March 16, 2011, Introduced by Reps. McMillin, Lund and Somerville and referred to the Committee on Oversight, Reform, and Ethics.

A bill to prohibit governmental entities from commercially competing against the private sector; and to provide for remedies and penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. This act shall be known and may be cited as the "government competition against private enterprise act".

Sec. 2. The legislature finds and declares all of the following:

(a) Private enterprise is necessary to the health, welfare, and prosperity of this state.

(b) Government competes with private enterprise when it provides goods and services to the public beyond its government function.

(c) This act is intended to protect economic opportunities for
private enterprise against unfair competition by government
agencies and to enhance the efficient provision of goods and
services to the public.

Sec. 3. As used in this act:

(a) "Commercial activity" means performing services or
providing goods that can normally be obtained from private
enterprise.

(b) "Essential services" means those services that are
essential for the public, including, but not limited to, water
supply, sewers, garbage and trash removal, recycling, utilities,
streets and roads, public transportation, and correctional
facilities.

(c) "Government agency" or "agency" means the state, a county,
city, village, township, educational institution, or a department,
agency, or subdivision thereof.

(d) "Government competition" means the provision of goods or
services to the public by a government agency that are or can be
offered by private enterprise.

(e) "Government functions" means those functions that are
exclusively the prerogative of government, including, but not
limited to, operation of the agency or department, fulfillment of
the legal obligations of the agency, law enforcement, and the
judicial system.

(f) "Necessary services" means those services that are
critical for human safety and health, including, but not limited
to, fire departments, emergency services, and medical services.

(g) "Private enterprise" means an individual, firm,
partnership, corporation, association, or any other legal entity engaging in the manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing, or advertising of goods or services for profit.

(h) "Vital services" means those services that are normally available in a community, including, but not limited to, food stores, drugstores, child care, elder care, and telecommunications services.

Sec. 4. A government agency is prohibited from competing against private enterprise, including by intergovernmental or interagency agreement, and is prohibited from funding, capitalizing, securing the indebtedness of, or leasing the obligations of, or subsidizing, any charitable or not-for-profit institution which would use the support to compete against private enterprise.

Sec. 5. The following functions or services are excepted from this act:

(a) Government functions.

(b) Necessary services. Nothing in this act shall preclude a government agency from utilizing private enterprise to provide necessary services.

(c) The development, management, and operation of state parks, historical monuments, and hiking or equestrian trails.

(d) Essential services, except that, if private industry can provide essential services, government agencies shall entertain bids from private enterprise and, if practicable, contract with private enterprise to provide essential services.
(e) Vital services, but only to the extent they are not available from private enterprise.

(f) Provisions of goods and services to students and invited guests of universities, community colleges, and public school districts.

Sec. 6. In cases of government competition against private enterprise that exist on the effective date of this act, the government agency may continue to engage in the competition but shall not exceed the scope of the competition. Nothing in this act precludes a government agency from contracting with private enterprise to provide goods or services to the public.

Sec. 7. (1) A cause of action may be initiated under this act to enjoin a government agency from participating in commercial activity resulting in competition against private enterprise.

(2) A civil action for injunctive relief under this act may request preliminary injunctive relief by alleging that a government agency is participating in commercial activity resulting in competition with private enterprise. Upon receipt of the complaint, the court shall order a preliminary hearing not later than 30 days from the date of the complaint.

(3) The court shall issue appropriate preliminary injunctive relief if at the preliminary hearing the plaintiff makes a prima facie showing of all of the following:

(a) The government agency is or is planning to participate in commercial activity.

(b) That commercial activity results or will result in competition with private enterprise.
(c) The threat to private enterprise or public money is imminent.

(4) The plaintiff is not required to show that they have no adequate remedy at law or will suffer irreparable harm nor any other common law element applicable to obtaining preliminary injunctive relief.

(5) If after a final hearing on the merits, the court finds that a government agency is participating in commercial activity resulting in competition with private enterprise, the court shall grant permanent injunctive relief and shall issue orders as necessary to abate the government competition with private enterprise.

(6) The court may award actual damages including, but not limited to, costs, reasonable attorney fees, and all expenses and disbursements made by the plaintiff in bringing the action.