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Title.

Prepared by the Legislative Council staff for  
Representative Toman  
January 20, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1374

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 54-09 of the North Dakota Century Code, relating to competition between the government and private industry; and to provide for a legislative management report.

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

**SECTION 1.** A new section to chapter 54-09 of the North Dakota Century Code is created and enacted as follows:

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

1. Upon petition by an individual directly affected by competition with a state agency or institution, the secretary of state shall determine whether the agency or institution is in competition with private enterprise.
2. If the secretary of state determines a state agency or institution is engaged in competition with private enterprise after a hearing during which all impacted parties had an opportunity to present evidence, the secretary of state shall direct the state agency or institution to terminate the activity unless:
  - a. Cessation of the activity will create an emergency;
  - b. The cost of providing the service through private enterprise will cost at least ten percent more than the same service provided by a state agency or institution;
  - c. Private enterprise cannot adequately provide the service; or
  - d. Cessation of the activity will cause irreparable harm or loss of substantial invested funds.
3. The secretary of state shall submit a written decision to the parties within twenty days of the hearing.
4. A petitioner may file an appeal of a decision made by the secretary of state with the district court. If the appeal is unsuccessful, the petitioner shall pay the costs of the hearing and appeal incurred by the state including reasonable attorney's fees.
5. Any activity or service provided by a state agency or institution before the effective date of this Act which is found to be in competition with private enterprise may continue until the expiration of any contract that would be affected adversely by the cessation of the activity.

6. Unless a state agency or institution demonstrates a compelling public interest for an activity to be in competition with private enterprise, it must be the policy of the state to contract with private enterprise. If a state agency or institution is authorized to engage in an activity in competition with private enterprise, the secretary of state shall set a fee for that activity to reflect the fair market value and the actual costs incurred.
7. This section does not apply to the Bank of North Dakota, the state mill and elevator, or the department of corrections and rehabilitation.
8. The secretary of state shall report to the legislative management by March fifteenth of each even-numbered year on the status of petitions received under this section."

Renumber accordingly