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MAR 16 1987

Place On Calendar

HOUSE FILE 529
BY COMMITTEE ON SMALL BUSINESS
AND COMMERCE

(Formerly House Study Bill 184)

Passed House, Date 3-31-87 (p. 985) Passed Senate, Date _____
Vote: Ayes 87 Nays 10 Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to governmental competition with and purchase of
2 goods and services from private enterprise.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

HOUSE FILE 529

H-3224

1 Amend House File 529 as follows:
2 1. Page 1, line 17, by striking the words "or
3 ordinance" and inserting the following: ", ordinance,
4 or regulation".

H-3224 FILED MARCH 19, 1987 BY BLACK of Jasper
Adopted 3/31/87 (p. 982)

HF 529

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1 Section 1. NEW SECTION. 23A.1 DEFINITIONS.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "Political subdivision" means a city, county, or school
5 corporation.

6 2. "Private enterprise" means an individual, firm,
7 partnership, joint venture, corporation, association, or other
8 legal entity engaging in the manufacturing, processing, sale,
9 offering for sale, rental, leasing, delivery, dispensing,
10 distributing, or advertising of goods or services for profit.

11 3. "State agency" includes a state department, board,
12 commission, or other unit of state government regardless of
13 whether moneys are appropriated to the agency.

14 Sec. 2. NEW SECTION. 23A.2 STATE AGENCIES AND POLITICAL
15 SUBDIVISIONS NOT TO COMPETE WITH PRIVATE ENTERPRISE.

16 1. A state agency or political subdivision shall not,
17 unless specifically authorized by statute or ordinance:

18 a. Engage in the manufacturing, processing, sale, offering
19 for sale, rental, leasing, delivery, dispensing, distributing,
20 or advertising of goods or services to the public which are
21 also offered by private enterprise unless such goods or
22 services are for use or consumption exclusively by the state
23 agency or political subdivision.

24 b. Offer or provide goods or services to the public for or
25 through another state agency or political subdivision, by
26 intergovernmental agreement or otherwise, in violation of this
27 chapter.

28 2. The state board of regents or a school corporation may,
29 by rule, provide for exemption from the application of
30 subsection 1 for activities conducted by an institution,
31 school, or agency under its control if the activities are any
32 of the following:

33 a. A required and reasonably related part of an
34 educational program.

35 b. Offered only to students, employees, or guests of the

1 institutions, schools, or agencies and cannot be provided by
2 private enterprise at the same or lower cost.

3 3. The state board of regents or a school corporation may,
4 by rule, provide for exemption from the application of
5 subsection 1 for any of the following on-campus activities:

6 a. Food service and sales.

7 b. Sale of books, records, tapes, software, educational
8 equipment, and supplies.

9 c. Sponsoring or providing facilities for cultural,
10 recreational, and athletic events.

11 d. Residence halls.

12 e. Student transportation.

13 f. Overnight accommodations for participants in school
14 programs, visitors to the school, parents, and alumni.

15 g. Items displaying the emblem or logo of the school or
16 that otherwise promote the school or its programs.

17 h. Souvenirs of the school, school events, or programs.

18 i. Services to patients and visitors at the University of
19 Iowa hospitals and clinics.

20 j. Telecommunications and radio and television stations.

21 k. Goods, products or professional services, which are
22 produced, created or sold incidental to the schools' teaching,
23 research and extension missions.

24 l. Services to the public at the Iowa State University
25 college of veterinary medicine.

26 4. After the effective date of this Act, before a state
27 agency is permitted to continue to engage in an existing
28 practice specified in subsection 1, that state agency must
29 prepare for public examination documentation showing that the
30 state agency can provide the goods or services at a price
31 equal to or below the price at which those goods or services
32 could be provided by private enterprise. The documentation
33 required by this subsection must include hourly wage rates,
34 pensions, and other benefits provided for labor, land,
35 equipment, utilities, building space, and other overhead

1 expenses, and an estimate of property and other taxes which
2 would apply if the goods or services were being provided by
3 private enterprise.

4 5. If a state agency is authorized by statute to compete
5 with private enterprise, or seeks to gain authorization to
6 compete, the state agency shall prepare for public inspection
7 documentation of all actual costs of the project including
8 those required in subsection 4.

9 6. Subsections 1 and 4 do not apply to activities of
10 community action agencies under community action programs, as
11 both are defined in section 601K.91.

12 Sec. 3. NEW SECTION. 23A.3 LOCAL PURCHASES.

13 A city, county, or school district, when purchasing goods
14 or services from private enterprise, shall purchase these
15 goods or services from a locally owned business located within
16 the city, county, or school district which offers these goods
17 or services if the cost and other considerations are
18 relatively equal. Nothing in this section shall be construed
19 to prevent or prohibit the giving of a preference to
20 businesses owned or operated by minorities or females as may
21 be provided in any other provision of law.

22 Sec. 4. NEW SECTION. RELIEF FOR AGGRIEVED PERSONS.

23 Any aggrieved person may seek relief for violations of this
24 chapter by filing an action in the district court for the
25 county in which the aggrieved business is located to seek
26 appropriate judicial relief.

27 A state agency or political subdivision found to be in
28 violation of this chapter shall be assessed and shall pay to
29 the aggrieved person the greater of one thousand dollars or
30 fees and other expenses, as defined in section 625.28.

31 EXPLANATION

32 This bill prohibits state agencies, cities, counties,
33 school corporations, state universities, area vocational
34 schools, and area community colleges from engaging in certain
35 activities which compete with private enterprise. Certain

1 activities of institutions governed by the board of regents
2 and school corporation may be exempted.

3 A city, county, or school district is required to purchase
4 goods or services from locally owned and located businesses
5 that offer the goods and services if the cost and other
6 considerations are comparable.

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HOUSE FILE 529

H-3491

Amend House File 529 as follows:

1. By striking page 2, line 33 through page 3, line 3 and inserting the following: "required by this subsection shall be in accordance with that required by generally accepted accounting principles."

2. Page 3, lines 7 and 8, by striking the words "including those required in subsection 4" and inserting the following: "as required by generally accepted accounting principles".

3. Page 3, by inserting after line 11 the following:

"_____. The director of the department of corrections, with the advice of the state prison industries advisory board, may, by rule, provide for the following exemptions from the application of subsection 1:

a. Iowa state industries may sell products to any tax-supported institution or governmental subdivision in any level of government which includes the state, county, city, or school corporation. Iowa state industries may sell products to employees of those entities.

b. Iowa state industries may sell products to nonprofit organizations including parochial schools, churches, or fraternal organizations and employees of those nonprofit organizations.

c. Iowa state industries may sell products to nonprofit health care facilities serving Medicaid or social security patients.

_____. The director of the department of corrections, with the advice of the board of corrections, may by rule, provide for exemption from this chapter for vocational-educational programs and farm operations of the department.

_____. This chapter does not apply to any of the following:

a. The operation of a city enterprise, as defined in section 384.24, subsection 2.

b. The performance of an activity that is an essential corporate purpose of a city, as defined in section 384.24, subsection 3, or which carries out the essential corporate purpose, or which is a general corporate purpose of a city as defined in section 384.24, subsection 4, or which carries out the general corporate purposes.

c. The operation of a city utility, as defined by section 390.1, subsection 2.

d. The performance of an activity by a city that is intended to assist in economic development or tourism.

1 e. The operation of a county enterprise, as
2 defined in section 331.461, subsection 1, or 331.461,
3 subsection 2.

4 f. The performance of an activity that is an
5 essential county purpose, as defined in section
6 331.441, subsection 2, or which carries out the
7 essential county purpose, or which is a general county
8 purpose as defined in section 331.441, subsection 2,
9 or which carries out the general county purpose.

10 g. The performance of an activity listed as a duty
11 relating to a county service in section 331.381.

12 h. The performance of an activity listed in
13 section 331.424, as a service for which a supplemental
14 levy may be certified.

15 i. The performance of an activity by a county that
16 is intended to assist in economic development or
17 tourism."

18 4. Page 3, by striking lines 13 and 14 and
19 inserting the following:

20 "A city, county, or school district shall adopt a
21 policy for purchasing goods or services from private
22 enterprise which requires consideration of purchasing
23 these".

24 5. Page 3, line 23, by inserting after the word
25 "seek" the following: "injunctive".

26 6. Page 3, lines 25 and 26, by striking the words
27 "to seek appropriate judicial relief".

28 7. Page 3, by striking lines 29 and 30 and
29 inserting the following: "the aggrieved person fees
30 and other expenses, as defined in section 625.28.

31 This section is the exclusive remedy for violations
32 of this chapter. However, the office of the citizens'
33 aide may review violations of this chapter and make
34 recommendations as provided in chapter 601G."

BY SKOW of Guthrie
COOPER of Lucas
METCALF of Polk
GARMAN of Story
PLATT of Muscatine

H-3491 FILED MARCH 31, 1987

ADOPTED as amended by 3495B 3/31/87 (p. 984)

HOUSE FILE 529

H-3495

1 Amend the amendment, H-3491, to House File 529 as
2 follows:

3 1. Page 1, by striking lines 20 through 22 and
A 4 inserting the following: "county, city, or school
5 corporation."

B 6 2. Page 1, lines 25 and 26, by striking the words
7 "and employees of those nonprofit organizations".

BY HATCH of Polk
SWARTZ of Marshall
RENKEN of Grundy
HARBOR of Mills
HANSEN of Woodbury

H-3495 FILED MARCH 31, 1987

DIVISION A - LOST, DIVISION B - ADOPTED (p. 984)

HOUSE FILE 529
BY COMMITTEE ON SMALL BUSINESS
AND COMMERCE

(As Amended and Passed by the House March 31, 1987)

Passed House, Date 4/1/87 (p. 1362) Passed Senate, Date 3/27/88 (p. 1240)
Vote: Ayes 76 Nays 0 Vote: Ayes 41 Nays 7
Approved May 12, 1988

A BILL FOR

1 An Act relating to governmental competition with and purchase of
2 goods and services from private enterprise.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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House Amendments _____
Deleted Language *

1 Section 1. NEW SECTION. 23A.1 DEFINITIONS.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "Political subdivision" means a city, county, or school
5 corporation.

6 2. "Private enterprise" means an individual, firm,
7 partnership, joint venture, corporation, association, or other
8 legal entity engaging in the manufacturing, processing, sale,
9 offering for sale, rental, leasing, delivery, dispensing,
10 distributing, or advertising of goods or services for profit.

11 3. "State agency" includes a state department, board,
12 commission, or other unit of state government regardless of
13 whether moneys are appropriated to the agency.

14 Sec. 2. NEW SECTION. 23A.2 STATE AGENCIES AND POLITICAL
15 SUBDIVISIONS NOT TO COMPETE WITH PRIVATE ENTERPRISE.

16 1. A state agency or political subdivision shall not,
17 unless specifically authorized by statute, ordinance, or
18 regulation:

19 a. Engage in the manufacturing, processing, sale, offering
20 for sale, rental, leasing, delivery, dispensing, distributing,
21 or advertising of goods or services to the public which are
22 also offered by private enterprise unless such goods or
23 services are for use or consumption exclusively by the state
24 agency or political subdivision.

25 b. Offer or provide goods or services to the public for or
26 through another state agency or political subdivision, by
27 intergovernmental agreement or otherwise, in violation of this
28 chapter.

29 2. The state board of regents or a school corporation may,
30 by rule, provide for exemption from the application of
31 subsection 1 for activities conducted by an institution,
32 school, or agency under its control if the activities are any
33 of the following:

34 a. A required and reasonably related part of an
35 educational program.

- 1 b. Offered only to students, employees, or guests of the
2 institutions, schools, or agencies and cannot be provided by
3 private enterprise at the same or lower cost.
- 4 3. The state board of regents or a school corporation may,
5 by rule, provide for exemption from the application of
6 subsection 1 for any of the following on-campus activities:
- 7 a. Food service and sales.
- 8 b. Sale of books, records, tapes, software, educational
9 equipment, and supplies.
- 10 c. Sponsoring or providing facilities for cultural,
11 recreational, and athletic events.
- 12 d. Residence halls.
- 13 e. Student transportation.
- 14 f. Overnight accommodations for participants in school
15 programs, visitors to the school, parents, and alumni.
- 16 g. Items displaying the emblem or logo of the school or
17 that otherwise promote the school or its programs.
- 18 h. Souvenirs of the school, school events, or programs.
- 19 i. Services to patients and visitors at the University of
20 Iowa hospitals and clinics.
- 21 j. Telecommunications and radio and television stations.
- 22 k. Goods, products or professional services, which are
23 produced, created or sold incidental to the schools' teaching,
24 research and extension missions.
- 25 l. Services to the public at the Iowa State University
26 college of veterinary medicine.
- 537 27 4. After the effective date of this Act, before a state
28 agency is permitted to continue to engage in an existing
29 practice specified in subsection 1, that state agency must
30 prepare for public examination documentation showing that the
31 state agency can provide the goods or services at a price
32 equal to or below the price at which those goods or services
33 could be provided by private enterprise. The documentation
34 required by this subsection shall be in accordance with that
35 required by generally accepted accounting principles.

1 5. If a state agency is authorized by statute to compete
2 with private enterprise, or seeks to gain authorization to
3 compete, the state agency shall prepare for public inspection
4 documentation of all actual costs of the project as required
5 by generally accepted accounting principles.

6 6. Subsections 1 and 4 do not apply to activities of
7 community action agencies under community action programs, as
8 both are defined in section 601K.91.

9 7. The director of the department of corrections, with the
10 advice of the state prison industries advisory board, may, by
11 rule, provide for the following exemptions from the
12 application of subsection 1:

13 a. Iowa state industries may sell products to any tax-
14 supported institution or governmental subdivision in any level
15 of government which includes the state, county, city, or
16 school corporation. Iowa state industries may sell products
17 to employees of those entities.

18 b. Iowa state industries may sell products to nonprofit
19 organizations including parochial schools, churches, or
20 fraternal organizations.

21 c. Iowa state industries may sell products to nonprofit
22 health care facilities serving Medicaid or social security
23 patients.

24 8. The director of the department of corrections, with the
25 advice of the board of corrections, may by rule, provide for
26 exemption from this chapter for vocational-educational
27 programs and farm operations of the department.

28 9. This chapter does not apply to any of the following:

29 a. The operation of a city enterprise, as defined in
30 section 384.24, subsection 2.

31 b. The performance of an activity that is an essential
32 corporate purpose of a city, as defined in section 384.24,
33 subsection 3, or which carries out the essential corporate
34 purpose, or which is a general corporate purpose of a city as
35 defined in section 384.24, subsection 4, or which carries out

1 the general corporate purposes.

2 c. The operation of a city utility, as defined by section
3 390.1, subsection 2.

4 d. The performance of an activity by a city that is
5 intended to assist in economic development or tourism.

6 e. The operation of a county enterprise, as defined in
7 section 331.461, subsection 1, or 331.461, subsection 2.

8 f. The performance of an activity that is an essential
9 county purpose, as defined in section 331.441, subsection 2,
10 or which carries out the essential county purpose, or which is
11 a general county purpose as defined in section 331.441,
12 subsection 2, or which carries out the general county purpose.

13 g. The performance of an activity listed as a duty
14 relating to a county service in section 331.381.

15 h. The performance of an activity listed in section
16 331.424, as a service for which a supplemental levy may be
17 certified.

18 i. The performance of an activity by a county that is
19 intended to assist in economic development or tourism.

20 Sec. 3. NEW SECTION. 23A.3 LOCAL PURCHASES.

21 A city, county, or school district shall adopt a policy for
22 purchasing goods or services from private enterprise which
23 requires consideration of purchasing these goods or services
24 from a locally owned business located within the city, county,
25 or school district which offers these goods or services if the
26 cost and other considerations are relatively equal. Nothing
27 in this section shall be construed to prevent or prohibit the
28 giving of a preference to businesses owned or operated by
29 minorities or females as may be provided in any other
30 provision of law.

31 Sec. 4. NEW SECTION. RELIEF FOR AGGRIEVED PERSONS.

32 Any aggrieved person may seek injunctive relief for
33 violations of this chapter by filing an action in the district
34 court for the county in which the aggrieved business is
35 located.

1 A state agency or political subdivision found to be in
2 violation of this chapter shall be assessed and shall pay to
3 the aggrieved person fees and other expenses, as defined in
4 section 625.28.

5 This section is the exclusive remedy for violations of this
6 chapter. However, the office of the citizens' aide may review
7 violations of this chapter and make recommendations as
8 provided in chapter 601G.

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HOUSE FILE 529

S-5631

1 Amend House File 529, as amended, passed, and
2 reprinted by the House, as follows:

3 1. By striking page 1, line 29 through page 2,
4 line 26 and inserting the following:

5 "2. The state board of regents or a school
6 corporation may, by rule, provide for exemption from
7 the application of this chapter for the following
8 activities:

9 a. Goods and services that are directly and
10 reasonably related to the educational mission of an
11 institution or school.

12 b. Goods and services offered only to students,
13 employees, or guests of the institution or school and
14 which cannot be provided by private enterprise at the
15 same or lower cost.

16 c. Use of vehicles owned by the institution or
17 school for charter trips offered to the public, full
18 or part-time, or temporary students.

19 d. Durable medical equipment or devices sold or
20 leased for use off premises of an institution, school
21 or University of Iowa hospitals or clinics.

22 e. Goods or services which are not otherwise
23 available in the quantity or quality required by the
24 institution or school.

25 f. Telecommunications other than radio or
26 television stations.

27 g. Sponsoring or providing facilities for fitness
28 and recreation.

29 h. Food service and sales.

30 i. Sale of books, records, tapes, software,
31 educational equipment, and supplies."

32 2. Page 4, by inserting after line 19 the
33 following:

34 "j. The following on-campus activities of an
35 institution or school under the control of the state
36 board of regents or a school corporation:

37 (1) Residence halls.

38 (2) Student transportation, except as specifically
39 listed in subsection 2, paragraph "c".

40 (3) Overnight accommodations for participants in
41 programs of the institution or school, visitors to the
42 institution or school, parents, and alumni.

43 (4) Sponsoring or providing facilities for
44 cultural and athletic events.

45 (5) Items displaying the emblem, mascot, or logo
46 of the institution or school, or that otherwise
47 promotes the identity of the institution or school and
48 its programs.

49 (6) Souvenirs and programs relating to events
50 sponsored by or at the institution or school.

- 1 (7) Radio and television stations.
- 2 (8) Services to patients and visitors at the
- 3 University of Iowa hospitals and clinics, except as
- 4 specifically listed in subsection 2, paragraph "d".
- 5 (9) Goods, products, or professional services
- 6 which are produced, created, or sold incidental to the
- 7 schools' teaching, research, and extension missions.
- 8 (10) Services to the public at the Iowa State
- 9 University college of veterinary medicine."

S-5631

Filed March 29, 1988

ADOPTED

(p. 1123)

BY WALLY HORN
JEAN LLOYD-JONES
LARRY MURPHY

HOUSE FILE 529

S-5630

- 1 Amend House File 529, as amended, passed and
- 2 reprinted by the House as follows:
- 3 1. Page 1, line 17, by inserting after the word
- 4 "statute," the following: "rule,".
- 5 2. Page 3, by inserting after line 27 the
- 6 following:
- 7 "____. The state department of transportation may,
- 8 in accordance with chapter 17A, provide for exemption
- 9 from the application of subsection 1 for the
- 10 activities related to highway maintenance, highway
- 11 design and construction, publication and distribution
- 12 of transportation maps, state aircraft pool
- 13 operations, inventory sales to other state agencies
- 14 and political subdivisions, equipment management and
- 15 disposal, vehicle maintenance and repair services for
- 16 other state agencies, and other similar essential
- 17 operations."
- 18 3. Page 4, by inserting after line 19 the
- 19 following:
- 20 "j. The operation of a public transit system, as
- 21 defined in chapter 601J, except that charter services,
- 22 outside of a public transit system's normal service
- 23 area, shall be conducted in Iowa intrastate commerce
- 24 under the same conditions, restrictions, and
- 25 obligations as those contained in 49 C.F.R., Part 604.
- 26 For purposes of this chapter, the definition and
- 27 conduct of charter services shall be the same as those
- 28 contained in 49 C.F.R., Part 604."
- 29 4. Page 4, line 32, by inserting after the word
- 30 "may" the following: ", after pursuing remedies
- 31 offered by chapter 17A,".
- 32 5. Page 5, line 5, by striking the words "This
- 33 section is" and inserting the following: "Chapter 17A
- 34 and this section are".

S-5630

Filed March 29, 1988

ADOPTED

(p. 1123)

BY ROBERT M. CARR
RICHARD DRAKE

SENATE 14
MARCH 16, 1988

HOUSE FILE 529

S-5377

1 Amend House File 529 as amended, passed and
2 reprinted by the House as follows:
3 1. Page 2, by striking lines 31 through 33 and
4 inserting the following: "state agency can provide
5 the goods or services at a competitive price. The
6 documentation".
7 2. Page 3, by striking lines 11 through 23 and
8 inserting the following: "rule, provide for
9 exemptions from this chapter.
10 . However, this chapter shall not be construed
11 to impair cooperative agreements between Iowa state
12 industries and private enterprise."
13 3. Page 5, by inserting after line 8 the
14 following:
15 "Sec. ____ . NEW SECTION. 246.815 SALE OF
16 PRODUCTS.
17 1. Iowa state industries may produce and sell
18 products to any tax-supported institution or
19 governmental subdivision in any level of government
20 which includes the state, county, city, or school
21 corporation. Iowa state industries may sell products
22 to employees of those entities.
23 2. Iowa state industries may sell products to
24 nonprofit organizations including parochial schools,
25 churches, or fraternal organizations.
26 3. Iowa state industries may sell products to
27 nonprofit health care facilities serving Medicaid or
28 social security patients."

S-5377

Filed March 15, 1988

BY JOHN A. PETERSON
DONALD V. DOYLE
EUGENE FRAISE

*Adopted 3/15/88 (p. 1124)
Transferred to journal (p. 1149)*

HOUSE FILE 529

S-5580

1 Amend House File 529, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 4, line 21, by inserting after the word
4 "county," the following: "area education agency,".
5 2. Page 4, line 24, by inserting after the word
6 "county," the following: "area education agency,".

S-5580

Filed March 25, 1988

BY JOE WELSH

Adopted 3/25/88 (p. 1124)

HOUSE FILE 529

S-5526

1 Amend House File 529, as amended, passed and
2 reprinted by the House as follows:
3 1. Page 1, line 17, by inserting after the word
4 "statute," the following: "rule,".
5 2. Page 3, by inserting after line 27 the
6 following:
7 "____. The state department of transportation may,
8 in accordance with chapter 17A, provide for exemption
9 from the application of subsection 1 for the
10 activities related to highway maintenance, highway
11 design and construction, publication and distribution
12 of transportation maps, state aircraft pool
13 operations, inventory sales to other state agencies
14 and political subdivisions, equipment management and
15 disposal, vehicle maintenance and repair services for
16 other state agencies, and other similar essential
17 operations."
18 3. Page 4, line 32, by inserting after the word
19 "may" the following: ", after pursuing remedies
20 offered by chapter 17A,".
21 4. Page 5, line 5, by striking the words "This
22 section is" and inserting the following: "Chapter 17A
23 and this section are".

S-5526

Filed March 23, 1988

2/10 3:20 (4.11.88)

BY ROBERT M. CARR
RICHARD DRAKE

SENATE AMENDMENT TO HOUSE FILE 529

6150

1 Amend House File 529, as amended, passed and
2 reprinted by the House as follows:

3 1. Page 1, line 17, by inserting after the word
4 "statute," the following: "rule,".

5 2. By striking page 1, line 29 through page 2,
6 line 26 and inserting the following:

7 "2. The state board of regents or a school
8 corporation may, by rule, provide for exemption from
9 the application of this chapter for the following
10 activities:

11 a. Goods and services that are directly and
12 reasonably related to the educational mission of an
13 institution or school.

14 b. Goods and services offered only to students,
15 employees, or guests of the institution or school and
16 which cannot be provided by private enterprise at the
17 same or lower cost.

18 c. Use of vehicles owned by the institution or
19 school for charter trips offered to the public, full
20 or part-time, or temporary students.

21 d. Durable medical equipment or devices sold or
22 leased for use off premises of an institution, school
23 or University of Iowa hospitals or clinics.

24 e. Goods or services which are not otherwise
25 available in the quantity or quality required by the
26 institution or school.

27 f. Telecommunications other than radio or
28 television stations.

29 g. Sponsoring or providing facilities for fitness
30 and recreation.

31 h. Food service and sales.

32 i. Sale of books, records, tapes, software,
33 educational equipment, and supplies."

34 3. Page 2, by striking lines 31 through 33 and
35 inserting the following: "state agency can provide
36 the goods or services at a competitive price. The
37 documentation".

38 4. Page 3, by striking lines 11 through 23 and
39 inserting the following: "rule, provide for
40 exemptions from this chapter.

41 _____. However, this chapter shall not be construed
42 to impair cooperative agreements between Iowa state
43 industries and private enterprise."

44 5. Page 3, by inserting after line 27 the
45 following:

46 "_____. The state department of transportation may,
47 in accordance with chapter 17A, provide for exemption
48 from the application of subsection 1 for the
49 activities related to highway maintenance, highway
design and construction, publication and distribution

H-6150

Page 2

1 of transportation maps, state aircraft pool
2 operations, inventory sales to other state agencies
3 and political subdivisions, equipment management and
4 disposal, vehicle maintenance and repair services for
5 other state agencies, and other similar essential
6 operations."

7 6. Page 4, by inserting after line 19 the
8 following:

9 "i. The operation of a public transit system, as
10 defined in chapter 601J, except that charter services,
11 outside of a public transit system's normal service
12 area, shall be conducted in Iowa intrastate commerce
13 under the same conditions, restrictions, and
14 obligations as those contained in 49 C.F.R., Part 604.
15 For purposes of this chapter, the definition and
16 conduct of charter services shall be the same as those
17 contained in 49 C.F.R., Part 604."

18 7. Page 4, by inserting after line 19 the
19 following:

20 "j. The following on-campus activities of an
21 institution or school under the control of the state
22 board of regents or a school corporation:

23 (1) Residence halls.

24 (2) Student transportation, except as specifically
25 listed in subsection 2, paragraph "c".

26 (3) Overnight accommodations for participants in
27 programs of the institution or school, visitors to the
28 institution or school, parents, and alumni.

29 (4) Sponsoring or providing facilities for
30 cultural and athletic events.

31 (5) Items displaying the emblem, mascot, or logo
32 of the institution or school, or that otherwise
33 promotes the identity of the institution or school and
34 its programs.

35 (6) Souvenirs and programs relating to events
36 sponsored by or at the institution or school.

37 (7) Radio and television stations.

38 (8) Services to patients and visitors at the
39 University of Iowa hospitals and clinics, except as
40 specifically listed in subsection 2, paragraph "d".

41 (9) Goods, products, or professional services
42 which are produced, created, or sold incidental to the
43 schools' teaching, research, and extension missions.

44 (10) Services to the public at the Iowa State
45 University college of veterinary medicine."

46 8. Page 4, line 21, by inserting after the word
47 "county," the following: "area education agency,".

48 9. Page 4, line 24, by inserting after the word
49 "county," the following: "area education agency,".

50 10. Page 4, line 32, by inserting after the word

E-6150

Page 3

1 "may" the following: ", after pursuing remedies
2 offered by chapter 17A,".

3 11. Page 5, line 5, by striking the words "This
4 section is" and inserting the following: "Chapter 17A
5 and this section are".

6 12. Page 5, by inserting after line 8 the
7 following:

8 "Sec. ____ . NEW SECTION. 246.815 SALE OF
9 PRODUCTS.

10 1. Iowa state industries may produce and sell
11 products to any tax-supported institution or
12 governmental subdivision in any level of government
13 which includes the state, county, city, or school
14 corporation. Iowa state industries may sell products
15 to employees of those entities.

16 2. Iowa state industries may sell products to
17 nonprofit organizations including parochial schools,
18 churches, or fraternal organizations.

19 3. Iowa state industries may sell products to
20 nonprofit health care facilities serving Medicaid or
21 social security patients."

22 13. By renumbering, relettering, or redesignating
23 and correcting internal references as necessary.

RECEIVED FROM THE SENATE

E-6150 FILED MARCH 31, 1988

~~House Amendment #14 (E-6150)~~

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON SMALL
BUSINESS AND COMMERCE BILL)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to governmental competition with and purchase of
2 goods and services from private enterprise.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SUB COMMITTEE ASSIGNMENTS
CHAIR: *Skow*
COMMITTEE: *Small Business*
2/25/87

1 Section 1. NEW SECTION. 23A.1 DEFINITIONS.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "Political subdivision" means a city or a county.

5 2. "Private enterprise" means an individual, firm,
6 partnership, joint venture, corporation, association, or other
7 legal entity engaging in the manufacturing, processing, sale,
8 offering for sale, rental, leasing, delivery, dispensing,
9 distributing, or advertising of goods or services for profit.

10 3. "State agency" includes a state department, board,
11 commission, or other unit of state government regardless of
12 whether moneys are appropriated to the agency.

13 Sec. 2. NEW SECTION. 23A.2 STATE AGENCIES AND POLITICAL
14 SUBDIVISIONS NOT TO COMPETE WITH PRIVATE ENTERPRISE.

15 1. A state agency or political subdivision shall not,
16 unless specifically authorized by statute or ordinance:

17 a. Engage in the manufacturing, processing, sale, offering
18 for sale, rental, leasing, delivery, dispensing, distributing,
19 or advertising of goods or services to the public which are
20 also offered by private enterprise unless such goods or
21 services are for use or consumption exclusively by the state
22 agency or political subdivision.

23 b. Offer or provide goods or services to the public for or
24 through another state agency or political subdivision, by
25 intergovernmental agreement or otherwise, in violation of this
26 chapter.

27 2. The state board of regents may, by rule, provide for
28 exemption from the application of subsection 1 for activities
29 conducted by an institution under its control if the
30 activities are any of the following:

31 a. A required and reasonably related part of an
32 educational program which leads to a degree.

33 b. Offered only to students, employees, or guests of the
34 institutions and cannot be provided by private enterprise at
35 the same or lower cost.

1 3. The state board of regents may, by rule, provide for
2 exemption from the application of subsection 1 for any of the
3 following on-campus activities:

4 a. Food service and sales.

5 b. Sale of course books and supplies.

6 c. Sponsoring or providing facilities for cultural,
7 recreational, and athletic events.

8 d. Student housing.

9 e. Student transportation.

10 4. After the effective date of this Act, before a state
11 agency is permitted to continue to engage in an existing
12 practice specified in subsection 1, that state agency must
13 prepare for public examination documentation showing that the
14 state agency can provide the goods or services at a price
15 equal to or below the price at which those goods or services
16 could be provided by private enterprise. The documentation
17 required by this subsection must include hourly wage rates,
18 pensions, and other benefits provided for labor, land,
19 equipment, utilities, building space, and other overhead
20 expenses, and an estimate of property and other taxes which
21 would apply if the goods or services were being provided by
22 private enterprise.

23 5. If a state agency is authorized by statute to compete
24 with private enterprise, or seeks to gain authorization to
25 compete, the state agency shall prepare for public inspection
26 documentation of all actual costs of the project including
27 those required in subsection 4.

28 Sec. 3. NEW SECTION. 23A.3 LOCAL PURCHASES.

29 A city, county, or school district, when purchasing goods
30 or services from private enterprise, shall purchase these
31 goods or services from a locally owned business located within
32 the city, county, or school district which offers these goods
33 or services if the cost and other considerations are
34 relatively equal.

35 Sec. 4. NEW SECTION. 23A.4 JUDICIAL RELIEF.

1 Any aggrieved person may elect to seek judicial relief for
2 violations of this chapter.

3 EXPLANATION

4 This bill prohibits state agencies, cities, counties, state
5 universities, area vocational schools, and area community
6 colleges from engaging in certain activities which compete
7 with private enterprise. Certain activities of institutions
8 governed by the board of regents may be exempted.

9 A city, county, or school district is required to purchase
10 goods or services from locally owned and located businesses
11 that offer the goods and services if the cost and other
12 considerations are comparable.

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HOUSE FILE 529

AN ACT

RELATING TO GOVERNMENTAL COMPETITION WITH AND PURCHASE OF
GOODS AND SERVICES FROM PRIVATE ENTERPRISE.

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

Section 1. NEW SECTION. 23A.1 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Political subdivision" means a city, county, or school corporation.
2. "Private enterprise" means an individual, firm, partnership, joint venture, corporation, association, or 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.
3. "State agency" includes a state department, board, commission, or other unit of state government regardless of whether moneys are appropriated to the agency.

Sec. 2. NEW SECTION. 23A.2 STATE AGENCIES AND POLITICAL SUBDIVISIONS NOT TO COMPETE WITH PRIVATE ENTERPRISE.

1. A state agency or political subdivision shall not, unless specifically authorized by statute, rule, ordinance, or regulation:
 - a. 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 such goods or services are for use or consumption exclusively by the state agency or political subdivision.
 - b. Offer or provide goods or services to the public for or through another state agency or political subdivision, by intergovernmental agreement or otherwise, in violation of this chapter.

2. The state board of regents or a school corporation may, by rule, provide for exemption from the application of this chapter for the following activities:

- a. Goods and services that are directly and reasonably related to the educational mission of an institution or school.
- b. Goods and services offered only to students, employees, or guests of the institution or school and which cannot be provided by private enterprise at the same or lower cost.
- c. Use of vehicles owned by the institution or school for charter trips offered to the public, full or part-time, or temporary students.
- d. Durable medical equipment or devices sold or leased for use off premises of an institution, school or University of Iowa hospitals or clinics.
- e. Goods or services which are not otherwise available in the quantity or quality required by the institution or school.
- f. Telecommunications other than radio or television stations.
- g. Sponsoring or providing facilities for fitness and recreation.
- h. Food service and sales.
- i. Sale of books, records, tapes, software, educational equipment, and supplies.

3. After the effective date of this Act, before a state agency is permitted to continue to engage in an existing practice specified in subsection 1, that state agency must prepare for public examination documentation showing that the state agency can provide the goods or services at a competitive price. The documentation required by this subsection shall be in accordance with that required by generally accepted accounting principles.

4. If a state agency is authorized by statute to compete with private enterprise, or seeks to gain authorization to compete, the state agency shall prepare for public inspection documentation of all actual costs of the project as required by generally accepted accounting principles.

5. Subsections 1 and 3 do not apply to activities of community action agencies under community action programs, as both are defined in section 601K.91.

6. The director of the department of corrections, with the advice of the state prison industries advisory board, may, by rule, provide for exemptions from this chapter.

7. However, this chapter shall not be construed to impair cooperative agreements between Iowa state industries and private enterprise.

8. The director of the department of corrections, with the advice of the board of corrections, may by rule, provide for exemption from this chapter for vocational-educational programs and farm operations of the department.

9. The state department of transportation may, in accordance with chapter 17A, provide for exemption from the application of subsection 1 for the activities related to highway maintenance, highway design and construction, publication and distribution of transportation maps, state aircraft pool operations, inventory sales to other state agencies and political subdivisions, equipment management and disposal, vehicle maintenance and repair services for other state agencies, and other similar essential operations.

10. This chapter does not apply to any of the following:

a. The operation of a city enterprise, as defined in section 384.24, subsection 2.

b. The performance of an activity that is an essential corporate purpose of a city, as defined in section 384.24, subsection 3, or which carries out the essential corporate purpose, or which is a general corporate purpose of a city as defined in section 384.24, subsection 4, or which carries out the general corporate purposes.

c. The operation of a city utility, as defined by section 390.1, subsection 2.

d. The performance of an activity by a city that is intended to assist in economic development or tourism.

e. The operation of a county enterprise, as defined in section 331.461, subsection 1, or 331.461, subsection 2.

f. The performance of an activity that is an essential county purpose, as defined in section 331.441, subsection 2, or which carries out the essential county purpose, or which is a general county purpose as defined in section 331.441, subsection 2, or which carries out the general county purpose.

g. The performance of an activity listed as a duty relating to a county service in section 331.381.

h. The performance of an activity listed in section 331.424, as a service for which a supplemental levy may be certified.

i. The performance of an activity by a county that is intended to assist in economic development or tourism.

j. The operation of a public transit system, as defined in chapter 601J, except that charter services, outside of a public transit system's normal service area, shall be conducted in Iowa intrastate commerce under the same conditions, restrictions, and obligations as those contained in 49 C.F.R., Part 604. For purposes of this chapter, the definition and conduct of charter services shall be the same as those contained in 49 C.F.R., Part 604.

k. The following on-campus activities of an institution or school under the control of the state board of regents or a school corporation:

(1) Residence halls.

(2) Student transportation, except as specifically listed in subsection 2, paragraph "c".

(3) Overnight accommodations for participants in programs of the institution or school, visitors to the institution or school, parents, and alumni.

(4) Sponsoring or providing facilities for cultural and athletic events.

(5) Items displaying the emblem, mascot, or logo of the institution or school, or that otherwise promotes the identity of the institution or school and its programs.

(6) Souvenirs and programs relating to events sponsored by or at the institution or school.

(7) Radio and television stations.

(8) Services to patients and visitors at the University of Iowa hospitals and clinics, except as specifically listed in subsection 2, paragraph "d".

(9) Goods, products, or professional services which are produced, created, or sold incidental to the schools' teaching, research, and extension missions.

(10) Services to the public at the Iowa State University college of veterinary medicine.

Sec. 3. NEW SECTION. 23A.3 LOCAL PURCHASES.

A city, county, area education agency, or school district shall adopt a policy for purchasing goods or services from private enterprise which requires consideration of purchasing these goods or services from a locally owned business located within the city, county, area education agency, or school district which offers these goods or services if the cost and other considerations are relatively equal. Nothing in this section shall be construed to prevent or prohibit the giving of a preference to businesses owned or operated by minorities or females as may be provided in any other provision of law.

Sec. 4. NEW SECTION. RELIEF FOR AGGRIEVED PERSONS.

Any aggrieved person may, after pursuing remedies offered by chapter 17A, seek injunctive relief for violations of this chapter by filing an action in the district court for the county in which the aggrieved business is located.

A state agency or political subdivision found to be in violation of this chapter shall be assessed and shall pay to the aggrieved person fees and other expenses, as defined in section 625.28.

Chapter 17A and this section are the exclusive remedy for violations of this chapter. However, the office of the citizens' aide may review violations of this chapter and make recommendations as provided in chapter 601G.

Sec. 5. NEW SECTION. 246.815 SALE OF PRODUCTS.

1. Iowa state industries may produce and sell products to any tax-supported institution or governmental subdivision in any level of government which includes the state, county, city, or school corporation. Iowa state industries may sell products to employees of those entities.

2. Iowa state industries may sell products to nonprofit organizations including parochial schools, churches, or fraternal organizations.

3. Iowa state industries may sell products to nonprofit health care facilities serving Medicaid or social security patients.

DONALD D. AVENSON
Speaker of the House

JO ANN ZIMMERMAN
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 529, Seventy-second General Assembly.

Approved May 12, 1988

JOSEPH O'HERN
Chief Clerk of the House

TERRY E. BRANSTAD
Governor

HF 529