

Department of Planning and Budget 2009 Fiscal Impact Statement

1. Bill Number: HB 1704

House of Origin X Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. Patron: Howell, A.T.

3. Committee: General Laws

4. Title: **Virginia Smoke Free Air Act; smoking in public places; civil penalties**

5. Summary: Moves the law restricting smoking in buildings and other enclosed areas from the title relating to local government (15.2) to the title relating to health (32.1) and prohibits smoking indoors in most buildings or enclosed areas frequented by the public. Exceptions are provided for (i) private homes, private residences, and private automobiles, and home-based businesses, unless used in conjunction with a licensed child care, adult day care, or health care facility; (ii) private clubs, except when being used for functions attended by persons other than members and invited guests; (iii) hotel or motel rooms designated as smoking rooms that are offered for rent to the public; (iv) specialty tobacco stores; (v) tobacco manufacturers; and (vi) private and semiprivate rooms in nursing homes and long-term care facilities. The bill requires the posting of “No Smoking” signs inside and at the entrances of areas where smoking is prohibited. Any person who continues to smoke in an area in which smoking is prohibited will be subject to a civil penalty of not more than \$100 for the first offense, and \$250 for subsequent offenses. Failure to comply with the smoking restrictions will subject proprietors to a \$200 civil penalty for the first offense and \$500 for subsequent offenses.

6. Fiscal Impact Estimates: See item #8.

7. Budget Amendment Necessary: Yes, Item 296.

8. Fiscal Implications:

Expenditure Impact

The Virginia Department of Health (VDH) currently inspects the restaurants which are licensed by the Board of Health. However, it appears that this bill expands VDH’s role to inspect more facilities and buildings frequented by the public, which include, but not are not limited to, retail stores, recreational facilities, educational facilities, common areas in apartment buildings, bars, and theaters. If responsibility for enforcement lies with VDH, additional staffing would be required to meet the enforcement requirements of this bill.

The minimum fiscal impact could be \$2,080,190 (\$57,255 + \$800 + \$1,379 x 35) in FY 2010. It is estimated that an additional 35 FTEs (1 per health district) would be required. The Environmental Health Specialist position is used to estimate the cost of these positions. The annual average salary for an Environmental Health Specialist is approximately \$41,000. Associated benefits would be \$16,255, which results in a total of \$57,255. In addition, there

would be a one-time computer and printer cost of \$800, and on-going VITA costs of \$1,379. The fiscal impact for FY 2011 would be \$2,052,190 ($57,255 + \$1,379 \times 35$).

However, there may possibly be 150,000 to 200,000 facilities statewide that meet the criteria, and the 35 additional employees could be insufficient to meet the required enforcement. VDH is unable to estimate the exact number of staff required. However, adding just three additional FTEs to each district would cost \$6,240,570 ($\$2,080,190 \times 3$) in FY 2010, and \$6,156,570 ($\$2,052,190 \times 3$) in FY 2011.

Any additional costs to the districts would be shared through the cooperative agreement split, which is about 60 percent general fund and 40 percent locality match. However, there would be a challenge for some poorer localities to meet the general fund match allocation.

VDH currently employs a Tobacco Control Program Manager who would be responsible for overseeing promulgation of regulations. Therefore, no fiscal impact would be realized as a result of meeting this requirement. In addition, VDH has developed and implemented (ongoing, continuous) an education program to explain the medical rationale, environmental purpose, requirements, and benefits related to the provisions of this bill. Therefore, no fiscal impact would be realized as a result of meeting this requirement.

In addition, there could be costs to the courts for processing the civil penalties.

Revenue Impact

The number of potential violators of this bill is unknown; therefore, the estimated revenue generated from the collection of civil penalties cannot be determined.

9. Specific Agency or Political Subdivisions Affected: Virginia Department of Health and the Supreme Court of Virginia

10. Technical Amendment Necessary: No.

11. Other Comments: VDH assumes that it will have responsibility for enforcement since §32.1 is located within VDH's responsibility. However, law enforcement officers already have access to all establishments and locations identified as covered by this bill.

This legislation is similar to HB 2067 and SB 1057.

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cc: Secretary of Health and Human Resources