

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 302

Government Performance Audit Select Committee Substitute Adopted 4/20/93

Short Title: GPAC/OAH Fee Structure.

(Public)

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Sponsors:

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Referred to: Finance.

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February 22, 1993

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE GOVERNMENT  
PERFORMANCE AUDIT COMMITTEE BY DIRECTING THE OFFICE OF  
ADMINISTRATIVE HEARINGS TO COLLECT FEES IN CONTESTED CASES.

Whereas, no fees are currently charged in contested cases conducted by the  
Office of Administrative Hearings; and

Whereas, the Government Performance Audit Committee recommends that  
25% of the operating budget of the Office of Administrative Hearings come from user  
fees; and

Whereas, user fees discourage frivolous cases and reduce reliance on General  
Fund appropriations; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 150B-23 reads as rewritten:

**"§ 150B-23. Commencement; assignment of administrative law judge; hearing  
required; notice; intervention.**

(a) A contested case shall be commenced by filing a petition with the Office of  
Administrative Hearings and, except as provided in Article 3A of this Chapter, shall be  
conducted by that Office. At the time the petition is filed, the Office of Administrative  
Hearings shall collect a fee in an amount equal to the sum collected in a civil action for  
the support of the General Court of Justice, Superior Court Division, pursuant to G.S.  
7A-305(a)(2). Upon a showing of good cause, the chief administrative law judge may  
waive the filing fee. The party who files the petition shall serve a copy of the petition on  
all other parties and, if the dispute concerns a license, the person who holds the license.

1 A party who files a petition shall file a certificate of service together with the petition.  
2 A petition shall be signed by a party or a representative of the party and, if filed by a  
3 party other than an agency, shall state facts tending to establish that the agency named  
4 as the respondent has deprived the petitioner of property, has ordered the petitioner to  
5 pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's  
6 rights and that the agency:

- 7 (1) Exceeded its authority or jurisdiction;
- 8 (2) Acted erroneously;
- 9 (3) Failed to use proper procedure;
- 10 (4) Acted arbitrarily or capriciously; or
- 11 (5) Failed to act as required by law or rule.

12 The parties in a contested case shall be given an opportunity for a hearing without  
13 undue delay. Any person aggrieved may commence a contested case hereunder. The  
14 Office of Administrative Hearings shall adopt rules to implement the procedures for  
15 commencing a contested case, including procedures relating to the filing fee.

16 A local government employee, applicant for employment, or former employee to  
17 whom Chapter 126 of the General Statutes applies may commence a contested case  
18 under this Article in the same manner as any other petitioner. The case shall be  
19 conducted in the Office of Administrative Hearings in the same manner as other  
20 contested cases under this Article, except that the decision of the State Personnel  
21 Commission shall be advisory only and not binding on the local appointing authority,  
22 unless (1) the employee, applicant, or former employee has been subjected to  
23 discrimination prohibited by Article 6 of Chapter 126 of the General Statutes or (2)  
24 applicable federal standards require a binding decision. In these two cases, the State  
25 Personnel Commission's decision shall be binding.

26 (a1) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 1022, s. 1(9).

27 (a2) An administrative law judge assigned to a contested case may require a party  
28 to the case to file a prehearing statement. A party's prehearing statement must be served  
29 on all other parties to the contested case.

30 (b) The parties to a contested case shall be given a notice of hearing not less than  
31 15 days before the hearing by the Office of Administrative Hearings. If prehearing  
32 statements have been filed in the case, the notice shall state the date, hour, and place of  
33 the hearing. If prehearing statements have not been filed in the case, the notice shall  
34 state the date, hour, place, and nature of the hearing, shall list the particular sections of  
35 the statutes and rules involved, and shall give a short and plain statement of the factual  
36 allegations.

37 (c) Notice shall be given personally or by certified mail. If given by certified  
38 mail, it shall be deemed to have been given on the delivery date appearing on the return  
39 receipt. If giving of notice cannot be accomplished either personally or by certified  
40 mail, notice shall then be given in the manner provided in G.S. 1A-1, Rule 4(j1).

41 (d) Any person may petition to become a party by filing a motion to intervene in  
42 the manner provided in G.S. 1A-1, Rule 24. In addition, any person interested in a  
43 contested case may intervene and participate in that proceeding to the extent deemed  
44 appropriate by the administrative law judge.

1 (e) All hearings under this Chapter shall be open to the public. Hearings shall be  
2 conducted in an impartial manner. Hearings shall be conducted according to the  
3 procedures set out in this Article, except to the extent and in the particulars that specific  
4 hearing procedures and time standards are governed by another statute.

5 (f) Unless another statute or a federal statute or regulation sets a time limitation  
6 for the filing of a petition in contested cases against a specified agency, the general  
7 limitation for the filing of a petition in a contested case is 60 days. The time limitation,  
8 whether established by another statute, federal statute, or federal regulation, or this  
9 section, shall commence when notice is given of the agency decision to all persons  
10 aggrieved who are known to the agency by personal delivery or by the placing of the  
11 notice in an official depository of the United States Postal Service wrapped in a wrapper  
12 addressed to the person at the latest address given by the person to the agency. The  
13 notice shall be in writing, and shall set forth the agency action, and shall inform the  
14 persons of the right, the procedure, the filing fee, and the time limit to file a contested  
15 case petition. When no informal settlement request has been received by the agency  
16 prior to issuance of the notice, any subsequent informal settlement request shall not  
17 suspend the time limitation for the filing of a petition for a contested case hearing."

18 Sec. 2. G.S. 150B-33(b) reads as rewritten:

19 "(b) An administrative law judge may:

- 20 (1) Administer oaths and affirmations;
- 21 (2) Sign, issue, and rule on subpoenas in accordance with G.S. 150B-27  
22 and G.S. 1A-1, Rule 45;
- 23 (3) Provide for the taking of testimony by deposition and rule on all  
24 objections to discovery in accordance with G.S. 1A-1, the Rules of  
25 Civil Procedure;
- 26 (3a) Rule on all prehearing motions that are authorized by G.S. 1A-1, the  
27 Rules of Civil Procedure;
- 28 (4) Regulate the course of the hearings, including discovery, set the time  
29 and place for continued hearings, and fix the time for filing of briefs  
30 and other documents;
- 31 (5) Direct the parties to appear and confer to consider simplification of the  
32 issues by consent of the parties;
- 33 (6) Stay the contested action by the agency pending the outcome of the  
34 case, upon such terms as he deems proper, and subject to the  
35 provisions of G.S. 1A-1, Rule 65;
- 36 (7) Determine whether the hearing shall be recorded by a stenographer or  
37 by an electronic device; and
- 38 (8) Enter an order returnable in the General Court of Justice, Superior  
39 Court Division, to show cause why the person should not be held in  
40 contempt. The Court shall have the power to impose punishment as  
41 for contempt for any act which would constitute direct or indirect  
42 contempt if the act occurred in an action pending in Superior Court.
- 43 (9) Determine that a rule as applied in a particular case is void because (1)  
44 it is not within the statutory authority of the agency, (2) is not clear and

1 unambiguous to persons it is intended to direct, guide, or assist, or (3)  
2 is not reasonably necessary to enable the agency to fulfill a duty  
3 delegated to it by the General Assembly.

4 (10) Impose the sanctions provided for in G.S. 1A-1 or Chapter 3 of Title  
5 26 of the North Carolina Administrative Code for noncompliance with  
6 applicable procedural rules.

7 (11) Assess costs against any party in a contested case, which assessment  
8 shall become part of the recommended decision or order provided in  
9 G.S. 150B-34(a)."

10 Sec. 3. This act becomes effective January 1, 1994, and applies to cases filed  
11 on or after that date.