
SENATE BILL 5507

State of Washington

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By Senators McCaslin, Moore, Matson, Bauer, Sellar, Conner, Cantu, McDonald, Owen, Thorsness and L. Smith.

Read first time February 4, 1991. Referred to Committee on Governmental Operations.

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 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 NEW SECTION. **Sec. 3.** GOVERNMENT AGENCY COMPETITION WITH PRIVATE
12 ENTERPRISE PROHIBITED. (1) It is the policy of the state of
13 Washington that a government agency shall not engage in commercial
14 activity to provide goods or services to the public.

15 (2) It is the policy of the state of Washington that a government
16 agency shall not engage in commercial activity to provide goods or
17 services for the use of other government entities outside the
18 jurisdiction of state government.

19 (3) A government agency may perform or provide a commercial
20 activity if:

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

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

25 (c) The activity is inherently related to the state's defense.

26 (4) If a government agency is authorized by law or the commission
27 to engage in a commercial activity, the state agency shall set a fee or
28 charge a price for that activity which shall include the true and total

1 cost relating to performing or providing that activity by such
2 government agency, including, but not limited to:

3 (a) The fair market value of the activity; and

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

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

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

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

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

20 NEW SECTION. **Sec. 4.** PRIVATE ENTERPRISE REVIEW COMMISSION. (1)

21 There is created the private enterprise review commission for the
22 purpose of reviewing and making determinations concerning the practices
23 of government agencies relating to commercial activities which may be
24 affected by this chapter and to abate violations of this chapter.

25 (2) The commission shall develop procedures to:

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

28 (b) Promptly hear and resolve complaints filed in accordance with
29 this chapter.

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

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

6 (b) Three members representing government agencies, including a
7 representative from a state agency, a representative from local
8 government selected from recommendations submitted by the association
9 of Washington cities and Washington state association of counties and
10 a representative from institutions of higher education selected from
11 recommendations from the state board of regents; and

12 (c) One member representing business to be chairperson of the
13 commission.

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

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

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

8 (7) Any person who believes that a government agency has violated
9 any provision of this chapter may file a written complaint with the
10 commission stating the grounds for the complaint. Upon receipt of the
11 complaint:

12 (a) The commission shall immediately transmit a copy of the
13 complaint and the competitive impact statement form to the government
14 agency named in the complaint;

15 (b) The government agency named in the complaint shall respond to
16 the commission in writing and provide a completed competitive impact
17 statement within thirty days. The government agency shall either admit
18 or deny the allegations made in the complaint and indicate whether
19 remedial action will be taken;

20 (c) Within thirty days after receipt of the government agency's
21 response, the commission shall schedule a public hearing on the
22 complaint unless the action agreed to be taken by the government agency
23 is acceptable to the complainant and the commission and shall review
24 the competitive impact statement;

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

28 (e) Any agency found to have violated this chapter shall terminate
29 such commercial activity within three months from the issuance date of
30 the commission report or under a schedule approved by the commission.

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

7 NEW SECTION. **Sec. 6.** CIVIL RIGHT OF ACTION. A private enterprise
8 damaged by a government agency violating this chapter may bring a civil
9 action in the superior court in the county where the private enterprise
10 is located for appropriate injunctive relief or damages, or both. A
11 private enterprise shall not have standing to seek injunctive relief or
12 damages or to challenge violations of this chapter in the courts of
13 this state until the private enterprise has first made a complaint to
14 the commission and has received the decision of the commission.

15 NEW SECTION. **Sec. 7.** SUPPORT STAFF. The department of trade
16 and economic development is the designated government agency to provide
17 staff support to the commission. The state auditor shall provide
18 performance audit and cost analysis to the commission.

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

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

23 NEW SECTION. **Sec. 10.** If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 remainder of the act or the application of the provision to other

1 persons or circumstances is not affected.