
SUBSTITUTE SENATE BILL 5507

State of Washington

52nd Legislature

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By Senate Committee on Governmental Operations (originally sponsored by Senators McCaslin, Moore, Matson, Bauer, Sellar, Conner, Cantu, McDonald, Owen, Thorsness and L. Smith).

Read first time March 6, 1991.

1 AN ACT Relating to commercial activity by government agencies; and
2 adding a new chapter to Title 43 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** LEGISLATIVE DECLARATION. The legislature
5 finds that the growth of private enterprise is essential to the health,
6 welfare, and prosperity of the people of the state of Washington, and
7 that government unfairly competes with the private sector when it
8 engages in commercial activities. Recognizing this problem, it is the
9 intent of the legislature and the purpose of this chapter to provide
10 economic opportunities to private enterprise and to regulate government
11 agencies.

12 It is the further intent of the legislature that issues and
13 complaints regarding the commercial activities of government and
14 private enterprise be addressed through a private enterprise review
15 commission.

1 NEW SECTION. **Sec. 2.** DEFINITIONS. Unless the context clearly
2 requires otherwise, the definitions in this section apply throughout
3 this chapter.

4 (1) "Commercial activity" includes the manufacturing, processing,
5 sale, offering for sale, rental, leasing, delivery, dispensing,
6 distributing, or advertising of goods or services that can be obtained
7 from and are predominately provided by private enterprise.

8 (2) "Commission" means the private enterprise review commission.

9 (3) "Private enterprise" means an individual, firm, partnership,
10 joint venture, corporation, association, or other legal entity engaged
11 in commercial activity for profit.

12 (4) "Government agency" includes the state of Washington and its
13 departments, institutions of higher education, an incorporated or
14 unincorporated city, county, town, port district, transportation
15 district, local improvement district, or any other municipal
16 corporation or political subdivision, now existing or hereafter
17 established.

18 (5) "Competitive impact statement" means a cost analysis using
19 uniform accounting standards to determine the total cost of the
20 commercial activity. The cost analysis shall include, but is not
21 limited to the following:

22 (a) Labor expenses, including direct wage and salary costs,
23 training costs, overtime, and supervisory overhead;

24 (b) Total employee fringe benefits and other personnel expenses;

25 (c) Operating costs including vehicle maintenance and repair,
26 marketing, advertising and other sales expenses, office expenses,
27 billing, and insurance expenses;

28 (d) Real estate and equipment costs, debt service costs, and a
29 proportionate amount of other agency overhead and capital expenses

1 including vehicle depreciation and depreciation of other fixed assets
2 such as buildings and equipment;

3 (e) Contract management costs;

4 (f) The imputed tax impact of the activity if such entity were
5 required to pay federal, state, and local taxes; and

6 (g) Any other cost particular to the business or industry supplying
7 the goods or services.

8 (6) "Uniform accounting standards" means an accounting method that
9 meets or exceeds established professional standards of accounting
10 existing at the time the record is prepared.

11 (7) "Self provisioning" includes all aspects of the provision of
12 goods and services that are integral to the day-to-day operation of a
13 government agency or necessary for a government agency to carry out its
14 statutory responsibilities.

15 NEW SECTION. **Sec. 3.** GOVERNMENT AGENCY COMPETITION WITH PRIVATE
16 ENTERPRISE PROHIBITED. (1) It is the policy of the state of Washington
17 that a government agency shall not engage in nonself provisioning
18 commercial activities to provide goods or services to the public.

19 (2) It is the policy of the state of Washington that a government
20 agency shall not engage in nonself provisioning commercial activities
21 to provide goods or services for the use of other government entities
22 outside the jurisdiction of state government.

23 (3) A government agency may perform or provide a commercial
24 activity if:

25 (a) Specifically authorized by statute or the commission; or

26 (b) A statement of emergency with supporting documents is filed by
27 the agency to the commission. Urgency alone shall not be an adequate
28 reason for engaging in a commercial activity; or

1 (c) The activity is inherently related to the state's military
2 affairs or law enforcement and emergency management.

3 (4) If a government agency is authorized by law or the commission
4 to engage in a commercial activity, the state agency shall set a fee or
5 charge a price for that activity which shall include the true and total
6 cost relating to performing or providing that activity by such
7 government agency, including, but not limited to:

8 (a) The competitive market value of the activity within the region
9 in which the goods or services will be sold; and

10 (b) The direct and indirect costs incurred in engaging in the
11 activity determined by use of the uniform accounting standards.

12 (5) If a government agency proposes to begin engaging in or expand
13 an existing commercial activity, the government agency shall:

14 (a) Prepare a competitive impact statement consistent with
15 commission standards and submit it to the commission;

16 (b) Prepare a detailed request for proposal that will be widely
17 disseminated within segments of private enterprise which normally
18 engage in the commercial activity in order to obtain firm bids or
19 proposals for the activity requested. A reasonable time frame approved
20 by the commission shall be given to private enterprise to submit bids
21 of proposals, including time to obtain financial supply commitments.
22 Bids received from the request for proposal shall be used in the
23 preparation of the competitive impact statement.

24 (6) Government agencies shall adopt and implement procedures to
25 monitor government agency compliance with this chapter.

26 NEW SECTION. **Sec. 4.** PRIVATE ENTERPRISE REVIEW COMMISSION. (1)
27 There is created the private enterprise review commission for the
28 purpose of reviewing and making determinations concerning the practices

1 of government agencies relating to commercial activities which may be
2 affected by this chapter and to abate violations of this chapter.

3 (2) The commission shall develop procedures to:

4 (a) Review the commercial activities of government agencies to
5 ensure compliance with this chapter;

6 (b) Promptly hear and resolve complaints filed in accordance with
7 this chapter.

8 (3) The commission shall consist of nine members appointed by the
9 governor, to include:

10 (a) Five members from private enterprise who are owners or officers
11 of small businesses, selected from recommendations submitted by state-
12 wide business associations;

13 (b) Three members representing government agencies, including a
14 representative from a state agency, a representative from local
15 government selected from recommendations submitted by the association
16 of Washington cities and Washington state association of counties and
17 a representative from institutions of higher education selected from
18 recommendations from the higher education coordinating board; and

19 (c) One member representing business to be chairperson of the
20 commission.

21 (4) All initial appointments to the commission shall be made within
22 ninety days from the effective date of this section. Terms of office
23 for all members of the commission shall be two years and members may be
24 reappointed up to an additional four terms. Each member who is a
25 government agency employee shall remain on the commission until the end
26 of his or her term of office, but only as long as he or she remains a
27 government agency employee. A vacancy on the commission shall be
28 filled within sixty days of the date the vacancy occurred in the same
29 manner as the original appointment. Any member appointed to fill a
30 vacancy occurring before the expiration of the term for which his or

1 her predecessor was appointed shall hold office for the remainder of
2 the term. Each member shall continue in office until his or her
3 successor is appointed and qualified.

4 (5) Five members of the commission shall constitute a quorum. No
5 action may be taken by the commission without the concurrence of at
6 least three members.

7 (6) The commission shall adopt, and may amend or rescind its
8 procedures, pursuant to chapter 34.05 RCW, as necessary to govern its
9 proceedings. The commission shall develop competitive impact
10 statements. Members of the commission shall serve without compensation
11 but shall receive the same reimbursement for actual travel expenses and
12 per diem for official commission meetings as members of the legislature
13 receive for legislative interim committees.

14 (7) Any person who believes that a government agency has violated
15 any provision of this chapter may file a written complaint with the
16 commission stating the grounds for the complaint. Persons with
17 complaints involving commercial activities by institutions of higher
18 education must first follow the procedures for complaints as determined
19 under RCW 28B.63.010 through 28B.63.050. If the complaint is not
20 resolved through this process, a written complaint may then be filed
21 with the commission.

22 Upon receipt of the complaint:

23 (a) The commission, after determining that the complaint has merit,
24 shall immediately transmit a copy of the complaint and the competitive
25 impact statement form to the government agency named in the complaint;

26 (b) The government agency named in the complaint shall respond to
27 the commission by submitting a competitive impact statement and other
28 written documentation showing how it complies with this chapter or
29 submitting a written plan to begin selling goods and services at a fair

1 and reasonable price so as to not compete unfairly with private
2 enterprise;

3 (c) Within thirty days after receipt of the government agency's
4 response, the commission shall review the competitive impact statement
5 and (i) acknowledge that the agency is in compliance; or (ii) accept
6 the recommendations for action to comply; or (iii) schedule a public
7 hearing;

8 (d) Within thirty days following a public hearing, the commission
9 shall issue an order of its findings to the complainant and the
10 government agency;

11 (e) Any agency found to have violated this chapter shall (i)
12 prepare and have approved by the commission a written plan to begin
13 selling those goods and services named in the complaint at a fair and
14 reasonable price so as to not compete unfairly with private enterprise;
15 or (ii) if the agency does not comply with the approved plan within a
16 reasonable period determined by the commission, terminate such
17 commercial activity.

18 NEW SECTION. **Sec. 5.** CEASE AND DESIST ORDERS. If a government
19 agency fails to comply with a commission order to cease and desist from
20 further commercial activity, the commission may file an action in the
21 superior court of the state of Washington for Thurston county seeking
22 an order to restrain and enjoin the agency from continued violations of
23 this chapter.

24 NEW SECTION. **Sec. 6.** CIVIL RIGHT OF ACTION. A private enterprise
25 damaged by a government agency violating this chapter may bring a civil
26 action in the superior court in the county where the private enterprise
27 is located for appropriate injunctive relief or damages, or both. A
28 private enterprise shall not have standing to seek injunctive relief or

1 damages or to challenge violations of this chapter in the courts of
2 this state until the private enterprise has first made a complaint to
3 the commission and has received the decision of the commission.

4 NEW SECTION. **Sec. 7.** SUPPORT STAFF. The department of trade and
5 economic development is the designated government agency to provide
6 staff support to the commission. The office of financial management
7 shall provide performance audit and cost analysis to the commission.

8 NEW SECTION. **Sec. 8.** CAPTIONS NOT LAW. Section headings as used
9 in this chapter do not constitute any part of the law.

10 NEW SECTION. **Sec. 9.** Sections 1 through 8 of this act shall
11 constitute a new chapter in Title 43 RCW.

12 NEW SECTION. **Sec. 10.** If any provision of this act or its
13 application to any person or circumstance is held invalid, the
14 remainder of the act or the application of the provision to other
15 persons or circumstances is not affected.