
SENATE BILL 6253

State of Washington 52nd Legislature 1992 Regular Session

By Senators Anderson, Owen, Bluechel and Johnson

Read first time 01/22/92. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to government; adding a new chapter to Title 43
2 RCW; and adding a new section to chapter 43.09.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that the role of
5 government is to provide public service to the people of the state by
6 providing an organizational framework for the orderly conduct of
7 society, services to promote the well-being of society as a whole, and
8 opportunity for all citizens to participate in directing the
9 development of their surroundings. The legislature further finds that
10 it is not the role of government or within its statutory authority to
11 enter the free market in competition with private enterprise for the
12 purpose of raising funds for government services or enlarging services
13 beyond the scope of the state legislative authority as expressed in its
14 statutes and budget allocations. It is therefore, the intent of the

1 legislature to prohibit, where appropriate and otherwise regulate the
2 role of government in commercial activities. It is the further intent
3 of the legislature that issues and complaints regarding the commercial
4 activities of government and private enterprise be addressed.

5 NEW SECTION. **Sec. 2.** Unless the context clearly requires
6 otherwise, the definitions in this section apply throughout this
7 chapter.

8 (1) "Commercial activity" includes the manufacturing, processing,
9 sale, offering for sale, rental, leasing, delivery, dispensing,
10 distributing, or advertising of goods or services in commerce for a
11 price, fee or charge.

12 (2) "Private enterprise" means an individual, firm, partnership,
13 joint venture, corporation, association, or other legal entity properly
14 registered with the state of Washington that engages in commercial
15 activity for profit.

16 (3) "Government agency" includes all agencies, departments, and
17 institutions of the state of Washington.

18 NEW SECTION. **Sec. 3.** It is the policy of the state of
19 Washington that a government agency may not engage in commercial
20 activities, except as provided by this chapter.

21 NEW SECTION. **Sec. 4.** (1) This chapter does not apply to:

22 (a) Transfers of goods or the providing of services by one state
23 agency to another that is integral to the day-to-day and efficient
24 operation of state government.

25 (b) The development, operation, and management of state parks,
26 historical monuments, and recreational facilities.

1 (c) Activities of the department of trade and economic development
2 that are specifically authorized by state law.

3 (d) Activities of the department of transportation that are
4 specifically authorized by state law.

5 (e) Printing and distributing information to the public as
6 authorized by state law and printing or copying public records or other
7 material relating to the public agency's public business and recovering
8 where authorized fees and charges for that service.

9 (f) Providing health services to eligible persons.

10 (g) Providing health care coverage for persons.

11 (h) The harvesting and raising of fish.

12 (i) The promotion and marketing of agricultural commodities.

13 (j) The promotion of the arts.

14 (k) Performing audits.

15 (l) Providing services for the blind and deaf.

16 (m) Providing community assistance.

17 (n) Providing convention and trade center facilities.

18 (o) Operating gambling functions.

19 (p) Assisting with financing for residential housing.

20 (q) Providing for workers' compensation insurance coverage as
21 provided for in Title 51 RCW.

22 (2) A government agency engaged in a commercial activity that is
23 not specifically exempted by this section but believes that its
24 activity is vital to the safety, health, and welfare of the citizens of
25 Washington state, may continue the activity until July 1, 1994, if:

26 (a) The agency requests a waiver from the governor and submits
27 copies of the request to the house of representatives government
28 committee and senate government operations committee; and publishes a
29 notice in the state register that advises how interested persons may
30 submit comments to the governor; and

1 (b) Within thirty days after the request is published in the state
2 register, the governor determines that there is compelling evidence
3 that a waiver should be granted to protect the health, safety, and
4 welfare of the state's citizens, and does grant the waiver.

5 NEW SECTION. **Sec. 5.** (1) If a government agency is providing
6 goods or services for a price or fee on the effective date of this
7 section to cities, counties, municipal corporations, and other units of
8 government that are not government agencies, the agency:

9 (a) May continue those activities until July 1, 1994; and

10 (b) May not continue those activities after July 1, 1994, unless
11 the agency prepares a competitive pricing impact statement meeting the
12 requirements of section 6 of this act, and transmits the statement to
13 the office of financial management by January 1, 1994.

14 (2) After July 1, 1994, a state agency may not provide goods and
15 services for a fee or price to a city, county, municipal corporation,
16 or other units of government that are not government agencies unless
17 the agency has prepared a competitive pricing impact statement meeting
18 the requirements of section 6 of this act, and transmitted the
19 statement to the office of financial management thirty days prior to
20 providing goods or services.

21 (3) A government agency may provide goods or services under
22 subsection (2) of this section for a period of ninety days without
23 preparing a competitive pricing impact statement if the office of
24 financial management issues a written authorization that identifies
25 compelling reasons to protect the safety, health, and welfare of the
26 state's citizens.

27 NEW SECTION. **Sec. 6.** (1) A government agency with specific
28 authority to engage in commercial activity shall impose a price, fee,

1 or charge that is fair and reasonable, unless specifically restricted
2 by law.

3 (2) For the purposes of this section, "fair and reasonable" means
4 that the price, fee, or charge includes the true and total cost to the
5 agency plus imputed costs for providing goods, services, or facilities,
6 utilizing a recognized professional accounting standard that is
7 commonly used in private enterprise. The price, fee, or charge must
8 take into account:

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

11 (b) The total value of employee benefits and other personnel
12 expenses;

13 (c) Operating costs including vehicle maintenance and repair,
14 marketing, advertising, and other sales expenses, office expenses,
15 billing, and insurance expenses;

16 (d) All direct costs for goods, merchandise, and materials that are
17 used in the course of the commercial activity;

18 (e) Real estate and equipment costs, debt service costs, and a
19 proportionate amount of other agency overhead and capital expense which
20 includes depreciation of vehicles and other fixed assets;

21 (f) Contract management costs;

22 (g) The imputed tax impact of the activity as if a private business
23 were to conduct the activity, including employment taxes under federal,
24 state, and local laws; and

25 (h) Other costs particular to the business or industry supplying
26 the goods or services.

27 (3) Prior to July 1, 1993, a government agency engaged in a
28 commercial activity shall file a competitive pricing impact statement
29 with the office of financial management that demonstrates the basis for

1 the agency's fair and reasonable price, fee, or charge. Thereafter, the
2 agency shall update the statement at least every six months.

3 (4) The office of financial management shall maintain a record of
4 competitive pricing impact statements and make those records available
5 for public inspection during regular business hours. The office shall
6 provide copies of the statements upon request and may charge a ten-
7 dollar fee for copying and mailing the statements, and a one-dollar
8 additional fee for each additional statement requested at the same time
9 as the first statement is requested.

10 NEW SECTION. **Sec. 7.** State institutions of higher education,
11 including the state's community and technical colleges, may not engage
12 in a commercial activity except as authorized by sections 4 through 6
13 of this act. The institutions may not:

14 (1) Provide a course of study that is reasonably available from
15 private enterprises and at a fee exceeding one hundred twenty percent
16 of a fair and reasonable fee as determined under section 6 of this act.
17 However, an institution may contract with a private enterprise to
18 provide a course of study on the institution's behalf.

19 (2) Provide to persons other than registered students, faculty,
20 staff, and invited guests goods, services, or facilities that are
21 reasonably available from private enterprise unless the provision of
22 goods, services, or facilities offers a valuable educational or
23 research experience or fulfills the public service mission of the
24 institution. This subsection does not apply to sponsoring or providing
25 facilities for recreational, cultural, and athletic events, or to
26 facilities providing food services and sales associated with those
27 events.

28 (3) Participate in competitive bidding for a commercial activity
29 unless a clear educational or research advantage would accrue to the

1 state of Washington. If an institution submits a bid, the bid must be
2 in an amount that represents a fair and reasonable price as determined
3 under section 6 of this act.

4 (4) Provide goods, services, or facilities for a fee or charge for
5 or through another government agency except as allowed by this section.

6 NEW SECTION. **Sec. 8.** (1) A person may bring an action in the
7 superior court where they reside or of Thurston county alleging that a
8 government agency is in violation of sections 2 through 7 of this act.
9 The court shall prohibit the government agency from engaging in the
10 activity if it determines that the activity is in violation and may
11 award the plaintiff reasonable attorneys fees' and court costs.

12 (2) Prior to trial on the plaintiff's complaint, the court shall
13 order the state auditor to conduct a competitive pricing impact
14 statement under section 6 of this act for the violating activity. The
15 auditor shall complete the statement within sixty days of receiving the
16 court's order. The court may grant the auditor an extension on a
17 written motion by the auditor.

18 (3) Upon receiving the competitive pricing impact statement from
19 the state auditor, the court shall schedule a trial as soon as is
20 reasonably possible.

21 NEW SECTION. **Sec. 9.** A new section is added to chapter 43.09 RCW
22 to read as follows:

23 (1) Within sixty days of receiving an order from a superior court
24 of Washington under section 8 of this act, the state auditor shall
25 complete a competitive pricing impact statement under section 6 of this
26 act concerning the government agency action that is at issue. The
27 auditor may request an extension by written motion served on the court

1 issuing the order that contains a date on which the statement will be
2 completed.

3 (2) The auditor may use the investigatory powers of his or her
4 office to the fullest extent allowed by law to complete the competitive
5 pricing impact statement.

6 NEW SECTION. **Sec. 10.** If any provision of this act or its
7 application to any person or circumstance is held invalid, the
8 remainder of the act or the application of the provision to other
9 persons or circumstances is not affected.

10 NEW SECTION. **Sec. 11.** Sections 1 through 8 and 10 of this act
11 shall constitute a new chapter in Title 43 RCW.