

SENATE BILL 422

Introduced by Farrell, et al.

2/14	Introduced
2/14	Referred to State Administration
2/15	Fiscal Note Requested
2/17	Hearing
2/20	Fiscal Note Received
2/20	Fiscal Note Printed
	Died in Committee

1
2 INTRODUCED BY *Sen. Ben Peterson* *Sen. Ramon Ramirez* *Sen. Kistner* *Sen. Ben Peterson* *Sen. Ramon Ramirez* *Sen. Kistner*
3 BY REQUEST OF THE GOVERNOR
4
5 A BILL FOR AN ACT ENTITLED: "THE PRIVATE ENTERPRISE REVIEW
6 ACT; ESTABLISHING A PRIVATE ENTERPRISE REVIEW COMMISSION TO
7 REVIEW AND INVESTIGATE THE APPROPRIATENESS OF STATE
8 GOVERNMENTAL ACTIVITIES; PROHIBITING STATE AGENCIES FROM
9 PERFORMING CERTAIN ACTIVITIES; AUTHORIZING THE COMMISSION TO
10 ISSUE ADVISORY LETTERS OR LETTERS OF APPROVAL REGARDING THE
11 APPROPRIATENESS OF STATE GOVERNMENTAL ACTIVITIES; AND
12 PROVIDING AN EFFECTIVE DATE."

13
14 STATEMENT OF INTENT

15 A statement of intent is required for this bill because
16 it grants the private enterprise review commission authority
17 to adopt rules necessary to carry out the provisions of
18 [this act].

19 It is the intent of the legislature to create a private
20 enterprise review commission to review the appropriateness
21 of state governmental activities to determine if the
22 activities:

- 23 (1) could be performed more efficiently by private
24 enterprise; or
25 (2) are state governmental activities that are in

1 competition with private enterprise.

2 In order to implement [this act], the commission may
3 adopt rules to:

4 (1) define those state governmental activities that
5 are inappropriate and that should be prohibited under
6 [section 10];

7 (2) establish procedures for conducting reviews
8 required in [section 11] and for conducting investigations
9 required in [section 12];

10 (3) provide a process that would allow state agencies
11 to perform activities otherwise prohibited under [section
12 10(1)] if the agencies qualify for an exemption for the
13 reasons described in [section 10(2)];

14 (4) implement [sections 13 and 14] governing the
15 issuance of advisory letters and letters of approval by the
16 commission; and

17 (5) clarify and interpret the provisions of [this act]
18 as may be necessary for purposes of carrying out the duties
19 required under [this act].

20 In adopting rules, the commission shall make a thorough
21 and careful review of state governmental activities and
22 examine all statutes, administrative rules, and practices
23 for the activities. In addition, the commission shall
24 consider the purposes stated in [section 2] and determine if
25 it would be in the interest of the public for private

enterprise to perform state governmental activities that are being performed by state agencies.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Short title. [This act] may be cited as the "Private Enterprise Review Act".

NEW SECTION. **Section 2.** Purpose. The purpose of [this act] is to:

(1) create a strong and viable economy characterized by stability, diversity, and growth through the development of private enterprise;

(2) identify and transfer to the private sector those state governmental activities that are inappropriate for state agencies to perform or that could be performed more efficiently by private enterprise;

(3) reduce or eliminate state governmental activity that is in competition with private enterprise;

(4) improve the efficiency, cost-effectiveness, and overall performance of state government in providing services to the public; and

(5) decrease the size and cost of state government in Montana.

NEW SECTION. **Section 3.** Definitions. As used in [this act] unless the context requires otherwise, the following definitions apply:

(1) "Commission" means the private enterprise review commission provided for in [section 4].

(2) "Private enterprise" means any nonpublic and nonpolitical business organization, including but not limited to a sole proprietorship, partnership, or corporation, including any corporation that is principally owned by its employees directly through the ownership of stock or indirectly through participation in an employee stock ownership plan.

(3) "State agency" means any department, office, commission, board, or institution in the executive branch of state government.

(4) "State governmental activity" or "activity" means any activity of a state agency involving the manufacturing, processing, offering for sale, rental, lease, or delivery, dispensing, distribution, or advertising of goods or services.

NEW SECTION. **Section 4.** Private enterprise review commission -- composition -- allocation. (1) There is a private enterprise review commission.

(2) The commission consists of five members appointed by the governor, four of whom shall represent private enterprise.

(3) The commission is allocated to the department of commerce for administrative purposes only as provided in

1 2-15-121.

2 NEW SECTION. Section 5. Term of office -- vacancies.

3 (1) Each member of the commission shall serve for a term of
4 3 years, except of the initial appointments, one member
5 shall serve a term of 1 year, two members shall serve terms
6 of 2 years, and two members shall serve terms of 3 years.

7 (2) A vacancy on the commission must be filled in the
8 same manner as the original appointment.

9 NEW SECTION. Section 6. Officers -- meetings --

10 quorum -- compensation. (1) The commission shall choose from
11 its members a chairman.

12 (2) The commission shall meet at least once every 3
13 months and at other times as determined by the chairman or
14 by a majority of the commission.

15 (3) Three members of the commission constitute a
16 quorum for the transaction of business.

17 (4) Members of the commission shall serve without
18 compensation but are entitled to reimbursement of expenses
19 as provided in 2-18-501 through 2-18-503.

20 NEW SECTION. Section 7. Staff assistance -- other

21 support. The department of commerce shall provide the
22 commission with technical, professional, and clerical
23 personnel; office equipment and supplies; books,
24 periodicals, and other research material; and otherwise
25 support the commission as necessary to enable the commission

1 to carry out the provisions of [this act].

2 NEW SECTION. Section 8. Powers and duties of

3 commission. (1) The commission shall:

4 (a) review the appropriateness of state governmental
5 activities to determine if the activities:

6 (i) could be performed more efficiently by private
7 enterprise; or

8 (ii) are state governmental activities that are in
9 competition with private enterprise;

10 (b) investigate complaints as provided in [section
11 12];

12 (c) issue advisory letters or letters of approval as
13 provided in [section 13]; and

14 (d) adopt rules necessary to carry out the provisions
15 of [this act], including rules defining state governmental
16 activities that are prohibited under [section 10].

17 (2) The commission may:

18 (a) investigate and examine any state governmental
19 activity that is subject to the provisions of [this act],
20 including all costs of the activity;

21 (b) inspect all records, books, and files of state
22 agencies;

23 (c) administer oaths, issue subpoenas, and compel the
24 attendance and testimony of witnesses and the production of
25 papers, books, accounts, documents, recordings, and other

1 tangible things relating to any matter under investigation
2 or review by the commission; and

3 (d) apply to the district court for an order
4 compelling compliance of any person who disobeys a subpoena
5 or refuses to testify to matters upon which he may be
6 lawfully questioned.

7 NEW SECTION. Section 9. Gifts and grants. The
8 commission may accept contributions, gifts, and grants, in
9 money or otherwise, to carry out the provisions of [this
10 act].

11 NEW SECTION. Section 10. Restriction on state
12 governmental activities -- exemptions. (1) Except as
13 provided in subsection (2), a state agency is prohibited
14 from performing any state governmental activity if, by rule
15 or as the result of a review or investigation, the
16 commission determines that the activity:

17 (a) could be performed more efficiently by private
18 enterprise; or

19 (b) is in competition with private enterprise.

20 (2) A state agency may perform a state governmental
21 activity otherwise prohibited under subsection (1) if:

22 (a) the state agency is required by state statute to
23 perform the activity;

24 (b) the activity is mandated as a condition of state
25 participation in a federally funded program;

1 (c) performance of the activity is modified or phased
2 out in accordance with a plan approved by the commission; or
3 (d) the commission finds, in its discretion, that the
4 activity should be exempted from the requirements of [this
5 act].

6 NEW SECTION. Section 11. State agency compliance --
7 request for advisory letter. (1) A state agency shall
8 carefully consider the nature of any state governmental
9 activity that it intends to perform prior to commencing the
10 activity to ensure compliance with [section 10]. If, upon
11 consideration, the state agency has reason to believe that
12 the activity is prohibited under [section 10], it shall, in
13 writing, request from the commission an advisory letter as
14 to whether the activity is prohibited under [section 10].

15 (2) If a state agency is performing a state
16 governmental activity and has reason to believe that the
17 activity is prohibited under [section 10], it may:

18 (a) request an advisory letter from the commission as
19 to whether the activity is prohibited under [section 10];
20 and

21 (b) consult with the commission to modify or phase out
22 the activity in order to be in compliance with [section 10].

23 (3) Upon receiving a request under this section, the
24 commission shall review the state governmental activity and
25 respond in writing to the state agency making the request,

1 as required in [section 13].

2 **NEW SECTION. Section 12. Complaints** --
3 investigations. (1) Any person may submit a written
4 complaint to the commission alleging that a state agency is
5 performing a state governmental activity that is prohibited
6 under [section 10]. Upon receiving a complaint, the
7 commission may conduct an investigation.

8 (2) All officers and employees of a state agency shall
9 fully cooperate with and may not obstruct any investigation
10 of a complaint conducted by the commission under subsection
11 (1).

12 **NEW SECTION. Section 13. Advisory letter -- approval**
13 letter. (1) If as a result of a review or investigation
14 under [this act] the commission determines that a state
15 agency is performing a state governmental activity that is
16 prohibited under [section 10], the commission shall issue an
17 advisory letter informing the governor and the state agency
18 of its determination. The commission shall send the advisory
19 letter by personal service or by certified mail, return
20 receipt requested. If the letter is issued as a result of a
21 complaint, the commission shall also send a copy of the
22 advisory letter, by first class mail, to the person who
23 submitted the complaint.

24 (2) If as a result of a review or investigation under
25 [this act] the commission determines that a state agency is

1 performing a state governmental activity that is not
2 prohibited under [section 10], the commission shall send a
3 letter of approval informing the agency of its determination
4 and the reason for the determination. The commission shall
5 send the letter of approval in the same manner as an
6 advisory letter under subsection (1).

7 **NEW SECTION. Section 14. Contents of advisory letter**
8 -- agency response. (1) An advisory letter issued under
9 [section 13] must:

10 (a) identify the activity of the state agency that is
11 prohibited under [section 10];

12 (b) cite the rule by which the commission has
13 determined that the state governmental activity is
14 prohibited under [section 10];

15 (c) advise the state agency either to cease and desist
16 in performing the prohibited activity or to modify its
17 performance of the activity in order to bring the activity
18 into compliance with the requirements of [section 10]; and

19 (d) inform the state agency that the commission will
20 publish the full text of the advisory letter in the
21 commission's biennial report to the governor and to the
22 legislative finance committee.

23 (2) If the commission advises the state agency to
24 modify its performance of an activity, the advisory letter
25 must include sufficient advice to enable the state agency to

1 successfully modify the activity in order to bring the
2 activity into compliance with the requirements of [section
3 10].

4 (3) A state agency that receives an advisory letter
5 from the commission shall:

6 (a) carefully review the letter and the state agency's
7 performance of the state governmental activity identified in
8 the advisory letter;

9 (b) consider whether and how the advice given in the
10 advisory letter should be implemented; and

11 (c) within 30 days after receiving the letter, inform
12 the commission in writing whether or not it intends to
13 implement the advice of the commission. If the state agency
14 intends to implement all or some of the advice of the
15 commission, it shall explain with particularity how it
16 intends to achieve implementation of the commission's advice
17 and develop a time schedule showing dates when it expects to
18 complete each phase of implementation. If the state agency
19 does not intend to implement any of the advice received from
20 the commission or intends to implement some but not all of
21 the advice, it shall explain its reasons for not
22 implementing the advice.

23 **NEW SECTION. Section 15. Consultation and assistance.**

24 The commission may consult with or assist a state agency to:

25 (1) modify a state governmental activity in order to

1 bring the activity into compliance with [section 10]; and

2 (2) develop a schedule to phase out performance of an
3 activity that is prohibited under [section 10].

4 **NEW SECTION. Section 16. Biennial report to governor**
5 **and legislative finance committee.** No later than December 1
6 of each even-numbered year, the commission shall submit a
7 report of its activities for the 2 preceding fiscal years to
8 the governor and to the legislative finance committee. The
9 report must include:

10 (1) a summary of rulemaking activity conducted by the
11 commission during the reporting period;

12 (2) an analysis of requests received under [section
13 11] and complaints received under [section 12], including
14 the number and kinds of requests and complaints that led to
15 the issuance of advisory letters and letters of approval;

16 (3) a summary of investigations under [section 12],
17 including the number of investigations undertaken and an
18 assessment of state agency cooperation with the
19 investigations;

20 (4) the full text of each advisory letter issued by
21 the commission during the period;

22 (5) an assessment of how state agencies implemented
23 the advice provided in advisory letters;

24 (6) specific recommendations for changes in the law
25 that are needed to compel state agencies to discontinue

1 state governmental activities that are prohibited under
2 [section 10]; and

3 (7) recommendations concerning other action necessary
4 to effect the purposes of [this act].

5 NEW SECTION. **Section 17. Codification instruction.**

6 (1) [Section 4] is intended to be codified as an integral
7 part of Title 2, chapter 15, part 18, and the provisions of
8 Title 2, chapter 15, part 18, apply to [section 4].

9 (2) [Sections 1 through 3 and 5 through 16] are
10 intended to be codified as an integral part of Title 2,
11 chapter 7, and the provisions of Title 2, chapter 7, apply
12 to [sections 1 through 3 and 5 through 16].

13 NEW SECTION. **Section 18. Saving clause.** [This act]
14 does not affect rights and duties that matured, penalties
15 that were incurred, or proceedings that were begun before
16 [the effective date of this act].

17 NEW SECTION. **Section 19. Severability.** If a part of
18 [this act] is invalid, all valid parts that are severable
19 from the invalid part remain in effect. If a part of [this
20 act] is invalid in one or more of its applications, the part
21 remains in effect in all valid applications that are
22 severable from the invalid applications.

23 NEW SECTION. **Section 20. Effective date.** [This act]
24 is effective July 1, 1989.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB422, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

SB422 would establish a private enterprise review commission to review and investigate the appropriateness of state governmental activities, issue advisory letters or letters of approval regarding the appropriateness of state governmental activities, and prohibiting state agencies from performing certain activities.

ASSUMPTIONS:

1. The five member commission would be allocated to the Dept. of Commerce for administrative purposes and would meet six times each year.
2. Meeting time including travel will be four days.
3. The department will provide clerical help and supportive services at 25% of operating and additional clerical help will be contracted.
4. Legal counsel will be required and is assumed at 120 hours per year at \$75 per hour.
5. The biennial report will be presented to the Governor in FY92.
6. The commission and associated costs will be funded with general fund.
7. There is no fiscal impact on the Governor's Office.

FISCAL IMPACT:Expenditures:

	Current	FY90		Current	FY91	
	Law	Proposed	Difference	Law	Proposed	Difference
Dept. of Commerce						
Operating Expenses	\$ -0-	\$32,791	\$32,791	\$ -0-	\$27,116	\$27,116
Equipment	-0-	3,800	3,800	-0-	-0-	-0-
Total	\$ -0-	\$36,591	\$36,591	\$ -0-	\$27,116	\$27,116

Funding:

General Fund	\$ -0-	\$36,591	\$36,591	\$ -0-	\$27,116	\$27,116
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TECHNICAL NOTES:

1. Section 8(2)(b), page 6, regarding inspection of all records, books and files may conflict with confidential files on private businesses which are maintained by state agencies, e.g., Dept. of Commerce Business Assistance Division.
2. Section 9, page 7, regarding contributions, gifts and grants to the commission may create the appearance of impropriety when the commission is also accepting complaints from private industry to investigate and privatize governmental functions, e.g., 2-2-104, 105, 121, MCA.



RAY SHACKLEFORD, BUDGET DIRECTOR
OFFICE OF BUDGET AND PROGRAM PLANNING

DATE 2/20/89


WILLIAM E. FARRELL, PRIMARY SPONSOR

DATE 2/20/89Fiscal Note for SB422, as introducedSB 422