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Bill Analysis

Legislative Service Commission

H.B. 482

124th General Assembly
(As Introduced)

Reps. Buehrer, Fessler, Evans, Calvert, White, Schmidt, Latta, Schaffer, Roman, Husted, Williams, Gilb, Webster, Reidelbach

BILL SUMMARY

- Enacts the "Electronic Government Services Act," which prohibits a government agency from providing duplicative or competing electronic commerce services with the private sector unless the government agency complies with procedures established in the Act.

CONTENT AND OPERATION

Ban on government agencies competing with private enterprises in offering or expanding electronic commerce services

Except as described below, the bill mandates that, if two or more competing private enterprises provide electronic commerce services, a government agency must not engage, through the expenditure of public moneys, in any activity to provide or offer those services or to expand similar services. Any provider of electronic commerce services that resides or does business in Ohio has standing to bring a cause of action for appropriate relief in a court of competent jurisdiction challenging the provision of those services by a government agency in a manner that is not in accordance with the bill's exception procedures described below. Nothing in the bill, however, prohibits a government agency from providing electronic commerce services to the public in the absence of two or more competing private enterprises providing those services. (Sec. 1306.27.)

The bill defines "electronic commerce services" as services relating to commercial activity (the performance of services or provision of goods that normally can be obtained from a private enterprise) that are the same as, similar to, or overlap information technology-based services provided to the public by two or more competing private enterprises. Those services include services made in connection with a transaction completed over a computer network, such as the buying of goods or services over the Internet. (Sec. 1306.25(A) and (C).)

Under the bill, a "government agency" means (1) a state agency as defined in the Auditor of State Law or a similar agency of a county, township, municipal corporation, or other political subdivision of this state or (2) any entity that is not majority-owned as private property and is established by law or by order or action of a state agency, a similar agency of a political subdivision, or an officer of a state or similar agency (sec. 1306.25(E)).¹ "Private enterprise" is defined as an individual, firm, partnership, joint venture, corporation, association, or other legal entity engaging in the private sector in the manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing, or advertising of goods or services for profit (sec. 1306.25(G)).

Exception to the ban

Public hearing

The bill authorizes a government agency to provide duplicative or competing electronic commerce services under specified conditions. Before it does so, one condition is that it must hold a public hearing to allow public comment about its proposed electronic commerce services. (Sec. 1306.28(A) and (B)(1).)

The government agency must provide, in a specified format (see below), at least 30 days' public notice of the time and place of the public hearing in one or more newspapers of general circulation in the counties within its jurisdiction. During this 30-day period, the government agency also must make its proposal available for public inspection in a prominent public location those counties. (Sec. 1306.28(B)(2).)

"Factors" to be included in the public notice

The *public notice* must set forth all of the following (sec. 1306.28(C)):

- The government agency's proposed findings of fact and conclusions of law describing the reasons why it believes it is necessary and in the public interest to provide duplicative or competing electronic commerce services.
- The initial and total "lifestyle" (perhaps, intended to be "lifecycle") costs of those services, which include, but are not limited to, all

¹ *The Auditor of State Law defines a "state agency" as every organized body, office, agency, institution, or other entity established by Ohio law for the exercise of any function of state government.*

technology, infrastructure, services, contracts, and "direct" or "indirect" personnel costs (see definitions below).

- The individual per taxpayer cost of those services on an annualized basis and their cost per user on an annualized basis.
- A description of the government agency's reasons for believing that the cost benefits of providing those services require the expenditure of public moneys.
- An identification of unmet needs in the consumer marketplace that those services would fulfill.
- A description of how those services would differ from those provided by two or more competing private enterprises.
- An economic impact analysis demonstrating that the offering of those services by the government agency will not be anticompetitive in its effect on existing industry and will not adversely impact or distort the marketplace of two or more competing private enterprises providing the same or similar services.

The bill defines "direct costs" to mean all costs, whether capital costs, operating costs, or otherwise, that would be eliminated if the service or function to which the costs relate is discontinued, and "indirect costs" to mean all costs, whether capital costs, operating costs, or otherwise, that are not direct costs (sec. 1306.25(B) and (F)). For purposes of the public notice's factors, certain indirect costs must be allocated in a specified manner (see "*Annual report of a government agency about its electronic commerce services*," below) (sec. 1306.28(F)).

Review of public comments

Following the public hearing and after reviewing the comments of the public, if the head of a government agency decides to proceed with offering duplicative or competing electronic commerce services, the head must sign factual and legal conclusions addressing the comments and each of the factors set forth in the public notice. Any provider of electronic commerce services that resides or does business in Ohio has standing to bring a cause of action for appropriate relief in a court of competent jurisdiction challenging the factual and legal sufficiency of those conclusions. (Sec. 1306.28(D).)

Annual report of a government agency about its electronic commerce services

Under the bill, any government agency providing electronic commerce services in a jurisdiction where a private enterprise provides the same services must prepare and publish an annual report about those services. The annual report must be substantially in accordance with full cost accounting and must disclose the amount, source, and cost of working capital utilized by the government agency for providing the services. (Sec. 1306.28(E).) "Full cost accounting" means accounting, in accordance with generally accepted accounting principles, for all direct costs and indirect costs (see their definitions under "**Factors**" to be included in the public notice," above), including capital costs, that are incurred in the ownership, management, or operation of electronic commerce services (sec. 1306.25(D)).

For purposes of providing the public notice of the public hearing and the annual report, a government agency, by any reasonable method consistent with applicable generally accepted accounting principles, must allocate indirect costs that support multiple electronic commerce services or functions among those services and functions in proportion to the relative burden each service or function places on the cost category (sec. 1306.28(F)).

Relationship of the bill to the Uniform Electronic Transactions Act

The Uniform Electronic Transactions Act (UETA) authorizes state agencies to utilize electronic records and electronic signatures. Generally, state agencies must determine if, and the extent to which, they will (1) send and receive electronic records and electronic signatures to and from other persons and (2) otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures. (See **COMMENT**.)

The bill makes a state agency's authority under the UETA subject, in addition to the UETA's restrictions, to the bill's provisions (sec. 1306.20(A)).

Findings and intent of the General Assembly

The bill states that the General Assembly finds and declares that (1) the growth of private enterprise is essential to the health, welfare, and prosperity of Ohio and (2) government competes with the private sector when it provides goods and services to the public (sec. 1306.26(A)). The bill further states that it is the General Assembly's intent and the purpose of the bill to (1) protect economic opportunities for private industry against unfair competition by government agencies and (2) enhance the efficient provision of public goods and services (sec. 1306.26(B)).

Title of the bill's new law

The bill states that the provisions that it enacts may be cited as the "Electronic Government Services Act" (sec. 1306.26(C)).

COMMENT

The Department of Administrative Services (DAS) must prescribe administrative rules governing the use of electronic records and electronic signatures by state agencies. The rules adopted by DAS must address all of the following (sec. 1306.21(A)(1) to (4), not in the bill):

- The minimum requirements for the method of creation, maintenance, and security of electronic records and electronic signatures;
- The control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and audibility of electronic records;
- Any other required attributes for electronic records that are specified for corresponding nonelectronic records or are reasonably necessary under the circumstances;
- The type of electronic signature required for those electronic records that must be signed;
- The manner and format in which an electronic signature must be affixed to an electronic record that must be signed;
- The identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process when an electronic record must be signed.

Additionally, DAS may adopt rules ensuring consistency and interoperability among state agencies with regard to electronic transactions, electronic signatures, and security procedures (sec. 1306.21(B)(1), not in the bill).

If a state agency creates, uses, receives, or retains *electronic records*, any rules adopted by the agency relating to those records must be consistent with the rules adopted by DAS. Additionally, if a state agency creates, uses, or receives *electronic signatures*, it must do so in accordance with these DAS rules. (Sec. 1306.20(C) and (D).)

Finally, current law allows a state agency in a specified manner to waive requirements in the Revised Code, other than UETA requirements concerning electronic transactions, that relate to the method of posting or displaying records, the manner of sending, communicating, or transmitting records, or the manner of formatting records (sec. 1306.20(B)(1) and (2)).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-23-02	p. 1294

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