



**REVISED OCSEA BILL ANALYSIS –
IMPACT ON GOVERNMENT SERVICES**
May 2005

ELECTRONIC GOVERNMENT SERVICES ACT – HB 188

Basic Thrust of the Bill

HB 188 prohibits government agencies, at the state and local level, from engaging in any electronic commerce service activity. A premise is that such government services compete with the private sector and it represents unfair competition by government agencies. The proposed Act provides for an analysis, potential hearing(s) and survey by the government agency as a condition of performing such work.

Reasons to Oppose the Bill

- 1. It is not clear what harm exists that is remedied by the bill.** The Bill summary analysis provides no data about the amount of electronic commerce activity that exists in state and local government. More importantly, the harm referred to in the bill analysis is not defined. This Bill requires that government agencies specifically limit the potential scope of work based on a harm that is not described or quantified.
- 2. The premise of unfair competition and the need to protect economic opportunities for private industry does not apply or is marginal.** The provision of government services continues to go through significant changes based on advancements in new technologies. The technology sector is one of the fastest growing sectors of our economy and is credited with providing significant productivity improvements that fueled our economic expansion. Companies providing electronic services have proliferated into a multi-billion dollar business with the public sector as one of its fastest growing markets. What is it about the technology sector that needs protection?
- 3. What the Act aims to regulate is ambiguous. Rapid technological innovation makes the target services harder to exclude from the public domain.** The Act states that electronic commerce services pertains to commercial activity that are the same as, similar to, or overlap information technology-based services provided by two or more private enterprises and that it includes services made in connection with a transaction completed over a computer network, such as buying goods or services over the internet. The potential scope of this activity is huge. Almost everything that government provides is linked to a service. This definition in practice lacks boundaries – it could be applied to training and employment services, parks and recreation services, systems by which state agencies purchase or provide services that are

or can be in the future made available via the internet. The potential number of impacted agencies or services is not understood and the business reason that is offered to prospectively change the operational methods that have worked in various state agencies so far have been offered.

Further, we need to acknowledge that the web-based technologies are advancing rapidly and accessibility to computer programs that make it easier for government to make services available with minimum investments and development costs.

- 4. The act adds unnecessary bureaucracy and increases the cost of government.** This Bill unnecessarily adds to the cost of government by requiring substantial analysis to be done that is often not necessary, requiring hearings to finish what is now normal basic policy/operational decisions and also by expanding the scope of litigation against the state or local government.
- A) Sec. 1306.27(B) states that any provider of electronic commerce services can bring a cause of action in court challenging the services offered by the government agency. Why would the government impose a process that expands the jurisdiction of the court on government agency decision making? Why would government increase its exposure to litigation costs? Already, under the existing competitive bidding requirements we have competing companies suing the state because it was not selected as the vendor. It is not uncommon for state agencies to be sued regardless of which contract is selected – the loser claiming that the statute was not properly followed or there are alleged procedural flaws. Further expanding the right to sue is begging for more delays and unnecessary cost.
- B) Hearings are required for public comment on proposed electronic commerce. The size of the proposed service is not a factor in this legislation. The purpose of the hearing seems to satisfy the need for the private sector to be given the business – which should be a secondary interest to the mission or objective of the state or local agency. The hearing process is time consuming and costly. Instead of streamlining decision making, the hearing process does the opposite.
- C) Required extra analysis may not be possible to do. It also further draws upon limited resources. In addition, an annual report is required. Also required is an analysis of lifecycles of duplicative and competing electronic commerce services including direct and indirect services including the cost of these services per user on an annualized basis (Sec. 1306.28(C3)). Venturing a guess on the lifecycle of any technology is open to disagreement. Who should be tasked with this assignment? The Bill states that the report shall allocate indirect costs that support multiple electronic commerce services or functions among those services and functions in proportion to relative burden each service or function places on the cost category (Sec. 1306.28 (F)). Government is providing more

reporting on actions it may never take and it will need to hire more auditors and accountants to simply satisfy the reporting requirements of the Act. Is this what we want government to do?

Two examples illustrate what this legislation would do. It should be noted that numerous scenarios exist with many different permutations.

1. At Hueston State Park the employees have received national recognition for using process improvement teams to reduce costs and improve park services. They were successful in out bidding the private vendor that operated the park golf course and they redesigned the services available at the marina – with substantial improvements in customer satisfaction. Substantial dollars were saved that were used to defray park operations that would have required general revenue funds. If these same employees and managers wanted to further improve service and reduce costs by using electronic commerce to permit customers to log on to sign up for tee times or rent a boat – just think of the red tape, potential hearings and costs they would incur if they needed to meet the requirements of this legislation. The hearing process alone would probably delay the decision for another season, the cost of the process would no doubt erase the savings they generated and it is very likely that a simple off the shelf web based package can be easily adapted for their use. Whose need would be satisfied here – the customer or the electronic commerce vendor?
2. The problems experienced by ODJFS with respect to the OhioWorks job match system helps to illustrate another point. After tens of millions of dollars, ODJFS has decided to scrap much of the work that was contracted out. A justification offered when the work began was that state employees don't have the expertise to do the work and that a more updated computer platform is needed. After more analysis we find that the new proposed platform is also outdated, the original Ohio Job Net is reinstated until a more long range system can be developed and that for every employee hired by ODJFS to replace the work once done by the vendor the state saves \$108,000! The state's decision not to invest in the expertise to perform the work cost the taxpayers and users of the system. This proposed legislation would institutionalize the same relationship that led to the cost overruns and poor services we experienced with the OhioWorks experience.
5. **Government will be less transparent, consumer friendly and cost more.** Technology has made government easier to access and consumer friendly by making information more available. State agency web sites provide information that helps the citizen with information that once required complicated inquires and lots of time.

The Act impairs the ability state and local agencies have to do it – that is creating accessible ways the public can use information or services that are directly related to the mission of the agency.

ODOT provides information regarding road and weather conditions but since a radio station provides such information it likely needs to be required to be contracted out. Such a service would then be available to numerous radio and/or TV stations. They somehow would charge us for the services since it certainly would not come free, although now it is made available currently via the ODOT web. ODOT would need to go through a lengthy, expensive, time consuming process to justify its practice – or on the alternative if the private sector now was contracted to do this, ODOT would spend yet more money coordinating what would like be a fragmented road and weather conditions system.

The Department of Taxation provides assistance to Ohio taxpayers through its web site. Citizens use the E-File service provided by the Department, which has saved significant dollars and has quickened the filing and tax return process. But since HR Block or another tax filing company can or claim to provide such a service – the Department must now spend resources justifying what it does – just to act on a decision to provide efficient, easy and friendly consumer services.

The Ohio Department of Natural Resources is charged with managing the states natural resources and it operates parks that permit Ohioans to experience and share these resources. However, since some company provides or could provide information about the state resources and events that take place at the parks, or since the Department chooses to use a web based consumer friendly method of providing such information or services – it must go through a lengthy and expensive process to simply do the job the citizen rightfully expects.

The Ohio Penal Industry (OPI) makes furniture – giving inmates useful work, helps provide job skills and saves taxpayers millions of dollars. However since this work falls under the goods and services covered by the Act it prohibited – it must be concluded that some harm was done to some company – despite the clear intention of OPI.

The Bill will interfere with state agency ability to offer online information the public has a right to expect and it will increase costs and further delay what should be an everyday business decision.

6. Over all the entire proposed Act is not consistent with effective government.

The legislation imposes on state and local governments limitations and requirements that business would not accept. It basically requires that electronic commerce be placed out to bid and that regardless of the web based technology the agency is using or the configuration of services it believes best fits its mission it will be subject to an extensive research, hearing and reporting process and very possibly litigation if one or more vendors believes it should have been offered the work.

In effect, the Act interferes with decision making by asserting that the private vendors are the expected source of service delivery. No one should have a monopoly on the technology of how a transaction is to be made. In practice, technology has thousands of uses in government operations and to carve out electronic commerce as something that by law agencies must separate out and treat differently is not justified and serves no operational purpose.

The public policy issue that deserves more focus is the capacity of government to use technologies to further its mission. The capacity of each agency varies significantly. We have learned some very hard lessons, particularly in ODJFS, where we relied on the private sector to develop computer systems – finding out later that the interests of the companies serving the state competed with the purpose of the programs. We also recognize that having an internal capacity to use and adopt technology is critical to providing cost-effective services.

This Bill would require that government pay someone else for the expertise it needs to be responsive and adaptive. This decision and its implications should be made on a case by case basis not by prescription as required by this legislation. This hard lesson cost tens of millions of dollars. Investments in the capacity of government to do the work, rather than contract for these services wastes valuable resources and time. It can very well damage government's ability to adapt.

This bill legislates a decision making process that further burdens government, unnecessarily complicates decision making and adds to government costs.