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HOUSE BILL 2808

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State of Washington                      61st Legislature                      2010 Regular Session

By Representatives Ericksen, Haler, and Short

Read first time 01/14/10. Referred to Committee on State Government & Tribal Affairs.

1            AN ACT Relating to commercial activities by state government  
2 agencies; adding a new chapter to Title 43 RCW; and repealing RCW  
3 28B.63.010, 28B.63.020, 28B.63.030, 28B.63.040, and 28B.63.050.

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

5            NEW SECTION.    **Sec. 1.**    (1) The legislature finds that in the  
6 process of governing, the state of Washington should not engage in  
7 commercial activity in competition with its citizens. The legislature  
8 finds that the competitive enterprise system, characterized by  
9 individual freedom and initiative, is the nation's primary source of  
10 economic strength, and that the growth of private enterprise is  
11 essential to the health, welfare, and prosperity of the citizens of the  
12 state of Washington. The legislature further finds that the role of  
13 the private sector is to provide commercial products and services for  
14 which there is demand in the marketplace, while the role of state  
15 agencies is limited to performing functions that are in the public  
16 interest and inherently governmental in nature.

17            (2) The legislature therefore declares it to be the general policy  
18 of the state that state agencies are prohibited from providing to the

1 marketplace for a fee those products or services that could be obtained  
2 from a private enterprise.

3 (3) This chapter may be known and cited as the freedom from  
4 government competition act.

5 NEW SECTION. **Sec. 2.** (1) State agencies are prohibited from  
6 engaging in commercial activities for a fee, unless they are granted an  
7 exception by the office of financial management.

8 (2)(a) By September 1, 2010, the office of financial management  
9 shall provide a process for state agencies to seek an exception on a  
10 case-by-case basis from the prohibition in subsection (1) of this  
11 section.

12 (b) The office of financial management may grant an exception under  
13 this section only if a state agency presents clear and convincing  
14 evidence that private enterprise has no reasonable capacity to  
15 undertake the activity.

16 (c) By September 1, 2010, the office of financial management shall  
17 provide a process, in accordance with all applicable provisions of  
18 chapter 34.05 RCW, by which any person who believes that a state agency  
19 has violated subsection (1) of this section may file a written  
20 complaint with the office. Within thirty days of the complaint being  
21 filed, the office of financial management must investigate and respond  
22 in writing with its findings and determination.

23 (3) Beginning January 1, 2011, and annually thereafter, the office  
24 of financial management must report to the legislature on any  
25 exceptions made under this section and any complaints filed and  
26 determined under this section.

27 NEW SECTION. **Sec. 3.** The definitions in this section apply  
28 throughout this chapter unless the context clearly requires otherwise.

29 (1) "Commercial activity" means an activity that provides a product  
30 or service that could be obtained from a private enterprise.

31 (2) "Private enterprise" means an individual, firm, partnership,  
32 joint venture, corporation, association, or other legal entity located  
33 in the United States that is engaged in business activity for profit.

34 (3) "State agency" means any office, board, commission, council,  
35 authority, department, agency, institution within the executive branch  
36 of state government, or institution of higher education.

1        NEW SECTION.   **Sec. 4.**   The following acts or parts of acts are each  
2 repealed:

3            (1) RCW 28B.63.010 (Intent) and 1987 c 97 s 1;

4            (2) RCW 28B.63.020 (Definitions) and 1987 c 97 s 2;

5            (3) RCW 28B.63.030 (Development of policies and mechanisms for  
6 defining and reviewing commercial activities) and 1987 c 97 s 3;

7            (4) RCW 28B.63.040 (Criteria for developing policies) and 1987 c 97  
8 s 4; and

9            (5) RCW 28B.63.050 (Programs and activities exempt from chapter)  
10 and 1987 c 97 s 5.

11        NEW SECTION.   **Sec. 5.**   Sections 1 through 3 of this act constitute  
12 a new chapter in Title 43 RCW.

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