

SB 307. Tutvedt. Privatization of Government Programs
Hearing. House State Administration Cte.
March 9, 2011

**Statement of Geoff Feiss, General Manager.
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Thank Sen. Tutvedt for taking the initiative to respond to the comments at the January 8 Listening Session regarding business community's concern about unfair, and unnecessary competition with private sector investment.

When faced with competition from the government, private investment frequently dries up. That diminishes employment opportunity (i.e., jobs), and tax revenues, at the same time that government demand for taxes increases to fund programs that may better be performed by the private sector.

If we can promote private investment, we can increase prospects for private sector jobs and reduce demand for taxpayers' dollars.

But outright bans on "government competition" are difficult to define, let alone enforce. So rather than attempt to "prohibit government competition" in a blanket manner, SB 307 enhances existing statute which provides for the privatization of government programs.

The problem with current privatization law (2-8-101 et seq.) is that it vests most of the power for privatization in the Executive and Executive Branch agencies. There's little, if any, incentive for Executive agencies to initiate privatization plans to privatize or terminate *their own* programs.

So SB 307 puts the initiative to recommend programs for termination or privatization *in the hands of the public, and the Legislative Branch*. Citizens may come forward with their recommendations during the Interim. Interim Committees may recommend to the Legislative Auditor such programs they

determine merit termination or privatization. And the Auditor reports to the next Legislature on the merits of privatizing or terminating programs. Finally, the Legislature has the option of terminating or privatizing programs.

SB 307 does not terminate any program without significant prior due diligence. Instead SB 307 enhances current law by creating a process that promotes public participation in the privatization of government programs.

As currently drafted, however, SB 307 is retrospective only. That is, it allows public comment only on programs that *already exist* for which a case may be made for termination or privatization. It would be even better if there could be a way somehow to prevent government programs from being created which threaten private investment. For example there might be stronger reporting provisions that would require government agencies to notify the public before undertaking projects which may better be performed by private investors—thereby saving the government money, and creating jobs at the same time.

Unfortunately, this kind of requirement has been difficult to craft in the past, and SB 307, for now, doesn't look back; only forward.

So SB 307 takes a significant, yet *modest and practical step* toward identifying and recommending various government programs which may better be performed by the private sector.

Auditor Amendment:

On the Senate side, the Legislative Auditor recommended coordinating language to ensure that SB 307 does not conflict with current law. An amendment proposed by the Auditor deletes language in another section of law that could result in duplicate privatization reviews (unlikely, but possible). It changes the definition of "privatization" to mean "transfer of control or ownership of an agency, program or service from the public sector to the private sector." The old

definition allows for “contracting with the private sector to provide services that are currently or *normally* conducted directly by employees of the state.” (“normally?”)

The Auditor’s amendment does not prevent contracting with the private sector for services, but that is not what “privatization” is. Privatization is to transfer ownership or control, not to contract with the private sector.

Fiscal Note:

The Fiscal Note on SB 307 indicates that SB 307 imposes is no fiscal cost to the State.

Other supporters:

I have been asked by the Montana **Chamber of Commerce** and the **Montana Retail Association** to let the Committee know that these organizations support SB 307.

Urge Do Concur.

Examples of programs that may be, or should have been, considered for privatization:

- Virtual Academy (\$2 million: 2009; \$2 million: 2011)
- State Data Centers (\$14.5 million. HB 4, 2007 May Special Session)
- Certain public assistance, welfare and social services programs
- Northern Tier fiber project (\$6.7 million. HB 4, 2007 May Special Session)
- Such programs that the public may identify

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