

State of Arizona
Senate
Forty-second Legislature
Second Regular Session
1996

FILED

**Jane Dee Hull
Secretary of State**

CHAPTER 321

SENATE BILL 1334

AN ACT

AMENDING SECTIONS 41-2752, 41-2753 AND 41-2754, ARIZONA REVISED STATUTES; REPEALING SECTION 41-2997.03, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 25, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 2; AMENDING TITLE 41, CHAPTER 27, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-2999.10; MAKING AN APPROPRIATION; RELATING TO GOVERNMENT COMPETITION WITH PRIVATE ENTERPRISE.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 41-2752, Arizona Revised Statutes, is amended to read:

41-2752. State competition with private enterprise prohibited; exceptions

A. A state agency shall not engage in the manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing or advertising of goods or services to the public which are also offered by private enterprise unless specifically authorized by law other than administrative law and executive orders.

B. A state agency shall not offer or provide goods or services to the public for or through another state agency or a local agency, including by intergovernmental or interagency agreement, in violation of this section or section 41-2753.

C. Except as otherwise provided in section 41-2754, subsection ~~H~~ I, the restrictions on activities which compete with private enterprise contained in this section do not apply to:

1. The development, operation and management of state parks, historical monuments and hiking or equestrian trails.

1 2. Correctional industries established and operated by the state
2 department of corrections providing the prices charged for products sold by
3 the correctional industries are not less than the actual cost of producing
4 and marketing the product plus a reasonable allowance for overhead and
5 administrative costs.

6 3. The Arizona office of tourism.

7 4. The Arizona highways magazine, operated by the department of
8 transportation.

9 5. Printing and distributing information to the public if the agency
10 is otherwise authorized to do so, and printing or copying public records or
11 other material relating to the public agency's public business and recovering
12 through fees and charges the costs of such printing, copying and
13 distribution.

14 6. The department of public safety.

15 7. The construction, maintenance and operation of state transportation
16 facilities.

17 D. The restrictions on activities which compete with private
18 enterprise contained in subsection A of this section do not apply to
19 community colleges and universities under the jurisdiction of a state
20 governing board.

21 Sec. 2. Section 41-2753, Arizona Revised Statutes, is amended to read:

22 41-2753. Competition with private enterprise by community
23 colleges and universities; limitations; rules;
24 complaints

25 A. Community colleges and universities under the jurisdiction of a
26 state governing board shall not, unless specifically authorized by statute:

27 1. Provide to persons other than students, faculty, staff and invited
28 guests goods, services or facilities that are practically available from
29 private enterprise, unless the provision of the goods, service or facility
30 offers a valuable educational or research experience for students as a part
31 of their education or fulfills the public service mission of the community
32 college or university. This paragraph does not apply to sponsoring or
33 providing facilities for recreational, cultural and athletic events or to
34 facilities providing food services and sales.

35 2. Enter competitive bidding for rendering any goods or services
36 unless a clear educational or research advantage would accrue to this state
37 by the community college or university rendering the goods or services. Any
38 such bid shall fairly and fully allocate all direct and indirect costs unless
39 the funding agency or sources provide for or require all bidders to use a
40 specific procedure or formula for allocating costs.

41 3. Provide to students, faculty, staff or invited guests goods,
42 services or facilities that are practically available from private enterprise
43 except as authorized by the state governing board.

1 4. Provide goods, services or facilities for or through another state
2 agency or a local agency, including by intergovernmental or interagency
3 agreement, which, if provided directly by the contractor, would be in
4 violation of this section or section 41-2752.

5 B. The state governing board may adopt and implement rules to provide
6 for the disposal by sale of products and by-products which are an integral
7 part of research or instruction conducted by community colleges and
8 universities under its jurisdiction if the products and by-products are not
9 sold to a retailer or sold at retail to the public by the particular
10 community college or university unless the sale is an integral part of the
11 particular research project or instructional program or there is no other
12 practical way of disposing by sale of the products or by-products, and if the
13 products or by-products are sold at their market value.

14 C. The state governing board shall adopt and implement rules to:

15 1. Regulate community college and university competition with private
16 enterprise and ensure compliance with this section.

17 2. Regulate use of community college and university facilities by
18 students, faculty, staff, invited guests and the general public.

19 3. Provide procedures for promptly hearing and resolving complaints
20 lodged under this article relating to community colleges and state
21 universities under the jurisdiction of the state governing board. Such
22 procedures shall include provisions for an expedited hearing process if it
23 is determined the alleged competition may cause severe financial hardship on
24 the person filing the complaint.

25 D. Any person aggrieved by a violation of this section may file a
26 complaint with the state governing board. The state governing board shall
27 transmit a copy of a complaint received pursuant to this subsection to the
28 private enterprise review board. The state governing board shall hear
29 complaints made pursuant to this section within sixty days and shall render
30 its decision within thirty days after the hearing. A person does not have
31 standing to challenge violations of this section in the courts of this state
32 until the person has first made a complaint to the board and has received the
33 board's decision.

34 E. This section does not apply to:

35 1. The Arizona health sciences center operated by the university of
36 Arizona, except in those cases in which the health sciences center provides
37 prosthetic or medical devices, or services related to such devices, and a
38 surgical or medical procedure is not involved in the application of the
39 device.

40 2. The provision of free medical services or equipment to indigents
41 in association with a community service health program.

42 3. Public service radio and television stations licensed to the state
43 governing boards or to community colleges and universities under their
44 jurisdiction.

1 4. Skill centers operated by the community college districts.

2 F. The exceptions to the restrictions on community college and
3 university competition with private enterprise in subsections A, B and E of
4 this section are subject to review by the private enterprise review board in
5 accordance with section 41-2754, subsection ~~H~~ I.

6 Sec. 3. Section 41-2754, Arizona Revised Statutes, is amended to read:
7 41-2754. Private enterprise review board; members; terms;
8 compensation; duties; staff; judicial review;
9 definition

10 A. A private enterprise review board is established composed of the
11 following members:

12 1. The chief executive or administrative officer of one state agency
13 who is appointed by the governor OR THE OFFICER'S DESIGNEE.

14 2. One member who is appointed by the state board of directors for
15 community colleges.

16 3. One member who is appointed by the Arizona board of regents.

17 4. ONE MEMBER WHO IS APPOINTED BY THE GOVERNOR TO BE THE
18 REPRESENTATIVE OF STATE EMPLOYEES COVERED UNDER SECTIONS R2-5-101 THROUGH
19 R2-5-902 OF THE ARIZONA ADMINISTRATIVE CODE.

20 ~~4~~ 5. Six members who are engaged in private enterprise, at least
21 three of whom represent the small business community. The speaker of the
22 house of representatives, the president of the senate and the governor shall
23 each appoint two members, and of the two appointed by each at least one shall
24 be a representative of the small business community.

25 ~~5~~ 6. Two advisory members from the house of representatives who are
26 appointed by the speaker of the house of representatives, one of whom shall
27 be a member of the house OF REPRESENTATIVES appropriations committee.

28 ~~6~~ 7. Two advisory members from the senate who are appointed by the
29 president of the senate, one of whom shall be a member of the senate
30 appropriations committee.

31 B. Terms of appointment to the board are for two years unless an
32 advisory member or the chief executive or administrative officer of a state
33 agency ceases to hold such office. In that case, the appointing officer
34 shall appoint a replacement member for the remainder of the unexpired term.

35 C. Members of the board in subsection A, paragraph ~~4~~ 5 of this
36 section are not eligible to receive compensation but are eligible for
37 reimbursement of expenses pursuant to title 38, chapter 4, article 2.

38 D. The board shall:

39 1. Select a chairman from among its members.

40 2. Meet at least four times each year at the state capitol and hold
41 additional hearings as may be necessary on the call of the chairman.

42 3. Receive written complaints of violations of the provisions of this
43 article.

1 4. Transmit complaints received under paragraph 3 of this subsection
2 to the state agency, university or community college DISTRICT alleged to be
3 in violation.

4 5. Hold public hearings on complaints and determine whether the
5 agency, university or community college DISTRICT is in violation of the
6 provisions of this article.

7 6. Within ~~sixty~~ NINETY days after receiving the STATE agency's
8 response, issue a written report of its findings to the complainant.

9 7. Transmit a complete report of each meeting to the legislature and
10 the governor including recommendations to remedy violations of prohibitions
11 on competition with private enterprise and findings on necessary exceptions
12 to the prohibitions.

13 E. The private enterprise review board may receive, but shall not
14 consider, a complaint relating to a university or community college DISTRICT
15 until the complaint has been filed with the state governing board under
16 section 41-2753, subsection D and the state governing board has rendered a
17 decision.

18 F. The STATE agency, university or community college DISTRICT shall
19 respond to the board in writing within forty-five days after receipt of a
20 complaint transmitted under subsection D, paragraph 4 of this section and
21 shall either deny or concur with the complaint and indicate any necessary and
22 contemplated remedial measures. When a specific complaint concerning section
23 41-2753, subsection A, paragraph 1 is received by the board regarding the
24 providing of goods, services or facilities as a valuable educational or
25 research experience for its students or to fulfill its public service
26 mission, a community college DISTRICT or university shall file with the
27 response to the private enterprise review board either a written description
28 of what it believes is the valuable educational or research experience for
29 its students or a written description of the public service mission, as
30 applicable.

31 G. The board may evaluate and review opportunities to contract with
32 private enterprise that are deemed to be in the public interest. The public
33 agencies offering services subject to review shall be involved as
34 participants in the evaluation process. The board may hold public hearings
35 as a part of its evaluation process and shall report its recommendations to
36 the legislature and the governor.

37 H. THE BOARD SHALL SOLICIT PETITIONS OF INTEREST FROM PRIVATE SECTOR
38 SERVICE PROVIDERS AS THE BOARD DEEMS APPROPRIATE. THE BOARD MAY EVALUATE AND
39 REVIEW THE PETITIONS AND MAY HOLD PUBLIC HEARINGS AS PART OF THE EVALUATION
40 PROCESS. THE BOARD MAY RECOMMEND SOME OR ALL OF THE PETITIONS TO THE
41 GOVERNOR'S OFFICE OF MANAGEMENT AND BUDGET FOR FURTHER REVIEW PURSUANT TO
42 SECTION 41-2773. A PERSON DOES NOT HAVE A CAUSE OF ACTION BASED ON THE
43 FAILURE OF THE BOARD TO CONSIDER A PETITION OF INTEREST OR TO MAKE A
44 RECOMMENDATION. THIS SUBSECTION DOES NOT APPLY TO THE ARIZONA BOARD OF

1 REGENTS, THE UNIVERSITIES UNDER ITS JURISDICTION OR COMMUNITY COLLEGE
2 DISTRICTS.

3 ~~H.~~ I. The board may evaluate and review all state agency exemptions
4 and exceptions to the restrictions on competition with private enterprise in
5 this article and may determine that any function or functions of a state
6 agency, university or community college DISTRICT are ~~or could be made~~ a
7 violation of this article. The board shall report its findings and
8 recommendations to the legislature and the governor.

9 ~~I.~~ J. At the request of the board, the ~~department of commerce~~ OFFICE
10 FOR EXCELLENCE IN GOVERNMENT, ESTABLISHED BY EXECUTIVE ORDER, OR ITS
11 SUCCESSOR, shall provide such staff support as is ~~necessary~~ FUNDED BY
12 LEGISLATIVE APPROPRIATION TO THE OFFICE to carry out the board's duties
13 pursuant to this section. The auditor general shall provide performance
14 audit information relating to state agency, university and community college
15 DISTRICT budgets and functions that the auditor general has available without
16 additional contact with state agencies through the legislative review of
17 agencies pursuant to chapter 27 of this title.

18 ~~J.~~ K. ~~Notwithstanding the provisions for relief prescribed by this~~
19 ~~article and~~ Except as provided by section 41-2753, subsection D, any
20 aggrieved person may elect to directly seek judicial relief including relief
21 under the provisions of section 12-2030.

22 ~~K.~~ L. For the purposes of this section, "advisory member" means a
23 member who gives advice to the other members of the private enterprise review
24 board at meetings of the board but who is not eligible to vote, is not a
25 member for purposes of determining whether a quorum is present and is not
26 eligible to receive compensation.

27 Sec. 4. Title 41, chapter 25, Arizona Revised Statutes, is amended by
28 adding article 2, to read:

29 ARTICLE 2. COMPETITIVE GOVERNMENT PROGRAM

30 41-2771. Definitions

31 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

32 1. "COMPETITIVE GOVERNMENT PROCESS" MEANS THE PROCESS, AS DEVELOPED
33 BY THE OFFICE OF MANAGEMENT AND BUDGET, DESIGNED TO STANDARDIZE THE
34 METHODOLOGY FOR HOW THE STATE IDENTIFIES AND EVALUATES STATE FUNCTIONS TO
35 DETERMINE IF FUTURE COMPETITIVE CONTRACTING WITH THE PRIVATE SECTOR AND OTHER
36 STATE AGENCIES IS IN THE BEST INTEREST OF THIS STATE.

37 2. "COMPETITIVE GOVERNMENT PROGRAM" MEANS THE PROGRAM, AS DEVELOPED
38 BY THE GOVERNOR'S OFFICE OF MANAGEMENT AND BUDGET, DESIGNED TO MANAGE THE
39 PROCESS OF INTRODUCING PRIVATE SECTOR AND INTERAGENCY COMPETITION INTO THE
40 DELIVERY OF STATE GOODS AND SERVICES.

41 3. "FUNCTION" MEANS A GOOD OR SERVICE THAT IS PROVIDED THROUGH THE
42 DIRECT EFFORTS OF STATE EMPLOYEES.

43 4. "OFFICE" MEANS THE OFFICE OF MANAGEMENT AND BUDGET, ESTABLISHED BY
44 EXECUTIVE ORDER, OR ITS SUCCESSOR.

1 5. "PRIVATIZATION" MEANS THE UTILIZATION OF A PRIVATE SECTOR ENTITY
2 IN THE DELIVERY OF GOODS AND SERVICES CURRENTLY PROVIDED BY A STATE FUNCTION
3 OR PROGRAM.

4 6. "RELEVANT COSTS" MEANS THOSE COSTS THAT RELATE TO A TARGET FUNCTION
5 THAT CAN BE ELIMINATED IF THE TARGET FUNCTION IS TRANSFERRED TO ANOTHER
6 AGENCY OR THE PRIVATE SECTOR.

7 7. "STATE AGENCY" MEANS ANY EXECUTIVE DEPARTMENT, OFFICE, COMMISSION,
8 INSTITUTION, BOARD OR OTHER EXECUTIVE AGENCY OF STATE ORGANIZATION REGARDLESS
9 OF WHETHER MONIES ARE APPROPRIATED TO THE AGENCY. STATE AGENCY DOES NOT
10 INCLUDE THE ARIZONA BOARD OF REGENTS, THE UNIVERSITIES UNDER ITS JURISDICTION
11 OR COMMUNITY COLLEGE DISTRICTS.

12 8. "TARGET FUNCTION" MEANS A CURRENT STATE FUNCTION THAT HAS BEEN
13 IDENTIFIED FOR REVIEW THROUGH THE COMPETITIVE GOVERNMENT PROCESS.

14 9. "TOTAL COSTS" MEANS ALL COSTS BORNE BY AN AGENCY TO PROVIDE A STATE
15 FUNCTION INCLUDING ALL INDIRECT COSTS AND APPLICABLE ALLOCATED COSTS.

16 41-2772. Arizona state competitive government program

17 A. A STATEWIDE COMPETITIVE GOVERNMENT PROGRAM SHALL BE ESTABLISHED
18 WITHIN THE GOVERNOR'S OFFICE OF MANAGEMENT AND BUDGET. THE PROGRAM SHALL
19 EMPHASIZE THIS STATE'S FIDUCIARY RESPONSIBILITY TO TAXPAYERS BY ENCOURAGING
20 VALUE IN THE PROVISION AND DELIVERY OF STATE SERVICES BY IDENTIFYING AND
21 PURSUING OPPORTUNITIES FOR INCREASING THE USE OF MARKET FORCES IN THE
22 DELIVERY OF STATE SERVICES, WHILE PREVENTING UNFAIR COMPETITION BETWEEN STATE
23 AGENCIES AND THE PRIVATE SECTOR.

24 B. THE COMPETITIVE GOVERNMENT PROCESS SHALL BE UTILIZED WHENEVER A
25 STATE AGENCY CHOOSES TO, OR IS COMPELLED TO, PRIVATIZE A STATE FUNCTION OR
26 PROGRAM CURRENTLY PROVIDED THROUGH THE DIRECT USE OF STATE EMPLOYEES.

27 C. THE ARIZONA BOARD OF REGENTS AND THE COMMUNITY COLLEGE DISTRICTS
28 SHALL DEVELOP A PROGRAM COMPARABLE TO THE COMPETITIVE GOVERNMENT PROGRAM FOR
29 THEMSELVES AND INSTITUTIONS UNDER THEIR JURISDICTION AND SHALL PRESENT A
30 REPORT TO THE OFFICE ON OR BEFORE OCTOBER 1 OF EACH YEAR THAT CONTAINS A
31 SUMMARY OF ALL ACTIVITIES CONDUCTED BY THE ARIZONA BOARD OF REGENTS AND
32 COMMUNITY COLLEGE DISTRICTS RELATING TO COMPETITIVE GOVERNMENT ACTIVITIES.
33 THE OFFICE MAY REQUIRE ORAL OR WRITTEN STATUS REPORTS RELATING TO COMPETITIVE
34 GOVERNMENT ACTIVITIES FROM THE STATE AGENCIES AS DEEMED NECESSARY.

35 41-2773. Powers and duties of the office of management and
36 budget relating to competitive government

37 IN ADDITION TO THE DUTIES ASSIGNED BY THE GOVERNOR, THE OFFICE:

38 1. SHALL DEVELOP, IMPLEMENT AND MANAGE A STATEWIDE COMPETITIVE
39 GOVERNMENT PROGRAM.

40 2. SHALL IDENTIFY, WITH THE ASSISTANCE OF STATE AGENCIES AND THE
41 PRIVATE ENTERPRISE REVIEW BOARD, FUNCTIONS IN STATE GOVERNMENT APPROPRIATE
42 FOR SUBMITTAL TO THE COMPETITIVE GOVERNMENT PROCESS.

43 3. MAY REQUIRE A STATE AGENCY TO CONDUCT AN IN-HOUSE TOTAL COST
44 ESTIMATE, A MANAGEMENT STUDY OR ANY HEARING, STUDY, REVIEW OR COST ESTIMATE

1 CONCERNING ANY ASPECT OF A TARGET FUNCTION TO DETERMINE THE POTENTIAL FOR
2 PRIVATIZATION.

3 4. MAY REQUIRE A STATE AGENCY TO RELEASE A REQUEST FOR PROPOSAL OR
4 INVITATION TO BID FOR ANY TARGET FUNCTION THE OFFICE DEEMS APPROPRIATE FOR
5 COMPETITIVELY CONTRACTING.

6 5. SHALL DEVELOP MINIMUM SAVINGS CRITERIA FOR GOVERNING THE AWARD OF
7 CONTRACTS RESULTING FROM THE COMPETITIVE GOVERNMENT PROCESS.

8 6. SHALL INSTRUCT THE OFFICE FOR EXCELLENCE IN GOVERNMENT, OR ITS
9 SUCCESSOR, TO:

10 (a) DEVELOP A COSTING MODEL THAT ACCURATELY ESTIMATES AND ACCOUNTS FOR
11 THE TOTAL COST OF PROVIDING A STATE FUNCTION AND DEVELOP METHODS BY WHICH
12 STATE IN-HOUSE COSTS CAN BE COMPARED TO PRIVATE SECTOR COSTS. THE MODEL
13 SHALL TAKE INTO ACCOUNT RELEVANT COSTS FOR DETERMINING WHETHER SAVINGS WOULD
14 RESULT FROM THE PRIVATIZATION OF A TARGET FUNCTION. THE MODEL SHALL
15 SPECIFICALLY ACCOUNT FOR CONVERSION, TRANSACTION, DISRUPTION, CONTRACT
16 MONITORING COSTS, AND REVENUE INCREASES AND DECREASES RELATED TO A
17 PRIVATIZATION.

18 (b) DEVELOP A HANDBOOK AND TRAINING PROGRAM THAT EDUCATES STATE
19 AGENCIES IN THE COMPETITIVE GOVERNMENT PROCESS.

20 (c) PREAPPROVE REQUESTS FOR PROPOSALS AND INVITATIONS TO BID, AS THE
21 OFFICE DEEMS APPROPRIATE, THAT COULD RESULT IN THE PRIVATIZATION OR TRANSFER
22 TO ANOTHER STATE AGENCY OF A TARGET FUNCTION.

23 (d) REVIEW PETITIONS OF INTEREST FORWARDED BY THE PRIVATE ENTERPRISE
24 REVIEW BOARD AND, ON OR BEFORE DECEMBER 15 OF EACH YEAR, PRESENT TO THE
25 GOVERNOR, PRESIDENT OF THE SENATE AND SPEAKER OF THE HOUSE OF REPRESENTATIVES
26 AN ANNUAL REPORT THAT CONTAINS A SUMMARY OF ALL ACTIVITIES CONDUCTED BY THE
27 OFFICE FOR EXCELLENCE IN GOVERNMENT CONCERNING THE PETITIONS. A PERSON DOES
28 NOT HAVE A CAUSE OF ACTION BASED ON THE FAILURE OF THE OFFICE FOR EXCELLENCE
29 IN GOVERNMENT TO CONSIDER A PETITION OF INTEREST OR TO MAKE A RECOMMENDATION.

30 Sec. 5. Repeal

31 Section 41-2997.03, Arizona Revised Statutes, is repealed.

32 Sec. 6. Title 41, chapter 27, article 2, Arizona Revised Statutes, is
33 amended by adding section 41-2999.10, to read:

34 41-2999.10. Private enterprise review board; termination
35 July 1, 1999

36 A. THE PRIVATE ENTERPRISE REVIEW BOARD TERMINATES ON JULY 1, 1999.

37 B. SECTION 41-2754 IS REPEALED ON JANUARY 1, 2000.

38 Sec. 7. Appropriation; purpose

39 The sum of \$55,000 is appropriated from the state general fund in
40 fiscal year 1996-1997 to the governor for distribution to the office for
41 excellence in government for the purposes provided in section 41-2754,
42 subsection J, Arizona Revised Statutes, as amended by this act.

~~APPROVED BY THE GOVERNOR MAY 1, 1996~~

~~FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 1, 1996~~