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HOUSE BILL 1721

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State of Washington

55th Legislature

1997 Regular Session

By Representatives McMorris, Koster, Honeyford, Van Luven and Mulliken

Read first time 02/05/97. Referred to Committee on Government Administration.

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

16 NEW SECTION. **Sec. 2.** The definitions in this section apply  
17 throughout this chapter, unless the context clearly requires otherwise.

1 (1) "Commercial activity" includes the manufacturing, processing,  
2 sale, offering for sale, rental, leasing, delivery, dispensing,  
3 distributing, or advertising of goods or services that can be obtained  
4 from private enterprise.

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

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

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

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

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

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

22 (c) Operating costs including vehicle maintenance and repair,  
23 marketing, advertising and other sales expenses, office expenses,  
24 billing, and insurance expenses;

25 (d) Real estate and equipment costs, debt service costs, and a  
26 proportionate amount of other agency overhead and capital expenses  
27 including vehicle depreciation and depreciation of other fixed assets  
28 such as buildings and equipment;

29 (e) Contract management costs;

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

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

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

1        NEW SECTION.    **Sec. 3.**    (1) It is the policy of the state of  
2 Washington that a government agency shall not engage in commercial  
3 activity to provide goods or services to the public.

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

8        (3) A government agency may perform or provide a commercial  
9 activity if:

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

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

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

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

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

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

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

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

27        (b) Prepare a detailed request for proposal that will be widely  
28 disseminated within segments of private enterprise that normally engage  
29 in the commercial activity in order to obtain firm bids or proposals  
30 for the activity requested. A reasonable time frame approved by the  
31 commission shall be given to private enterprise to submit bids or  
32 proposals, including time to obtain financial supply commitments. Bids  
33 received from the request for proposal shall be used in the preparation  
34 of the competitive impact statement.

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

37        NEW SECTION.    **Sec. 4.**    (1) There is created the private enterprise  
38 review commission for the purpose of reviewing and making

1 determinations concerning the practices of government agencies relating  
2 to commercial activities that may be affected by this chapter and to  
3 abate violations of this chapter.

4 (2) The commission shall develop procedures to:

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

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

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

11 (a) Five members from private enterprise who are owners or officers  
12 of small businesses;

13 (b) Three members representing government agencies, including a  
14 representative from a state agency, a representative from local  
15 government, and a representative from institutions of higher education;  
16 and

17 (c) One member representing business to be chairperson of the  
18 commission.

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

32 (5) Five members of the commission constitute a quorum. No action  
33 may be taken by the commission without the concurrence of at least  
34 three members.

35 (6) The commission shall adopt and may amend or rescind its  
36 procedures, pursuant to chapter 34.05 RCW, as necessary to govern its  
37 proceedings. The commission shall develop competitive impact  
38 statements. Members of the commission shall serve without compensation  
39 but shall receive the same reimbursement for actual travel expenses and

1 per diem for official commission meetings as members of the legislature  
2 receive for legislative interim committees.

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

7 (a) The commission shall immediately transmit a copy of the  
8 complaint and the competitive impact statement form to the government  
9 agency named in the complaint;

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

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

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

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

26 NEW SECTION. **Sec. 5.** If a government agency fails to comply with  
27 a commission order to cease and desist from further commercial  
28 activity, the commission may file an action in the superior court of  
29 the state of Washington for Thurston county seeking an order to  
30 restrain and enjoin the agency from continued violations of this  
31 chapter.

32 NEW SECTION. **Sec. 6.** A private enterprise that is found by  
33 superior court to have been damaged by a government agency may be  
34 awarded by the court action fees and other expenses, including  
35 reasonable attorneys' fees. The amount awarded shall not exceed  
36 twenty-five thousand dollars. Fees and expenses awarded must be paid  
37 by the government agency from its operating fund within sixty days.

1 Agencies shall report all such payments to the office of financial  
2 management within five days of paying the fees and other expenses.

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

11 NEW SECTION. **Sec. 8.** The department of community, trade, and  
12 economic development is the designated government agency to provide  
13 staff support to the commission. The state auditor shall provide  
14 performance audit and cost analysis to the commission.

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

17 NEW SECTION. **Sec. 10.** If any provision of this act or its  
18 application to any person or circumstance is held invalid, the  
19 remainder of the act or the application of the provision to other  
20 persons or circumstances is not affected.

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