

**As Introduced**

**126th General Assembly  
Regular Session  
2005-2006**

**H. B. No. 188**

**Representatives Buehrer, Seaver, Brinkman, White, D. Evans**

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**A BILL**

To amend section 1306.20 and to enact sections 1  
1306.25 to 1306.29 of the Revised Code to adopt 2  
the Electronic Government Services Act to prohibit 3  
a government agency from providing duplicative or 4  
competing electronic commerce services with the 5  
private sector unless the government agency 6  
complies with specified procedures. 7

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That section 1306.20 be amended and sections 8  
1306.25, 1306.26, 1306.27, 1306.28, and 1306.29 of the Revised 9  
Code be enacted to read as follows: 10

**Sec. 1306.20.** (A) Subject to section 1306.11 and to sections 11  
1306.25 to 1306.29 of the Revised Code, each state agency shall 12  
determine if, and the extent to which, it will send and receive 13  
electronic records and electronic signatures to and from other 14  
persons and otherwise create, generate, communicate, store, 15  
process, use, and rely upon electronic records and electronic 16  
signatures. 17

(B)(1) Subject to division (B)(2) of this section, a state 18  
agency may waive a requirement in the Revised Code, other than a 19  
requirement in sections 1306.01 to 1306.15 of the Revised Code, 20

that relates to any of the following:	21
(a) The method of posting or displaying records;	22
(b) The manner of sending, communicating, or transmitting records;	23 24
(c) The manner of formatting records.	25
(2) A state agency may exercise its authority to waive a requirement under division (B)(1) of this section only if the following apply:	26 27 28
(a) The requirement relates to a matter over which the state agency has jurisdiction;	29 30
(b) The waiver is consistent with criteria set forth in rules adopted by the state agency. The criteria, to the extent reasonable under the circumstances, shall contain standards to facilitate the use of electronic commerce by persons under the jurisdiction of the state agency consistent with rules adopted by the department of administrative services pursuant to division (A) of section 1306.21 of the Revised Code.	31 32 33 34 35 36 37
(C) If a state agency creates, uses, receives, or retains electronic records, both of the following apply:	38 39
(1) Any rules adopted by a state agency relating to electronic records shall be consistent with rules adopted by the department of administrative services pursuant to division (A) of section 1306.21 of the Revised Code.	40 41 42 43
(2) Each state agency shall create, use, receive, and retain electronic records in accordance with section 149.40 of the Revised Code.	44 45 46
(D) If a state agency creates, uses, or receives electronic signatures, the state agency shall create, use, or receive the signatures in accordance with rules adopted by the department of administrative services pursuant to division (A) of section	47 48 49 50

1306.21 of the Revised Code.

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(E)(1) To the extent a state agency retains an electronic record, the state agency may retain a record in a format that is different from the format in which the record was originally created, used, sent, or received only if it can be demonstrated that the alternative format used accurately and completely reflects the record as it was originally created, used, sent, or received.

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(2) If a state agency in retaining any set of electronic records pursuant to division (E)(1) of this section alters the format of the records, the state agency shall create a certificate of authenticity for each set of records that is altered.

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(3) The department of administrative services, in consultation with the state archivist, shall adopt rules in accordance with section 111.15 of the Revised Code that establish the methods for creating certificates of authenticity pursuant to division (E)(2) of this section.

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(F) Whenever any rule of law requires or authorizes the filing of any information, notice, lien, or other document or record with any state agency, a filing made by an electronic record shall have the same force and effect as a filing made on paper in all cases where the state agency has authorized or agreed to ~~such that~~ that electronic filing and the filing is made in accordance with applicable rules or an applicable agreement.

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(G) Nothing in sections 1306.01 to 1306.23 of the Revised Code shall be construed to require any state agency to use or permit the use of electronic records and electronic signatures.

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~~(H)(1) Notwithstanding division (C)(1) or (D) of this section, any state agency that, prior to the effective date of this section, used or permitted the use of electronic records or electronic signatures pursuant to laws enacted, rules adopted, or~~

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~~agency policies adopted before the effective date of this section,~~ 82  
~~may use or permit the use of electronic records or electronic~~ 83  
~~signatures pursuant to those previously enacted laws, adopted~~ 84  
~~rules, or adopted policies for a period of two years after the~~ 85  
~~effective date of this section.~~ 86

~~(2) Subject to division (H)(3) of this section, after the~~ 87  
~~two year period described in division (H)(1) of this section has~~ 88  
~~concluded, all~~ All state agencies that use used or permit 89  
permitted the use of electronic records or electronic signatures 90  
~~before the effective date of this section~~ September 14, 2000, 91  
shall only use or permit the use of electronic records or 92  
electronic signatures consistent with rules adopted by the 93  
department of administrative services pursuant to division (A) of 94  
section 1306.21 of the Revised Code. The 95

~~(3) After the two year period described in division (H)(1) of~~ 96  
~~this section has concluded, the department of administrative~~ 97  
~~services~~ may permit a state agency to use electronic records or 98  
electronic signatures that do not comply with ~~division (H)(2) of~~ 99  
~~this section~~ requirement, however, if the state agency files a 100  
written request with the department. 101

(I) For the purposes of this section, "state agency" means 102  
every organized body, office, or agency established by the laws of 103  
the state for the exercise of any function of state government, 104  
but does not include the general assembly, any legislative agency, 105  
the supreme court, ~~the~~ other courts of record in this state, or 106  
any judicial agency. 107

**Sec. 1306.25.** As used in sections 1306.25 to 1306.29 of the 108  
Revised Code: 109

(A) "Commercial activity" means performing services or 110  
providing goods that normally can be obtained from a private 111  
enterprise. 112

(B) "Direct costs" 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. 113  
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(C) "Electronic commerce services" mean services relating to commercial activity that are the same as, similar to, or overlap information technology-based services provided to the public by two or more competing private enterprises. "Electronic commerce services" includes services made in connection with a transaction completed over a computer network, such as the buying of goods or services over the internet. 116  
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(D) "Full cost accounting" means, in accordance with generally accepted accounting principles, accounting for all direct costs and indirect costs that are incurred in the ownership, management, or operation of electronic commerce services. 123  
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(E) "Government agency" means either of the following: 128

(1) A state agency as defined in section 117.01 of the Revised Code or a similar agency of a county, township, municipal corporation, or other political subdivision of this state; 129  
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(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 or similar agency of a county, township, municipal corporation, or other political subdivision of this state, or an officer of such a state or similar agency. 132  
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(F) "Indirect costs" means all costs, whether capital costs, operating costs, or otherwise, that are not direct costs. 137  
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(G) "Private enterprise" means an individual, firm, partnership, joint venture, corporation, association, limited liability company, or other legal entity engaging, in the private sector, in the manufacturing, processing, sale, offering for sale, 139  
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rental, leasing, delivery, dispensing, distributing, or 143  
advertising of goods or services for profit. 144

Sec. 1306.26. (A) The general assembly finds and declares 145  
that the growth of private enterprises is essential to the health, 146  
welfare, and prosperity of this state and that government competes 147  
with the private sector when it provides goods and services to the 148  
public. 149

(B) It is the intent of the general assembly and the purpose 150  
of sections 1306.25 to 1306.29 of the Revised Code to protect 151  
economic opportunities for the private sector against unfair 152  
competition by government agencies and to enhance the efficient 153  
provision of goods and services to the public. 154

(C) Sections 1306.25 to 1306.29 of the Revised Code may be 155  
cited as the "electronic government services act." 156

Sec. 1306.27. (A) Except as provided in section 1306.28 of 157  
the Revised Code, if two or more competing private enterprises 158  
provide electronic commerce services, a government agency shall 159  
not engage, through the expenditure of public moneys, in any 160  
activity to provide or offer those electronic commerce services to 161  
the public or expand similar electronic commerce services to the 162  
public. 163

(B) Any provider of electronic commerce services that resides 164  
or does business in this state has standing to commence a civil 165  
action in a court of competent jurisdiction, and has a cause of 166  
action for appropriate relief, to challenge the provision of 167  
electronic commerce services by a government agency that is not in 168  
accordance with sections 1306.25 to 1306.29 of the Revised Code. 169

(C) Nothing in sections 1306.25 to 1306.29 of the Revised 170  
Code prohibits a government agency from providing electronic 171  
commerce services to the public in the absence of two or more 172

competing private enterprises providing those services.

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Sec. 1306.28. (A) A government agency may provide duplicative or competing electronic commerce services to the public if the agency complies with this section.

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(B) Before a government agency provides duplicative or competing electronic commerce services to the public, it shall hold a public hearing to allow public comment about the agency's proposed electronic commerce services. The government agency shall provide at least thirty days' public notice of the time and place of the public hearing in one or more newspapers of general circulation in the county or counties within its jurisdiction. During the thirty-day period before the public hearing, the government agency shall make its proposal for providing duplicative or competing electronic commerce services to the public available for public inspection in a prominent public location within the county or counties where the public notice is provided.

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(C) The public notice described in division (B) of this section also shall set forth all of the following:

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(1) 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 to the public and citing the legal authority that permits the government agency to do so;

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(2) The initial and total lifecycle costs of the proposed duplicative or competing electronic commerce services, which include, but are not limited to, all technology, infrastructure, services, contracts, and direct or indirect personnel costs;

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(3) The individual per taxpayer cost of the proposed duplicative or competing electronic commerce services on an

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annualized basis and the cost of these services per user on an 203  
annualized basis; 204

(4) The government agency's reasons for believing that the 205  
cost benefits of providing duplicative or competing electronic 206  
commerce services require the expenditure of public moneys; 207

(5) An identification of unmet needs in the consumer 208  
marketplace that the proposed duplicative or competing electronic 209  
commerce services would fulfill; 210

(6) A description of how the proposed duplicative or 211  
competing electronic commerce services would differ from those 212  
provided by two or more competing private enterprises; 213

(7) An economic impact analysis demonstrating that the 214  
offering of the proposed duplicative or competing electronic 215  
commerce services by the government agency will not be 216  
anticompetitive in its effect on the existing industry and will 217  
not adversely impact or distort the marketplace of two or more 218  
competing private enterprises providing the same or similar 219  
electronic commerce services. 220

(D)(1) After reviewing comments from the public following the 221  
public hearing described in this section, if the head of a 222  
government agency decides to proceed with offering duplicative or 223  
competing electronic commerce services to the public, the head of 224  
the government agency shall sign factual and legal conclusions 225  
addressing the comments and each of the factors set forth in the 226  
public notice described in division (C) of this section and send a 227  
written notice to the controlling board that sets forth these 228  
conclusions and the government agency's decision to proceed. 229

(2) A government agency shall not offer duplicative or 230  
competing electronic commerce services to the public without the 231  
approval of the controlling board. 232

(3) The controlling board may continue to exercise oversight 233  
with respect to any approval decision it makes under division 234  
(D)(2) of this section. 235

(E) Any government agency providing electronic commerce 236  
services in a jurisdiction where a private enterprise provides the 237  
same electronic commerce services shall prepare and publish an 238  
annual report about its electronic commerce services. The annual 239  
report substantially shall be in accordance with full cost 240  
accounting and shall disclose the amount, source, and cost of 241  
working capital utilized by the government agency for providing 242  
electronic commerce services. 243

(F) For purposes of providing the public notice and preparing 244  
and publishing the annual report described in this section, a 245  
government agency, by any reasonable method consistent with 246  
applicable generally accepted accounting principles, shall 247  
allocate indirect costs that support multiple electronic commerce 248  
services or functions among those services and functions in 249  
proportion to the relative burden each service or function places 250  
on the cost category. 251

**Sec. 1306.29.** Sections 1306.25 to 1306.28 of the Revised Code 252  
do not affect the responsibilities of a government agency to 253  
prepare and make public records available for inspection and 254  
copying in accordance with section 149.43 of the Revised Code. 255

**Section 2.** That existing section 1306.20 of the Revised Code 256  
is hereby repealed. 257