
11 reporting of revenues and expenditures and recommend where
12 agency efficiencies or cost reductions can be implemented;

13 (3) Analyze the effectiveness of the program or service
14 in terms of legislative intent.

15 (4) If revenues exceed the full cost of the program or
16 service by more than 20% for 3 consecutive years, the
17 Auditor General must recommend a fee decrease to more
18 accurately reflect the full cost of administering the
19 program or service.

20 (5) If General Revenue Funds are necessary to subsidize
21 a particular program or service, the Auditor General shall
22 determine the amount of general revenue funds used per year
23 to support the program and make a recommendation as to
24 whether the fee or user charge should be increased to
25 recover the full cost of the program.

26 Section 55. Special Funds. Resources from funds
27 established in the State treasury to receive fees and user
28 charges for special purposes may not be used for general
29 purposes.

30 Section 97. Severability. The provisions of this Act are
31 severable under Section 1.31 of the Statute on Statutes.

32 (15 ILCS 405/16.2 rep.)

33 Section 105. The State Comptroller Act is amended by

1 repealing Section 16.2.

2 (30 ILCS 5/3-8.5 rep.)

3 Section 110. The Illinois State Auditing Act is amended by
4 repealing Section 3-8.5.

5 Section 999. Effective date. This Act takes effect upon
6 becoming law.