

HB 1374 – Testimony by Dustin Gawrylow (Lobbyist #266) North Dakota Watchdog Network

Mr. Chairman and members of the committee,

I would like to thank Representative Toman for reintroducing this bill once again, I think this is the 4th time it has been put forward. (Previous: 2021 – HB 1169, 2019 – HB 1217, 2017 – HB 1162)

The concept of this bill is simple: to create an evaluation process for when government competes with private industry. It is based on ALEC model language.

It is a perennial bill that promptly gets ignored and tossed aside, or converted into an optional study, then not actually studied.

There is simply not the political will among the majority party to actually look at all the ways the state and local government – despite the fact the majority party likes to give lip service to the idea of getting government out of the way of business – but when it comes down to it, we all know this body is more interested in picking winners and losers than adhering to the free market philosophy that is so often espoused.

I urge a DO PASS recommendation, knowing full well that any law trying to get government out of way of private industry does not have a chance of passage.

Thank you for your time.

ALEC Government Services Competition Act

Summary

This model bill provides a general model for state government privatization efforts. States should adapt this model to meet their own particular needs and circumstances regarding privatization. It prohibits state agencies, institutions, or political subdivisions supported in whole or part by any state revenues, from engaging in any activity which is in competition with private enterprise unless the agency, institution, or political subdivision can demonstrate that there is an overriding or compelling public interest served by the state's provision of the service. It also sets standards for state agencies, authorized to engage in an activity in competition with private enterprise, to follow.

Model Legislation

{Title, enacting clause, etc}

Section 1.

This Act may be cited as the Government Services Competition Act.

Section 2. {Definitions.}

An Act relating to activities in competition with private enterprise.

(A) As used in this Act, an "activity in competition with private enterprise" means an activity which:

- (1) Is undertaken by a state agency, institution, or political subdivision that is supported in whole or in part from any state revenues; and
- (2) Can be performed by an existing private enterprise situated within the State.

Section 3. {Legislative Findings.}

Except as otherwise provided in this Act, and notwithstanding any other provisions of law, it shall be the policy that no state agency, institution, or political subdivision supported in whole or part by any state revenues shall engage in any activity which is in competition with private enterprise unless the agency, institution, or political subdivision can demonstrate that there is an overriding or compelling public interest served by the state's provision of the service. Examples of activities provided by the state which may carry an overriding or compelling public interest include certain aspects of the criminal justice system; activities and services of various kinds provided by educational institutions; programs of the state development finance authority; and health services such as those provided by state owned or operated hospitals.

Section 4. The commissioner of the "public protection and regulation agency" [insert appropriate state agency] shall determine, upon petition by any person directly affected by competition with a state agency, institution, or political

subdivision whether the agency, institution, or political subdivision is 'in competition with private enterprise.

Section 5. If, after a hearing at which all parties have been afforded an opportunity to present evidence, the commissioner finds that the agency, institution, or political subdivision is engaged in an activity in competition with private enterprise, he/she shall direct the agency, institution, or political subdivision to terminate the activity unless he/she also finds that:

(A) Cessation of the activity by the agency, institution, or political subdivision will create a bona fide emergency;

(B) The cost of the service from private enterprise will be at least 10 percent greater than the cost of the services provided by government;

(C) Private enterprise cannot adequately provide the needed service; or

(D) Cessation of the activity will cause irreparable harm or loss of substantial invested funds to the state.

Section 6. The commissioner shall submit a decision along with written findings within 20 days decision to authorize or terminate the activity of the agency or institution and shall make copies available to all interested parties.

Section 7. An appeal from an order of the commissioner may be taken to the circuit court where the petitioner does business. Such appeal shall not be de novo. The petitioner, if unsuccessful, shall pay the costs of the hearing and appeal incurred by the state, if any, including reasonable attorney's fees.

Section 8. Activities of a state agency, institution, or political subdivision which were undertaken prior to, and are in operation as of [insert date], and which are found under this Act to be in competition with private enterprise.

Section 6. The commissioner shall submit a decision along with written findings within 20 days decision to authorize or terminate the activity of the agency or institution and shall make copies available to all interested parties.

Section 7. An appeal from an order of the commissioner may be taken to the circuit court where the petitioner does business. Such appeal shall not be de nova. The petitioner, if unsuccessful, shall pay the costs of the hearing and appeal incurred by the state, if any, including reasonable attorney's fees.

Section 8. Activities of a state agency, institution, or political subdivision which were undertaken prior to, and are in operation as of [insert date], and which are found under this Act to be in competition with private enterprise and ordered terminated, may continue until the expiration date of any contract that would be adversely affected by the cessation of the activity.

Section 9. If a state agency, institution, or political subdivision of the state demonstrates an overriding or compelling public interest for the provision of any

activity in competition with private enterprise, it nevertheless shall be the policy of the state to contract with the private sector for the provision of that activity insofar as it is feasible and in the public interest.

Section 10. If a state agency, institution, or political subdivision is authorized to engage in an activity in competition with private enterprise, it shall be the policy of the state to set a fee or charge a price for that activity which shall include consideration of:

(A) The fair market value of the activity; and

(B) The actual costs incurred in engaging in the activity, including the costs and value of labor, real estate, equipment, overhead, and other related expenses.

Insofar as appropriate or deemed expedient in order to serve the public interest, fees or prices charged for public activities shall reflect the fair market value or the actual costs incurred.

Section 11. No later than [insert date) of each odd numbered year, the secretary shall submit a report on government competition with private enterprise to the legislature and the governor. The report shall include recommendations concerning whether the competitive government activities identified and reviewed by the secretary should be continued.

Section 12. {Severability clause.}

Section 13. {Repealer clause.}

Section 14. {Effective date.}

Reapproved by the ALEC Board of Directors on January 29, 2013