

FISCAL NOTE
Requested by Legislative Council
01/06/2017

Revised
 Bill/Resolution No.: HB 1162

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$670,113	\$0	\$670,113	\$0
Appropriations	\$0	\$0	\$670,113	\$0	\$670,113	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Provides a forum for individuals directly affected by competition from the state, requiring a hearing and PSC decision on whether the state has interfered with private industry. HB 1162 creates a substantive addition to PSC jurisdiction and will increase costs for the PSC and other entities.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

State government entities are delegated power by the legislature to provide many goods, services, and functions that may be provided by the private sector. The broad scope of this bill will likely cause a significant increase in expenditures and appropriations for numerous state institutions. In addition to an increase of costs to the PSC and state institutions, customers currently receiving goods or services from the government source will also be impacted, and could be required to pay up to ten percent more from a private source. It is difficult to estimate this impact because of the sheer breadth of possibilities. However, it can only cause a significant increase in expenditures and appropriations for a number of institutions.

The bill will significantly raise costs to the PSC, other state agencies and institutions, and even possibly political subdivisions, depending on how the definition of "agency or institution" is interpreted. These costs include salaries and associated operating costs for PSC staff and commissioners involved in the hearings and decisions, costs to retain an administrative law judge to preside at the hearings, costs of counsel and other staff by state institutions defending themselves, and costs associated with elimination of programs and services offered by the state agencies and institutions, if ordered by the PSC to terminate providing such service. Furthermore, the bill would also require the PSC to be involved in setting the rates, adjusting rates, and ongoing compliance and enforcement. The PSC setting rates to the fair market value and the actual costs incurred will likely result in costs or revenue reductions, or possibly even rate increases if they are below the fair market value.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

See response to 2B, above

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Total Estimated Expenditures for the Biennium: PSC expenditures \$670,113.20
Attorney General's Office \$68,400.00

Total \$738,513.20

Assuming that all expenditures are a result of contracted employees, the following are the estimated expenditures for the PSC. Administrative law judges are utilized for PSC hearings and are contracted through the Office of Administrative Hearings. Additional commission staff or contracted staff would be required for each hearing and ongoing compliance. This estimate uses contracted staff. An attorney, staff analyst, and administrative costs are estimated for each hearing. For a noncomplex, average hearing, the cost is estimated at \$18,209.25 per hearing. Seeing that the legislation would provide an easy path to hearing, as well as the breadth of local and state institutions and subdivisions, the PSC estimates 12 hearings per biennium. The time estimate for the analyst, attorney, and substantive administrative law judge is based upon 40 hours between hearing, preparation, prehearing schedules and motions, post-hearing determinations, proposed order and order writing. The cost of ongoing compliance over the biennium is estimated at 20% of the hearing costs. If rate setting is required, a separate hearing would likely be required to make the determination and, and a rate specialist to assist. A PSC decision on this statute would be ripe to be contested. At its outset, a PSC decision is expected to be highly contested due to the nature of the case being heard, similar to the territorial act. The anticipated costs are:

6,600.00 Substantive Administrative Law Judge - \$165 per hour (40 hours)
6,300.00 Attorney for hearing - \$180 per hour (35 hours)
5,250.00 Analyst/Accountant - \$150 per hour (35 hours)
59.25 Certified service (31.25); regular service (8); and documents and paper (20)

18,209.25 per hearing
X 12 hearings per biennium

218,511.00 In hearing costs for the biennium
43,702.20 Costs in ongoing compliance

262,213.20
18,000.00 \$150 per hour for 20 hours of rate consulting for 1 out of 2 cases (6 total)
9,900.00 ALJ for rate hearing - \$165 per hour for 10 hours.

290,113.20
60,000.00 additional legal action required to be submitted to court to enforce actions 1 out of 3 (4 cases)

350,113.20
320,000.00 for additional legal counsel for appeals in 2 out of 3 cases through district and state supreme court (8 cases).

670,113.20 Total Required Fees per biennium if work is contracted out by the PSC.

In addition to the PSC costs, It is estimated that there will be a cost of \$5,700 of attorney expenses per hearing for the Office of the Attorney General's service to defend the agencies and institutions.

Without costs for appeals, cost of staff of other agencies, and only the price of AG services, the additional costs through the Attorney General's office is estimated at \$68,400 for legal services for the biennium (12 hearings x \$5,700).

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

See response to 3B above.

Name: John M Schuh

Agency: PSC

Telephone: 701-328-2421

Date Prepared: 01/12/2017