

## Department of Planning and Budget 2004 Fiscal Impact Statement

- 1. Bill Number**      HB 918
- House of Origin**     Introduced     Substitute     Engrossed
- Second House**       In Committee  Substitute     Enrolled
- 2. Patron**            Phillips
- 3. Committee**        Passed Both Houses
- 4. Title**              Exclude convenience stores and certain gas stations from the Health Department's restaurant regulation
- 5. Summary/Purpose:** Enrolled HB 918 would exclude from the definition of restaurant, and thereby from regulation as a restaurant, convenience stores or gas stations having 15 or fewer seats at which food is served to the public on the premises, if they are subject to Department of Agriculture and Consumer Services (VDACS) regulation and they are not associated with a national or regional restaurant chain. The Senate Substitute adds a provision specifying that such facilities shall remain responsible for collecting any applicable local meals tax.

**6. Fiscal Impact Is Final:**

**6a. Expenditure Impact:**

<i>Fiscal Year</i>	<i>Dollars</i>			<i>Positions</i>
	<i>GF</i>	<i>NGF</i>		
2003-04	\$ 0	\$ 0	0.0	
2004-05	83,598	20,000	2.0	
2005-06	83,662	20,000	2.0	
2006-07	83,662	20,000	2.0	
2007-08	83,662	20,000	2.0	
2008-09	83,662	20,000	2.0	
2009-10	83,662	20,000	2.0	

*Note: VDACS considers this a moderate estimate of additional cost. The actual total spending amount could be lower if HB 766 passes or significant economies of scale can be achieved due to overlap with existing inspections. However, a greater degree of overlap would reduce SF revenues.*

**6b. Revenue Impact Is Indeterminate:**

*Dollars*

<i>Fiscal Year</i>	<i>GF</i>	<i>NGF</i>	<i>Positions</i>
2003-04	\$ 0	\$ 0	N/A
2004-05	0	20,000	N/A
2005-06	0	20,000	N/A
2006-07	0	20,000	N/A
2007-08	0	20,000	N/A
2008-09	0	20,000	N/A
2009-10	0	20,000	N/A

*Note: VDACS considers this a high-end estimate of additional revenues. Data is not available to determine how much revenue will be generated by the new inspection activity.*

**7. Budget amendment necessary:** Yes. Item #105, General Food Inspection, budget of Virginia Department of Agriculture and Consumer Affairs (VDACS)

**8. Fiscal implications:**

**Current Situation**

VDACS currently has general authority under Title 3.1 of the *Code of Virginia* to inspect these establishments and may already be inspecting the non-restaurant portion of the facilities. However, pursuant to an interagency Memorandum of Understanding, VDACS tries not to inspect when VDH is inspecting the same facility.

Unfortunately, current data does not allow a determination of how many of the 600 such facilities currently inspected by VDH are already being inspected by VDACS, but some amount of overlap is assumed. Thus, VDACS estimates that the responsibility for inspecting the restaurant portions of 500 facilities would be shifted to their inspection staff.

**Meals Tax Impact on Localities**

Some localities now levy a meals tax on the restaurant portion of these facilities. Had this group of facilities been removed from the definition of restaurants, as the earlier versions of the bill provided, localities would have lost meals tax revenue. By moving the proposed exemption for these facilities from the definitional portion of the Health Code (§31.1-1) to the direct exemption portion of the Health Code (§35.1-25), the facilities continue to be defined as restaurants and localities continue to be free to tax them as they have in the past.

**Virginia Department of Health (VDH)**

***Expenditure Estimates:*** Under HB 918, VDH would no longer inspect and permit the food service portion of approximately 600 currently permitted restaurants located in convenience

stores or gas stations. (The Virginia Department of Agriculture and Consumer Services already is responsible for inspecting the retail portion of convenience stores.)

The current VDH responsibility for inspecting these 600 operations translates into three environmental health FTEs. However, because the affected establishments are spread all across the Commonwealth, the three FTEs are not discrete positions but rather are comprised of a very small portion of each local health department's environmental health operation. Since no discrete staff impacts can be identified and other workloads for environmental specialists tend to rise as population rises, no staffing reductions would be feasible.

The number of restaurants, as well as food festivals and other operations that VDH is required to inspect in order to prevent food-borne illness outbreaks continues to grow over time. While VDH may lose up to 600 sites statewide as a result of this bill, the agency is likely to pick up nearly that many in new ventures.

In addition, the \$40 fee that VDH collects does not cover the actual cost of inspection, so that net growth places an additional burden on VDH's state-local cooperative budget. No new general fund resources are provided to cover either caseload growth or revenue shortfalls, and thus no net savings are anticipated.

**Revenue Estimates:** VDH will probably lose between \$10,000 and \$24,000 in revenue from inspection fees, but the amount is small and other anticipated changes in revenues are expected to obscure the impact of the loss. Thus, no budget adjustment would be appropriate. Therefore, no revenue change for VDH is reflected in Item 6b, above.

### **Virginia Department of Agriculture and Consumer Affairs (VDACS)**

Pursuant to §3.1-399, VDACS has responsibility for inspecting restaurants to assure the purity, cleanliness, and proper storage of foods. Heretofore, the inspection mandate to VDH has been deemed, as a practical matter, to override this general VDACS authority with regard to these specific restaurant facilities. However, with the removal of the VDH mandate, the responsibility will revert to VDACS.

**Revenue Estimates:** VDACS has no way of determining how many of the 600 facilities covered by HB 918 they are already inspecting with regard to their non-restaurant portions but for the purposes of this Fiscal Impact Statement, they are estimating 100. If VDACS inspectors are already inspecting a facility, then no new fee would be charged and revenues would be lower than estimated in Item 6.

VDACS estimates that assessing a new \$40 annual inspection fee on these establishments would generate a maximum revenue of \$20,000 each year. Because VDACS revenue is so uncertain, however, no estimate is included in Item 6b above.

**Expenditure Estimates:** VDACS indicates that new duties cannot be absorbed without reducing performance of other duties and no non-general fund money is available to fund the new responsibilities.

Consistent with current VDACS regulations, two inspections would be conducted per year per establishment, on average. The agency estimates that two new Food Safety Specialist positions would be required to conduct the 1,000 additional or expanded inspections per year. The expenditure impact for the first year would be \$103,598 for costs associated with salary, equipment, supplies and training, and \$103,662 for the second year for costs associated with salary and supplies.

**Potential Impact of HB 766:** VDACS estimates that if HB 766 passes, as appears likely, 300 facilities (600 annual inspections) might be eliminated from the HB 918 impact, because such facilities sell only packaged foodstuffs. As a result, total expenditures and revenues estimated in Item 6, above, would be reduced by 60 percent, as follows:

**Expenditure Impact:**

<i>Fiscal Year</i>	<i>Dollars</i>		<i>Positions</i>
	<i>GF</i>	<i>NGF</i>	
2003-04	\$ 0	\$ 0	0.0
2004-05	33,439	8,000	2.0
2005-06 and subsequent years	33,464	8,000	2.0

**Revenue Impact Is Indeterminate:**

<i>Fiscal Year</i>	<i>Dollars</i>		<i>Positions</i>
	<i>GF</i>	<i>NGF</i>	
2003-04	\$ 0	\$ 0	N/A
2004-05 and subseq. years	0	8,000	N/A

If no new funding is provided with passage of HB 918, VDACS may find it necessary to request additional funding in the 2005 Session budget cycle.

**9. Specific agency or political subdivisions affected:**

- Virginia Department of Agriculture and Consumer Affairs (VDACS)
- Virginia Department of Health (VDH), including all local health departments
- Independent local health departments in Fairfax County, Richmond, and elsewhere

**10. Technical amendment necessary:** No

**11. Other comments:** Passage of HB 766 would eliminate VDACS' inspection requirements for any retail establishment that sells only pre-packaged food items, thereby reducing both the costs and revenues anticipated as a result of implementing HB 918.

**Date:** 3/18/04 / RMC

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c: Secretary of Health and Human Resources