

**HOUSE BILL NO. 1374**

Introduced by

Representatives Toman, Christensen, Motschenbacher, Prichard

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 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 competition with a state agency or  
9 institution, the commission shall determine whether the agency or institution is in  
10 competition with private enterprise.

11 2. If the public service commission determines a state agency or institution is engaged in  
12 competition with private enterprise after a hearing during which all impacted parties  
13 had an opportunity to present evidence, the commission shall direct the state agency  
14 or 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 Act 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. If a state agency or institution is authorized to engage  
11      in an activity in competition with private enterprise, the commission shall set a fee for  
12      that activity to reflect the fair market value and the actual costs incurred.
- 13      7. This section does not apply to the Bank of North Dakota, the state mill and elevator, or  
14      the department of corrections and rehabilitation.
- 15      8. The commission shall report to the legislative management by March fifteenth of each  
16      even-numbered year on the status of petitions received under this section.