

TESTIMONY OF

Sherry Neas, Director, Central Service Division

Good morning, Chairman Louser and members of the committee. My name is Sherry Neas, Central Services Division Director, and Chief Procurement Officer, with the Office of Management and Budget (OMB). OMB is opposed to HB 1374, as introduced.

Similar bills were introduced in 2017 (HB 1162), 2019 (HB 1217), and 2021 (HB 1169) which OMB also opposed.

The bill introduced this session does provide exceptions for the State Mill and Elevator, Bank of North Dakota, and Department of Correction and Rehabilitation.

The broad language in HB 1374 would allow anyone to petition that a government agency is competing with the private sector. This creates the potential for many petitions that could result in substantial workload for the Public Service Commission and interruption of state agency operations.

OMB is the administrative agency for state purchasing practices. State procurement laws facilitate a competitive process for vendors to compete for state contracts. Procurement laws also allow government agencies and correctional institutions to obtain needed goods and services directly from other government agencies and correctional institutions, this is known as using government sources of supply. There are several government agencies that have statutory authority to perform functions or provide goods and services that also exist in the private sector.

Government sources of supply may be established for efficiency, security or a specific mission of the agency. For example, OMB has statutory authority to operate a central mailroom, central supply, printing operations and surplus property operation. There are several other government agencies and correctional institutions that perform functions or provide goods and services also provided by private sector individuals and businesses. In some cases, government entities have the option to use the government source or conduct a procurement process to select a private sector provider.

This bill describes an administrative process whereby the Public Service Commission determines whether a government entity is in competition with the private sector and determines whether or not the government entity can continue the activity. OMB has concerns regarding how the administrative process described in this bill can override statutory authority

for government agencies and correctional institutions to provide the goods or services being petitioned.

OMB also has concerns with the section of the bill related to Public Service Commission authority establishing prices for other government entities. Page 2, lines 10-12 of the bill states, "If a state agency or institution is authorized to engage in an activity in competition with private enterprise, the commission shall set a fee for that activity to reflect the fair market value and the actual costs incurred."

Involving the Public Service Commission in establishing fees for government entities that provide goods and services would create a substantial workload increase for the Public Service Commission, and likely reduce the efficiencies of government programs.

Using OMB as an example, the laws that authorize OMB to operate a surplus property operation require OMB to transfer property at fair market value. OMB operates surplus property and has subject matter expertise in that area. Therefore, OMB would be the logical entity to establish rates for that program.

Existing law emphasizes opportunities for private sector entities to compete for government contracts, while also authorizing purchases directly from existing government agencies and correctional institutions.

In conclusion, OMB opposes the broad language of HB 1374 which could conflict with existing laws, disrupt existing government operations, and potentially result in substantial workload increase for the Public Service Commission and other government entities with existing authority for their operations.

OMB would welcome the opportunity to work with this committee and the bill sponsors on an amendment that addresses our concerns to exempt state agencies and institutions with existing authority from the process described in this bill.

Mr. Chairman and members of the committee, this concludes my testimony, and I would welcome any questions.