

SENATE BILL 3003
By Clabough

AN ACT to enact the "Electronic Government Services Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Electronic Government Services Act".

SECTION 2. The general assembly finds and declares that the growth of private enterprise is essential to the health, welfare, and prosperity of this state and that government competes with the private sector when it provides goods and services to the public. It is the intent of the general assembly and the purpose of this act to protect economic opportunities for private industry against unfair competition by government agencies and enhance the efficient provision of public goods and services.

SECTION 3. As used in this act:

(1) "Commercial activity" means performing services or providing goods which can normally be obtained from private enterprise;

(2) "Direct costs" means all costs, whether capital costs, operating costs, or otherwise, that would be eliminated if the service or function to which they relate were discontinued;

(3) "Electronic commerce service" means services that are the same, similar to or overlapping those information technology-based services provided by the private sector to the general public, for example, any transaction completed over a computer network such as the buying of goods and services on the Internet;

(4) "Full cost accounting" means in accordance with applicable generally accepted accounting principles, accounting for all direct and indirect costs, including capital costs, that are incurred in the ownership, management or operation of an electronic service;

(5) "Government agency" means the state, any unit of state government and any local government or other subdivision of the state, and shall not be construed to exclude any entity which is not majority owned as private property and which is established under the Constitution, statutes, ordinances or any other order or action by any such entity or its officers;

(6) "Indirect cost accounting" means all costs, whether capital costs, operating costs, or otherwise, that are not direct costs. Indirect costs that support multiple services or functions shall be allocated among those services and functions in proportion to the relative burden each service or function places on the cost category and by any reasonable method consistent with applicable generally accepted accounting principles;

(7) "Private enterprise" means an individual, firm, partnership, joint venture, corporation, association or any other legal entity engaging in the manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing or advertising of goods or services for profit; and

(8) "Private sector" means two (2) or more competing privately-owned companies.

SECTION 4. If the private sector provides electronic commerce services to the public, government shall not start or carry on any activity to provide or offer such services or expand similar services at government expense or provision. Nothing in this act prohibits government from providing electronic commerce services to the public in the absence of the private sector provision of such services.

SECTION 5.

(a) A government agency can provide duplicative or competing electronic commerce services provided that the head of the agency that proposes to provide duplicative or competing electronic commerce services to the general public provides public notice and the opportunity of the public to comment on the agency's proposed services. Such notice shall include the 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 agency must specify:

(1) the initial and total lifecycle costs of the proposed government services, which include, but are not limited to, all technology, infrastructure, services, contracts, and direct and indirect personnel costs;

(2) the individual per taxpayer cost of such services on an annualized basis, and the cost of such services per user on an annualized basis;

(3) a description of the agency's reasons for believing that the cost benefits of providing such services require the expenditure of public funds;

(4) identification of unmet needs in the consumer marketplace which the government service offer would fulfill;

(5) a description of how the proposed government service offers would differ from those provided by the private sector; and

(6) an economic impact analysis demonstrating that the offering of proposed electronic commerce services by government will not be anti-competitive in its effect on the existing industry, and will not adversely impact or distort the private sector marketplace for the same or similar electronic commerce services.

(b) Subsequent to receiving the comments of the public, if the head of the agency wishes to proceed with duplicative or competing services, the head of the agency must sign factual and legal conclusions enumerating all of the factors described in (a).

(c) Any provider of electronic commerce services who resides within or does business in the state has standing to judicially challenge the factual and legal sufficiency of the findings in (b) pursuant to the state's procedures for hearing and resolving complaints filed under this act.

(d) Any provider of electronic commerce services, who resides within or does business in the state, has standing to judicially challenge the provision of electronic commerce services by the government agency not made in conformance with this act pursuant to the state's procedures for hearing and resolving complaints filed under this act.

SECTION 6. Nothing contained in this act may be construed to prohibit a government agency from offering electronic government services to the general public prior to the effective date of this act.

SECTION 7. If an agency elects to provide electronic services in a jurisdiction where a private enterprise delivers the same electronic service, the agency shall prepare and publish, on or before October 1, 2002, an annual report on its electronic services. The report shall be

substantially in accordance with full cost accounting and shall include disclosure of the amount, source, and cost of working capital utilized for its electronic services.

SECTION 8. The commissioner of finance and administration is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Title 4, Chapter 5.

SECTION 9. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 10. This act shall take effect upon July 1, 2002, the public welfare requiring it.