

SENATE BILL REPORT

SB 5507

AS REPORTED BY COMMITTEE ON GOVERNMENTAL OPERATIONS,  
MARCH 4, 1991

**Brief Description:** Providing economic opportunities for private enterprise.

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

**SENATE COMMITTEE ON GOVERNMENTAL OPERATIONS**

**Majority Report:** That Substitute Senate Bill No. 5507 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators McCaslin, Chairman; Roach, Vice Chairman; and Matson.

**Minority Report:** Do not pass.

Signed by Senators Madsen and Sutherland.

**Staff:** Barbara Howard (786-7410)

**Hearing Dates:** February 12, 1991; March 4, 1991

**SENATE COMMITTEE ON WAYS & MEANS**

**Staff:** Terry Wilson (786-7715)

**Hearing Dates:** March 11, 1991

**BACKGROUND:**

Government competition with business has been the subject of several recent studies, including one in 1988 by a Senate Select Committee on Non-Profit Competition with the Private Sector. Small business groups such as the Coalition for Fair Competition have suggested that commercial activities performed by government should be limited.

**SUMMARY:**

Among legislative findings are that government unfairly competes with the private sector when it engages in commercial activities.

Competition with private enterprise prohibited. Several state policies are enumerated: (1) A state or local government agency, including an institution of higher education, must not engage in commercial activity to provide goods or services to the public or to other government entities outside state government's jurisdiction. (2) Exemptions are provided for commercial activity if: such activity is specifically

authorized by statute or by the Review Commission; a statement of emergency is filed with the commission; or the activity is inherently related to the state's defense.

Procedural requirements for authorized activities. When a government agency engages in an authorized activity, it must set a fee or price which includes the true and total cost of the activity. Agency cost includes, but is not limited to, the fair market value of the activity and the direct and indirect costs incurred by using uniform accounting standards.

If an agency proposes to begin or expand a commercial activity, it must submit a competitive impact statement to the Review Commission, which is defined as a cost analysis covering all labor expenses, total employee fringe benefits and other personnel costs, operating and capital costs, and the imputed tax impact of the activity if the agency were required to pay local, state and federal taxes.

Commission created. A Private Enterprise Review Commission is created, consisting of nine members appointed by the Governor. Membership includes five owners or officers of small businesses, selected from recommendations by statewide business associations; three representatives of government, including one from a state agency, one from local government, and one from higher education, and one business representative who serves as chairperson. Initial appointments must be made for two-year terms within 90 days of the effective date, and members may be appointed up to four more terms.

The commission must adopt its procedures under the provisions of the Administrative Procedure Act. Members serve without compensation but receive the same reimbursement for travel and per diem as legislators receive for interim business.

Powers and duties of the commission. The purpose of the Review Commission is to review and make determinations concerning commercial activities by government and abatement of violations of these procedures. The commission must review commercial activities of government agencies to assure compliance with the process, and promptly hear and resolve complaints. The commission is charged with development of competitive impact statements.

Any person who believes a government agency has violated this process may file a written complaint with the commission. The commission must send a copy of the complaint and the competitive impact statement form to the affected agency. The agency must respond with a completed competitive impact statement within 30 days. It must admit or deny the allegations and indicate whether remedial action will be taken.

The commission must schedule a hearing within 30 days after receipt of the agency's response unless the agreed agency action is acceptable to the complainant, and the commission must review the impact statement. Within 30 days after the hearing the commission must issue an order of its findings.

Any agency found to have violated the process must terminate the commercial activity within three months of the commission's report.

If an agency fails to comply with a commission order to cease and desist from the commercial activity, the commission may seek a restraining order from superior court in Thurston County. A private enterprise damaged by violations of this process may bring a civil action seeking injunctive relief or damages, or both. Such a suit is authorized only if the business has first filed a complaint with the commission.

Support staff for the commission is furnished by the Department of Trade and Economic Development. The State Auditor is to provide performance audit and cost analysis to the commission. There is a standard severability clause.

**EFFECT OF PROPOSED SUBSTITUTE:**

Activities relating to the state's military affairs, law enforcement or emergency management are exempted. The higher education representative on the commission is nominated by the Higher Education Coordinating Board.

In reviewing complaints the commission must first determine whether a complaint has merit, and the agency may submit documentation demonstrating compliance with the process in addition to the competitive impact statement. Complaints filed against institutions of higher education must first be processed under the higher education statutes before a formal complaint may be filed with the commission.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** available

**TESTIMONY FOR (Governmental Operations):**

Many state agencies, including institutions of higher education, provide a wide variety of services which can better be provided by the private sector. Examples include: telecommunications services, printing, jewelry, security systems, recreational activities, as well as transient guest housing and restaurant services, beer and wine sales, barbering, cosmetology and furniture manufacture. Because the activities can be offered at a lower rate through subsidies from public funds, small businesses cannot survive and communities lose tax revenues. Only truly governmental functions should be provided by government, not competitive commercial activities.

**TESTIMONY AGAINST (Governmental Operations):**

In many instances, the agency activities are not subsidized and major economies can be effected if agencies can provide bulk services or products at lower costs than could be offered

on the private market. With such activities and correctional industries, for example, both training and jobs are provided to inmates who would otherwise be fully subsidized.

This measure is unworkable because the commission is stacked six to three for business. If public jobs were not available in some of these areas, the workers would be forced to rely on welfare.

**TESTIFIED (Governmental Operations):** PRO: Nat Jackson, Assn. of Washington Business and Compuphone Communications; Beverly Woods, Director of Public Affairs, AWB; Dick Ducharme, Utility Contractors; Frank Erickson, Ellensburg; Carl Nelson, Washington Retail Assn.; Bob Broderick, Associated Grocers; B.J. Fuller, BJ's Beauty and Barber College; Larry Stevens, NECA; Ilene Ryberrry, Tug's; George Robinson, Idea Works; Joe Beaulieu, Olympia/Thurston County Chamber of Commerce; Linda Matson, National Federation of Independent Business; CON: Michael Stewart, Council of Presidents; Lynn Lodmell and John Cusich, DOC, Correctional Industries; Larry Kenney, State Labor Council; Mark Brown, WFSE; Sam Kinville, Washington State Council of County and City Employees; Jack Heinricher, Assistant State Auditor

**TESTIMONY FOR (Ways & Means):**

This bill deals with unfair competition. State agencies compete directly with private enterprise but their prices are subsidized.

**TESTIMONY AGAINST (Ways & Means):**

The state is not trying to compete with private enterprise. The bill is so broad that state government wouldn't be able to do many things it should do. The bill raises more questions than it answers.

**TESTIFIED (Ways & Means):** Beverly Woods, Association of Washington Business (pro); Mark Brown, WA Federation of State Employees (con); Dave Rodgers, WA Public Ports Association (con); Gary Smith, Independent Business Association (pro)