Sixty-seventh Legislative Assembly of North Dakota

## 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	<u>Gov</u>	ernment - Private business - Competition - Report to legislative management.
8	<u>1.</u>	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	<u>2.</u>	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	<u>3.</u>	The commission shall submit a written decision to the parties within twenty days of the
22		hearing.

Sixty-seventh Legislative Assembly

1	<u>4.</u>	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	<u>5.</u>	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	<u>6.</u>	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	<u>7.</u>	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.