

FISCAL NOTE
Requested by Legislative Council
01/26/2017

Amendment to: 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	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$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	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 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).*

Engrossed bill provides for a study regarding competition between government and private industry. As a study, the bill will have no fiscal impact.

- 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.*

None

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.*

See response to 2B, above.

- 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 2B above.

Name: Illona A. Jeffcoat-Sacco

Agency: PSC

Telephone: 701-328-2407

Date Prepared: 01/26/2017

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

FISCAL NOTE
Requested by Legislative Council
01/06/2017

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						
Expenditures						
Appropriations						

- 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.*

The bill will likely cause a significant increase in expenditures and appropriations for numerous agencies, institutions, and political subdivisions. It is impossible to estimate this impact because there are too many variables. The bill will significantly raise costs to the PSC, other state agencies and institutions, and also political subdivisions, depending on the definition of "agency or institution." in the bill. 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 for the agencies and institutions that are the subject of the hearing to defend against the challenge, costs associated with elimination of the programs and services provided or offered by the state agencies and institutions, under existing law, if an agency loses the case, costs to the PSC to conduct the ratemaking associated with the bill when an agency is permitted to compete with private industry, and the costs or revenue reduction to the impacted agency due to the PSC setting the fees the agency can charge.

The costs are impossible to estimate because there are too many variables. There is no guarantee there will be any cases, or if there are, how many there will be. Also, we cannot say how long any particular hearing might be. A hearing could take anywhere from 1/2 day to several days. There will be considerable PSC staff and commissioner time involved in complicated cases, as well as staff time for the agency that is the subject of the challenge. The same holds for any ratemaking that may result from the proceeding, but there is no way to estimate precisely what type of cases will be brought. They could be anything from a case against the state crime lab, to one against ITD or the BSC automotive shop, or even a county official. Consequently, while we expect substantial fiscal impact, it is impossible to estimate the impact to revenues or costs.

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.*

See response to 2B, above.

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 2B above.

Name: Illona Jeffcoat-Sacco

Agency: PSC

Telephone: 701-328-2407

Date Prepared: 01/12/2017

2017 HOUSE INDUSTRY, BUSINESS, AND LABOR

HB 1162

2017 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Peace Garden Room, State Capitol

HB 1162

1/16/2017

26933

- Subcommittee
 Conference Committee

Committee Clerk Signature

Ellen Letang

Explanation or reason for introduction of bill/resolution:

Competition between the government & private industry & require a report to Legislative management.

Minutes:

Attachment 1, 2

Chairman Keiser: Opens the hearing of HB 1162.

Representative Nathan Toman~District 34-Mandan: Introduces the HB 1162 which would give private industry a mouth piece to file petitions to the PSC.

1:25

Chairman Keiser: Do you want us to amend this to include the political sub divisions?

Rep Toman: Yes, clarify the statute.

Rep Dobervich: While I was reading the bill it came up in my mind of specific examples, I wondering if you could come up with some samples of situations.

Toman: I drafted this without any real situations.

Rep Dobervich: Is there any other states that has anything like this in place or a precedence at all?

Toman: This is a free market idea.

Rep Beadle: When you envision how this would play out, how would you envision in relationship to the state bank & some of their operations, such as the low interest student loans? Do you directly compete with student loans through a private market like Wells Fargo? How would you envision state institutions for a state agency, would we still be able to maintain some of those things? How else would we bid to shop around to coders & developers?

Toman: The IT industry is procurement because they are not selling an internet service to the public. From a state bank, if they are exempted, I think that comes into play like high ed.

Rep Lefor: Page 2, line 8, unless a state institution or agency demonstrates a compelling public interest, who determines a compelling public interest?

Toman: The PSC & the public interest they are serving.

Rep Dobervich: I can go to a grocery market, choose a state mill or other company pancake mix, would the state mill & other companies, would they be required to report then? Since we have private business providing a product that is produced by the state. Would this might truly be an issue & why would it be an issue, in the fact that we have a state owned entity that there are a lot of options that are available.

Rep Toman: That is why I'm recommending those amendments that I missed because I wasn't thinking about those state mills.

Dustin Gawrylow~ND Watchdog Network: Attachment 1.

11:50

Rep Dobervich: You talk about court cases & cost to private business & you also talked about that the PSC regulates the monopoly. Do we have an issue where we have to get involved because the state is developing all these products & services that are directly competing with the free market or is this what might happen? Why do we need this & is it a problem?

Gawrylow: There are specifics. I wanted this, to find a way to deal with the various situations out there without being specific. When you get into specifics that has gone on in the past 7 years, it gets tenuous & there is animosity between sides. I'm talking specifically about Western Area Water Supply (WAWS). There are independent water supplies out there that were out their first, who then came into competition with the government with the creation of that entity. I want to give people a platform to debate an issue. I'm been on both sides but I represent people & told them that I will take the philosophy of promoting good government. I would help them find a way to create an even playing field to debate the issue if they feel it's unfair by the state. There should be something in place if it happens.

Rep Ruby: I would agree in philosophy, the way this is written, it talk about institutions, where do you draw the line on this for certain services that is in direct competition?

Gawrylow: I would draw the line on things that are regulated the other entities. When you get down to the basic of cities, that would be up for debate. I wouldn't personally, target that sort of thing.

Chairman Keiser: Anyone else here to testify in support, opposition?

John Schuh~Public Utility Staff Counsel-PSC: Attachment 2.

20:20

Chairman Keiser: PSC does make determinations when it comes to the WAWS that they regulate, is that correct.

Schuh: Yes, we do make determinations in the areas that we have been delegated but some are beyond our scope.

John Olson ~ Represent the Western Area Water Supply: This a very heated topic leading to the development of oil without water. I agree with the philosophical principle here but that is not the issue. What this bill would do is set up another regulatory body to look at these issues & right now the industrial commission in reviewing WAWS activities. The legislature heavily involved in reviewing laws activities & as the state water commission. There are all kinds of things that come into at looking at the activities that WAWS is out there. Keep in mind that even the Bank of ND has a lot of loans outstanding to the WAWS & those would have to be repaid. The industrial water sales are the main source of income to repay those loans at other loans. Point is, the legislature has a very keen interest in making sure the WAWS is successful & that those loans are paid to the state. Transferring that expertise, from the Industrial Commission, the Water Commission & the Legislature itself, now to the PSC, needs to be thought out & analyzed before you need to do that. Also, set up the PSC as the arbiter of reviewing authority on these issues or when they arise.

Rep Kasper: On line 11, it appears it's a black & white bill. Is this the crux of this bill?

Olson: Yes, that is.

Rep Becker: I would say that WAWS is classic example of competition. Page 1, line19, wouldn't the whole WAWS situation be free from concern because if we stopped all industrial sales by WAWS, it would be a loss of substantial invested funds.

Olson: That is an excellent point, it may cut the argument there.

Sherry Neas~Office of Management & Budget-Central Division: Attachment 3.

32:30

Chairman Keiser: Anyone else here to testify in support, opposition?

Rick Clayburgh~President & CEO of the ND Bankers Association & Independent Community Banks of ND: Our concern focuses on the Bank of ND & the role they play. The major success of the bank is because it is allowed to operate like a bank. It's a banker's bank, so it serves our members in our state. We walk a fine line in the banking industry, as is an area that we watch & keeps tabs on, but the bank has oversight over the investor commission & also an advisory commission. The relationship between the community banks & the Bank of ND is a very strong one & we are concerned about the potential impact on that by this legislation. With the concern of the Bank of ND, we would be neutral on this position.

Chairman Keiser: Anyone else here to testify in a neutral position.

Rep Becker: I've seen bills overturned on the floor that we supported anomalously in the committee, it would be smart to have amendments.

Chairman Keiser: Closes the hearing on HB 1162.

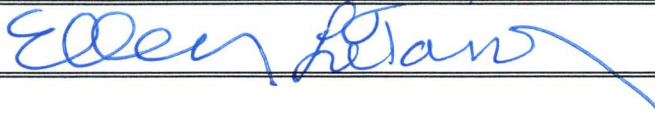
2017 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1162
1/25/2017
No recording

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Competition between the government & private industry & require a report to Legislative management.

Minutes:

Attachment 1, 2

Chairman Keiser: Reopens the hearing of HB 1162.

Nathan Toman~District 34-Mandan: Attachment 1.

Rep Toman: Attachment 2, turns the bill into a study.

Chairman Keiser: What are the wishes of the committee?

Rep Becker: Moves amendment 17.0415.02001.

Rep Beadle: Second.

Roll call was take on the amendment for HB 1162 with 6 yes, 8 no, 0 absent, amendment fails.

Chairman Keiser: What are the wishes of the committee?

Rep Lefor: Moves the amendment to turn it into a study & state "shall consider".

Rep Kasper: Second.

Voice vote – Motion carried.

Chairman Keiser: Further discussion. What are the wishes of the committee?

Rep Kasper: Moves a Do Pass as Amended.

Vice Chairman Sukut: Second.

Chairman Keiser: Further discussion.

Roll call was taken for a Do Pass as Amended on HB 1162 with 12 yes, 2 no, 0 absent & Rep Becker is the carrier.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1162

Page 1, line 9, after "institution" insert "or a political subdivision"

Page 1, line 10, after "institution" insert "or political subdivision"

Page 1, line 11, after "institution" insert "or a political subdivision"

Page 1, line 14, after "institution" insert "or political subdivision"

Page 1, line 15, after "a." insert "The state agency or institution or political subdivision is required by law to provide the service;

b."

Page 1, line 16, replace "b." with "c."

Page 1, line 16, remove "at least ten"

Page 1, line 17, remove "percent"

Page 1, line 17, replace "a" with "the"

Page 1, line 17, after "agency" insert "or"

Page 1, line 17, after "institution" insert "or political subdivision"

Page 1, line 18, replace "c." with "d."

Page 1, line 19, replace "d." with "e."

Page 2, line 3, after "state" insert "or political subdivision"

Page 2, line 4, after "institution" insert "or a political subdivision"

Page 2, line 8, after "institution" insert "or a political subdivision"

Page 2, line 9, after "state" insert "and the political subdivision"

Page 2, line 10, after "agency" insert "or"

Page 2, line 10, after "institution" insert "or a political subdivision"

Re-number accordingly

January 25, 2017

1/25/17 DPA

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1162

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of competition between government and private industry."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - COMPETITION BETWEEN GOVERNMENT AND PRIVATE INDUSTRY. During the 2017-18 interim, the legislative management shall consider studying competition between government and private industry. The study must include input from business owners in state trade associations and state and national experts on business and economics. The study must analyze areas in which government entities may have conflicts of interest with private industry and whether the government's role in providing specific services deters nonprofit organizations from performing the same service. The study also must determine the industries and regions in which government competition impacts businesses and industries and the fiscal loss to the state if a government entity performs a service also provided by a private industry. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly

Date: Jan 25, 2017

Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1162

House _____ Industry, Business and Labor _____ Committee

Subcommittee

Amendment LC# or Description: 17.0415.02001

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar

Other Actions Reconsider _____

Motion Made By Rep Becker Seconded By Rep Beadle

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		X	Rep Laning		X
Vice Chairman Sukut		X	Rep Lefor		X
Rep Beadle	X		Rep Louser	X	
Rep R Becker	X		Rep O'Brien		X
Rep Bosch	X		Rep Ruby	X	
Rep C Johnson	X		Rep Boschee		X
Rep Kasper		X	Rep Dobervich		X

Total (Yes) 6 No 8

Absent 0

Floor Assignment amendment 1 - Motion failed

Date: Jan 25, 2017

Roll Call Vote #: 2

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1162

House _____ Industry, Business and Labor _____ Committee

Subcommittee

Amendment LC# or Description: 17.0415.02002

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar
- Other Actions Reconsider _____

Motion Made By Rep Lefor Seconded By Rep Kasper

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Rep Laning		
Vice Chairman Sukut			Rep Lefor		
Rep Beadle			Rep Louser		
Rep R Becker			Rep O'Brien		
Rep Bosch			Rep Ruby		
Rep C Johnson			Rep Boschee		
Rep Kasper			Rep Dobervich		

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____ Voice vote ~ Motion carried

state "shall consider"

Date: Jan 25, 2017

Roll Call Vote #: 3

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1162

House _____ Industry, Business and Labor _____ Committee

Subcommittee

Amendment LC# or Description: 17.0415.02003

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar

Other Actions Reconsider _____

Motion Made By Rep Kasper Seconded By Rep Sukut

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep Laning	X	
Vice Chairman Sukut	X		Rep Lefor	X	
Rep Beadle	X		Rep Louser	X	
Rep R Becker	X		Rep O'Brien	X	
Rep Bosch	X		Rep Ruby	X	
Rep C Johnson	X		Rep Boschee		X
Rep Kasper	X		Rep Dobervich		X

Total (Yes) 12 No 2

Absent 0

Floor Assignment Rep Becker

REPORT OF STANDING COMMITTEE

HB 1162: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1162 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of competition between government and private industry."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - COMPETITION BETWEEN GOVERNMENT AND PRIVATE INDUSTRY. During the 2017-18 interim, the legislative management shall consider studying competition between government and private industry. The study must include input from business owners in state trade associations and state and national experts on business and economics. The study must analyze areas in which government entities may have conflicts of interest with private industry and whether the government's role in providing specific services deters nonprofit organizations from performing the same service. The study also must determine the industries and regions in which government competition impacts businesses and industries and the fiscal loss to the state if a government entity performs a service also provided by a private industry. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly

2017 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1162

2017 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

Engrossed HB 1162
3/15/2017
Job Number 29218

- Subcommittee
 Conference Committee

Committee Clerk Signature

Eva Liedelt

Explanation or reason for introduction of bill/resolution:

To provide for a legislative management study of competition between government and private industry

Minutes:

1 Attachment

Chairman Klein: Called the committee back to order.

Representative Toman: Introduced the bill. This bill is to request legislative management to study competition between government and private industry. It started out as prohibition bill and in the House we amended it into a study because there were a bunch of unanswered questions on how that would affect certain things like the bank, the mill and procurement and other such things that the state does.

Senator Casper: Can you talk a little more of what it started out as, it was a prohibition against?

Representative Toman: Prohibition of state competition against private industry. The impetus behind it was not to put the bank or the mill out of business and I tried to hold those harmless in the original draft but any services that the state would provide that the private industry is already providing.

Chairman Klein: College for example, public schools?

Representative Toman: That was not the intent of the bill. It was more on the political sub division side of it, more than a state agency side of it when I first submitted the bill. Those are the questions that were brought up and that is why we amended it into a study to find out if it is picked by legislative management, if there are areas where there is competition.

Senator Casper: Just reading the study here, I see it as a shall study. I think that means if we pass this they will study it for sure. If they do choose to study, who is going to participate and where is the information going to come from and who is going to lead it?

Representative Toman: I am not sure which interim committee it would be assigned to but the study must include input from business owners and state trade associations and state and national experts on business and economics. It would be an informational request, that is how I would see it. Who is being affected and those companies could come forward and then the experts on government competition, government services would be polled for how that works in other states.

Senator Poolman: You mentioned all of the industries that you wanted to hold harmless, which ones are you targeting? When you wrote the bill what were you targeting?

Representative Toman: More so on the political sub division stand point. If I am a contractor and I am providing mitigation and then the political sub division decides that they are going to provide mitigation services rather than RFP for them. It sets up shop against a local mitigation engineer.

Chairman Klein: The water system and I start selling water and compete against the independents. That to me would be the first one I would think about.

Representative Toman: That would have been included in that but it wasn't the impetus behind it. It was all competition.

Senator Campbell: This has been going on forever and I don't think anybody wants government to compete with private industry but so many times it is providing a service or monopolistic. There wasn't any specific thing that got you to do this or just local political subs in general. There wasn't any specific thing that irked you or a constituent that brought this to you?

Representative Toman: Me personally no. I am sure that there are some that will testify in favor of this that saw that as well but going along the lines of private industry and providing those services would provide for a more limited government. Except in those instances where there isn't anyone filling that need and the original bill spoke to that as well. I don't have the original bill in front of me but it provided for some of those. If the government had to provide it because of welfare that clause was in the original bill.

Chairman Klein: If we found some bad player out there, then we would then address that. We would report that of course during the interim at that committee hearing and determine or not if we need to pursue that with litigation or just change the law. How do you see us addressing this?

Representative Toman: Would it be targeted toward certain industries that are competing or would it bring to light where we need to make the adjustments or would it be a blanket, we are done with this? We don't know the answer to that and what industries are experiencing this or if there is just a couple of them.

Dustin Gawrylow, North Dakota Watchdog Network: In support. Written testimony, see attachment #1. (6:36-8:25)

Senator Casper: What is the North Dakota Watchdog Network? Do you have like a hundred business people who are part of the organization that are on the board? I know we have organizations coming here and they have a board and they say our board voted to say we have a lot of issues with government intruding on our business. I wondering on whose behalf you are testifying. You are testifying on behalf of the North Dakota Watchdog Network so I just want to educate myself on that a little bit.

Dustin Gawrylow: We are an organization that is 100% in state funded. We have about 500 or so donors that have given us donations over the years. It is the latest incarnation of a different group that started about ten years ago. We support efforts to reduce taxes, limit government, reduce spending. Those sort of generic conservative issues that simply aren't represented by any other group. There are plenty other special interest organizations and there is no other full time entity that seeks to represent the interest of the voiceless tax payers out there. Our membership includes people who can afford twenty dollar donations a year up to several thousand. Just like any other organization we get involved where we can and where we need to. There is simply not enough coverage by journalist and by other entities in the state looking out for the public's interest. (9:02-10:26)

Senator Casper: If we're are going to do a study and spend time, energy and effort and the states money. Is there a distinct ill or that we are trying to elevate here? I get the general overarching kind of thought but are there a half of dozen instances that you can describe are happening that we should look at because it is happening on a broader scale besides the universities, the schools, the bank, the mill. I am not quiet seeing, I am not saying this doesn't happen.

Dustin Gawrylow: As I mentioned we are trying to stay in in a more generic approach on this. The elephant in the room is the Western Area Water Supply. In fact, House Bill 1022 which is the appropriations bill which includes a new invented tax called a royalty on private water also includes a study on that specific issue. This is trying to reach out broader than that and so if that study passes it can take care of WAWS but I think there is a need for looking at other areas. (11:19-13:30)

Senator Poolman: Do any of the donors that you have pay to lobby on specific issues?

Dustin Gawrylow: No, I have a specific rule against that. We speak in favor of good government, limited government, lower taxes and less spending. If an issue falls into those categories and it just happens to be their pet issue, that is the overlap. We do not do for hire issues. We are a nonprofit organization. I have personally representative organizations in that role in the past and I always keep those hats separate. Just like any other lobbyist that has multiple clients. I don't like to mix those monies around because frankly it would get me in trouble with the IRS.

Brian Johnson, CEO of the North Dakota Association Soil Conservation District: In opposition. When this bill popped up we were pretty concerned about it. We have been planting trees for over seventy-five years. It just seemed to be such a broad bill based upon a disagreement between two entities. We are going to drag everything we do and put it in front of the public service commission and determine whether or not something competes. I think it would be simpler for these two entities to get together and talk about their differences

and maybe get that worked out. We do things that others don't want to do but it would be easy for a nursery to say, they shouldn't plant trees because we plant trees. All of a sudden we are out of the tree business and you could take that from trash removal from cities, there are private trash folks that can say they can do it. There is snow removal. I don't think it was thought out on how much it would include. I ask that you guys kill this and let's move on. (14:48-16:18)

Chairman Klein: I was thinking of snow removal and some of those things that we take for granted but some contractor which we probably used this winter but in general we do rely on the state to do a lot of that. We could have security firms doing more police work, I don't know.

Brian Johnson: Yes, and where does it stop and schools could fall under that. It is really a big broad sweeping deal and we need be really careful where we go with it.

Chairman Klein: Dustin hit on it, the gorilla was the WAWS project and I know I was part of its creation and it has turned into a real big animal and I think we are still trying to pull back and figure out how we can get a better handle on what's going on and how we can treat the independent more fairly.

Brian Johnson: I am not in support of one group or the other as far as the water issue but most times if you sit down, various groups sit down together you can work something out.

Chairman Klein: Closed the hearing.

2017 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

Engrossed HB 1162
3/15/2017
Job Number 29226

- Subcommittee
 Conference Committee

Committee Clerk Signature

Eva Liebelt

Explanation or reason for introduction of bill/resolution:

To provide for a legislative management study of competition between government and private industry

Minutes:

No Attachments

Chairman Klein: I am looking for some discussion. This was generated because of the WAWS program and I was chatting a bit with Sherry from OMB and this opens a ton of other issues as it relates to the workers out at the Penitentiary, Rough Riders Industries and how that applies. She rattled off a ton of things that they are monitoring but understanding that there are a lot of hidden things in there.

Senator Roers: I was approached on Friday morning about this very issue about WAWS and the problems and trying to unwind it and what could be done. It seems to me if that was his major focus for this bill it is too little too late.

Senator Casper moved a do not pass.

Senator Roers seconded the motion.

Roll Call Vote: Yes-6 No-1 Absent-0

Senator Poolman will carry the bill.

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. Engrossed HB 1162**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Senator Casper Seconded By Senator Roers

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Marcellais	x	
Vice Chairman Campbell		x			
Senator Roers	x				
Senator Burckhard	x				
Senator Casper	x				
Senator Poolman	x				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Senator Poolman

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1162, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO NOT PASS (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1162 was placed on the Fourteenth order on the calendar.

2017 TESTIMONY

HB 1162

Jan 16, 2017

HB 1162 – Testimony by Dustin Gawrylow (Lobbyist #215) North Dakota Watchdog Network

*****Amendment Needed: Apply toward all political subdivisions as well.*****

HB 1162 is a bill to protect the philosophy of a free and open market when government is involved in providing services for the market.

In North Dakota, we have a long history of mixing government and business together which started and never really stopped after the Non-Partisan League days 100 years ago.

Today, North Dakota's economic needs and its business friendly approach require a way for private industry to react to the various ways North Dakota's business activities affect the free market.

Businesses need a way to petition their government without expending financial costs in court.

By creating a mechanism for businesses to petition the public Service Commission for an evaluation as to whether the government funded and managed competition they deal with is fair, North Dakota gives businesses a lower cost alternative to lawyers and courts.

This bill grants businesses access to elected officials who can evaluate the governments' role in the free market effectively as the PSC already regulates monopolies.

This bill should have limited financial impact on the PSC as any utilization of this law would be worked into the PSC's regular business.

All North Dakotans should seek to find ways to limit the government's involvement in the free market, and thereby limit the taxpayers exposure to market-driven instability.

House Bill 1162

Presented by: John Schuh
Public Utility Staff Counsel
Public Service Commission

Before: House Industry, Business and Labor Committee
The Honorable George Keiser, Chairman

Date: January 16, 2017

TESTIMONY

Mister Chairman and committee members, I am John Schuh, Staff Counsel with the Public Service Commission. The Public Service Commission asked me to testify today in opposition to House Bill 1162.

HB 1162 creates a new section under chapter 49-02, which allows an individual directly affected by competition with a state agency or institution to present a case to the Commission. Then, if determined to be in competition with private enterprise, the Commission will direct the state institution to terminate the activity. HB 1162 creates a number of concerns for the Commission.

It is unclear how the bill will affect budgets, but we believe the impact could be substantial. Although the number of complaints and the nature of the hearings are difficult to anticipate, even one hearing can tie up substantial agency resources. In addition to Commissioner and staff time, hearings generally require an administrative law judge to hear motions, make procedural determinations, and generally regulate the course of the proceeding. Furthermore, this bill would require state institutions to commit resources to defending their programs and

services during hearing and through appeals. This will include counsel, either through the office of the attorney general or outside, and other agency staff related to the programs and actions that are the subject of the challenge. The bill will also impose additional costs on the Public Service Commission, and correspondingly on the impacted agencies. If the commission ultimately needs to set the rates or fees an agency may charge for the service or product at issue, the commission will need to commit additional resources to that ratemaking function, and the impacted agency stands to lose revenue from the change.

The expense of the bill is unknown at this time, but again, is potentially vast. Chapter 49-02 and the bill do not contain a definition of "state agency or institution." This may result in complaints being filed against any number of institutions, from the Department of Health, universities, prisons, information technology providers, to even local government programs. Finally, generally one department of state government is and should be restrained from exercising powers over other departments. HB 1162 requires the commission to make determinations of law beyond what is normal jurisdiction for an administrative agency.

HB 1162 delegates authority to the commission to make determinations as to statutory authority of agencies and government subdivisions granted by the legislature. An affected agency may be a constitutional agency headed by an elected official, or an appointed agency under the umbrella of the governor. Under either scenario, Public Service Commission adjudication of that agency's statutory authority would be inappropriate. The commission would be forced to make legal

determinations involving construction and interpretation of statutes which more appropriately belong to the judiciary.

For all of these reasons, the Public Service Commission asks that the committee recommend a Do Not Pass on House Bill 1162.

Mister Chairman, this concludes our testimony. I will be happy to answer any questions.

Jan 16, 2017

3

Office of Management and Budget

Testimony on HB 1162

House Industry, Business and Labor Committee
Chairman George Keiser

Chairman Keiser and members of the Committee. My name is Sherry Neas, Office of Management and Budget, Central Services Division.

OMB is opposed to HB 1162 as written.

The language of the bill is very broad. Line 8 – 10 state:

Upon petition by an individual directly affected by competition with a state agency or institution, the public service commission shall determine whether the agency or institution is in competition with private enterprise.

While this is a new section in Chapter 49-02 related to the Powers of Commission Generally, the new section does not contain language that defines the scope of what can be petitioned.

OMB is concerned that this broad language could allow the petition of many functions of state agencies and institutions. Many duties and functions performed by state government also exist in private sector. Would this new section allow a petition of any situation of potential government – private sector competition?

Using OMB as an example, OMB has central supply, printing operations, and surplus property sales. There are many other agencies that provide goods and services that are also provided by private sector individuals and companies. State agencies usually have statutory authority to perform these functions for government. Procurement law allows state agencies obtain needed goods and services from correctional institutions and other government agencies.

Such a broad interpretation, creates the potential for many petitions that could result in substantial workload for the Public Service Commission and interruption of state agency operations.

In speaking with Representative Toman, OMB learned that this broad interpretation was not the intent of the bill.

That concludes my testimony, and I would welcome any questions you might have.

Sherry Neas, Director, Central Services Division
Office of Management and Budget (OMB)
sneas@nd.gov
701-328-1726
Cell: 701-426-2841

Jan 25, 2017

17.0415.02001
Title.

Prepared by the Legislative Council staff for
Representative Toman
January 18, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1162

Page 1, line 9, after "institution" insert "or a political subdivision"

Page 1, line 10, after "institution" insert "or political subdivision"

Page 1, line 11, after "institution" insert "or a political subdivision"

Page 1, line 14, after "institution" insert "or political subdivision"

Page 1, line 15, after "a." insert "The state agency or institution or political subdivision is required by law to provide the service:

b."

Page 1, line 16, replace "b." with "c."

Page 1, line 16, remove "at least ten"

Page 1, line 17, remove "percent"

Page 1, line 17, replace "a" with "the"

Page 1, line 17, after "agency" insert "or"

Page 1, line 17, after "institution" insert "or political subdivision"

Page 1, line 18, replace "c." with "d."

Page 1, line 19, replace "d." with "e."

Page 2, line 3, after "state" insert "or political subdivision"

Page 2, line 4, after "institution" insert "or a political subdivision"

Page 2, line 8, after "institution" insert "or a political subdivision"

Page 2, line 9, after "state" insert "and the political subdivision"

Page 2, line 10, after "agency" insert "or"

Page 2, line 10, after "institution" insert "or a political subdivision"

Renumber accordingly

Jan 25, 2017

2

17.0415.02002
Title.

Prepared by the Legislative Council staff for
Representative Toman
January 19, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1162

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - COMPETITION BETWEEN GOVERNMENT AND PRIVATE INDUSTRY. During the 2017-18 interim, the legislative management shall study competition between government and private industry. The study must include input from business owners in state trade associations and state and national experts on business and economics. The study must analyze areas in which government entities may have conflicts of interest with private industry and whether the government's role in providing specific services deters nonprofit organizations from performing the same service. The study also must determine the industries and regions in which government competition impacts businesses and industries and the fiscal loss to the state when a government entity performs a service also provided by a private industry. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly

HB 1162 – Testimony by Dustin Gawrylow (Lobbyist #215) North Dakota Watchdog Network

HB 1162 is a study bill to protect the philosophy of a free and open market when government is involved in providing services for the market.

In North Dakota, we have a long history of mixing government and business together which started and never really stopped after the Non-Partisan League days 100 years ago.

Today, North Dakota's economic needs and its business friendly approach require a way for private industry to react to the various ways North Dakota's business activities affect the free market.

By creating a mechanism for the legislature to study whether the government funded and managed competition they deal with is fair, North Dakota can pave the way to reduce its impact on the free market.

All North Dakotans should seek to find ways to limit the government's involvement in the free market, and thereby limit the taxpayers exposure to market-driven instability.

This study bill passed the House by a vote of 82-8, after a House IBL vote of 12-2.

We ask you to concur with the overwhelming support this bill has and give it a DO PASS without any amendment.