

HOUSE BILL NO. 1169

Introduced by

Representatives Toman, Becker, Christensen, Ertelt, Hoverson, Kading

1 A BILL for an Act to create and enact a new section to chapter 49-02 of the North Dakota
2 Century Code, relating to competition between the government and private industry; and to
3 provide for a report to the legislative management.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new section to chapter 49-02 of the North Dakota Century Code is created
6 and enacted as follows:

7 **Government - Private business - Competition - Report to legislative management.**

8 1. Upon petition by an individual directly affected by alleged competition with a state
9 agency or institution, the commission shall determine whether the agency or institution
10 is in competition with private enterprise.

11 2. If the commission determines a state agency or institution is engaged in competition
12 with private enterprise after a hearing during which all impacted parties had an
13 opportunity to present evidence, the commission shall direct the state agency or
14 institution to terminate the activity unless:

15 a. Cessation of the activity will create an emergency;

16 b. The cost of providing the service through private enterprise will cost at least ten
17 percent more than the same service provided by a state agency or institution;

18 c. Private enterprise cannot adequately provide the service; or

19 d. Cessation of the activity will cause irreparable harm or loss of substantial
20 invested funds.

21 3. The commission shall submit a written decision to the parties within twenty days of the
22 hearing.

- 1 4. A petitioner may file an appeal of a decision made by the commission with the district
2 court. If the appeal is unsuccessful, the petitioner shall pay the costs of the hearing
3 and appeal incurred by the state including reasonable attorney's fees.
- 4 5. Any activity or service provided by a state agency or institution before the effective
5 date of this section which is found to be in competition with private enterprise may
6 continue until the expiration of any contract that would be affected adversely by the
7 cessation of the activity.
- 8 6. Unless a state agency or institution demonstrates a compelling public interest for an
9 activity to be in competition with private enterprise, it must be the policy of the state to
10 contract with private enterprise for the activity. If a state agency or institution is
11 authorized to engage in an activity in competition with private enterprise, the
12 commission shall set a fee for that activity to reflect the fair market value and the
13 actual costs incurred.
- 14 7. The commission shall report to the legislative management by March fifteenth of each
15 even-numbered year on the status of petitions received under this section.