

# HOUSE OF REPRESENTATIVES

Olympia Washington

## Bil Analysis

Bil No. HB 1721

Economic opportunities/private enterprise  
Brief title

Public Arg: 2/21/97

Reps. McMorris/Koster/Honeyford  
Sponsor

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### BACKGROUND:

The Legislature enacted legislation in 1987 requiring institutions of higher education to consult with local business organizations and representatives of the small business community to develop comprehensive policies that define the legitimate purposes under which these institutions could provide goods, services, or facilities that were available from private businesses; mechanism for reviewing current and proposed commercial activities to ensure they are consistent with institutional policies; and a mechanism for receiving, reviewing, and responding to enquiries from private businesses regarding commercial activities at higher education.

The criteria that must be considered in developing the comprehensive policies in providing goods, services, or facilities to persons other than faculty, staff, students, patients, and invited guests are that these items represent a resource which is substantial and directly related to the institution's instructional, research, or public service mission which is not practically available in the private marketplace and for which there is a demand; and the fees charged take into account the full direct and indirect costs, overhead, and the price of such items in the private marketplace.

The criteria that must be considered in developing the comprehensive policies in providing goods, services, and facilities to faculty, staff, students, patients, and invited guests are: that these items are substantial and directly related to the institution's instructional, research, or public service mission; provision of these items represents a special convenience to and supports the campus community, or facilitates a curriculum, public service, or on-campus residential life; fees charged for these items take into account the full direct and indirect costs, including overhead; and the adequacy of security procedures to ensure that these items are only provided to faculty, staff, students, patients, and invited guests.

No similar statutory provisions exist for state agencies or units of local government.

Continued

**SUMMARY:**

It is declared to be the policy of the state of Washington that government agencies cannot engage in commercial activities or provide goods or services to the public. Institutions of higher education, state agencies, and certain local governments are subjected to new limits on commercial activities.

A private enterprise review commission is created to review and make determinations concerning the practices of government agencies related to commercial activities. The commission consists of nine members appointed by the Governor for two-year terms. The membership includes five members who own or are officers of small businesses; three members representing state agencies, including representatives of state government, local government, and higher education; and one member representing business to act as the chair of the commission.

Members of the commission serve without compensation but may be reimbursed for travel expenses as well as per diem for official meetings in an amount equal to the per diem that legislators receive for interim legislative committee meetings. The commission must follow procedures contained in the Administrative Procedure Act.

The commission is required to develop procedures to review the commercial activities of government agencies to assure compliance with the restrictions on commercial activity and promptly hear and resolve complaints that have been filed against government agencies.

A government agency may perform or provide commercial activities specifically authorized by statute if the commission's statement of emergency with supporting documents is filed with the commission or the activity is inherently related to the state's defense. If a government agency engages in a commercial activity, it must charge a fee or price for that activity which includes the true and total cost for performing the activity. The agency must consider when setting the cost for the commercial activity, the fair market value of the activity, and the direct and indirect costs incurred in engaging in the activity.

A government agency that wishes to begin engaging in or expanding an existing commercial activity must prepare a competitive impact statement consistent with commission standards and send the statement to the commission and prepare a detailed request for proposal that is circulated to private enterprise businesses that normally engage in that activity in order to obtain bids. A competitive impact statement means a cost analysis using uniform accounting standards to determine the total cost of the uniform activity. The analysis must include but is not limited to labor expenses, total employee fringe benefits, and personnel expenses, operating costs including vehicle maintenance and repair, marketing, advertising, office expenses, billing, and insurance expenses, real estate and equipment costs, debt service costs, and a proportional amount of other agency overhead and depreciation of other fixed assets such as buildings and equipment, contract management costs, the imputed tax impact of the activity if the entity were required to pay taxes, and any other cost particular to the business or industry supplying the goods or services. HB 1721 - Page 3

Any person who believes that a government agency has violated the provisions pertaining to commercial activity may file a written complaint with the commission. After receiving the complaint, the commission must transmit the complaint and a competitive impact statement form to the state agency. The government agency must respond within 30 days, including completing the competitive impact statement. Within 30 days of the agency's response, the commission must schedule a public hearing on the complaint, unless the action that the agency agrees to take is acceptable to the complainant and the commission. The commission has 30 days after the hearing to issue a decision. The commission may file an action in Thurston County superior court to seek a restraining order and enjoin the agency against continued violations.

A private enterprise cannot bring an action against a government agency for violations of the commercial activity prohibitions unless the private enterprise first filed a complaint with the commission and has received the commission's decision.

A private enterprise that is found by the superior court to have been damaged by a government agency may be awarded court fees and expenses, including reasonable attorney's fees. The total amount awarded cannot exceed \$25,000. The government agency must pay any such award within 60 days from its operating fund, and must report all payments to the Office of Financial Management within five days of being made.

The Department of Community, Trade and Economic Development is required to provide staff support to the commission. The state auditor must provide performance audit and cost analysis to the commission.

A government agency is defined to include the state and its departments, higher education institutions, incorporated and unincorporated cities, counties, towns, port districts, transportation districts, local improvement districts, or any other municipal corporation or subdivision of the state.

**FISCAL NOTE:** Requested February 16, 1997.

**EFFECTIVE DATE:** Ninety days after adjournment of session in which bill passed.