

**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.