

HOUSE BILL NO. 1162

Introduced by

Representatives Toman, Rick C. Becker, Jones, K. Koppelman, Louser, Olson, Simons

Senator O. Larsen

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 ~~require a report to the legislative management.~~ for an Act to provide for a legislative
4 management study of competition between government and private industry.

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

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

8 ~~**Government - Private business - Competition - Report to legislative management.**~~

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

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

16 ~~a. Cessation of the activity will create an emergency;~~

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

19 ~~c. Private enterprise cannot adequately provide the service; or~~

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

22 ~~3. The public service commission shall submit a written decision to the parties within~~
23 ~~twenty days of the hearing.~~

- 1 ~~4. A petitioner may file an appeal of a decision made by the public service commission~~
2 ~~with the district court. If the appeal is unsuccessful, the petitioner shall pay the costs of~~
3 ~~the hearing 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 adversely affected 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. If a state agency institution is authorized to engage in~~
11 ~~an activity in competition with private enterprise, the public service commission shall~~
12 ~~set a fee for that activity to reflect the fair market value and the actual costs incurred.~~
13 ~~7. The public service commission shall report to the legislative management by March~~
14 ~~fifteenth of each even-numbered year on the status of petitions received under this~~
15 ~~section.~~

16 **SECTION 1. LEGISLATIVE MANAGEMENT STUDY - COMPETITION BETWEEN**
17 **GOVERNMENT AND PRIVATE INDUSTRY.** During the 2017-18 interim, the legislative
18 management shall consider studying competition between government and private industry. The
19 study must include input from business owners in state trade associations and state and
20 national experts on business and economics. The study must analyze areas in which
21 government entities may have conflicts of interest with private industry and whether the
22 government's role in providing specific services deters nonprofit organizations from performing
23 the same service. The study also must determine the industries and regions in which
24 government competition impacts businesses and industries and the fiscal loss to the state if a
25 government entity performs a service also provided by a private industry. The legislative
26 management shall report its findings and recommendations, together with any legislation
27 required to implement the recommendations, to the sixty-sixth legislative assembly.