

State Corporation Commission 2012 Fiscal Impact Statement

1. Bill Number: HB464

House of Origin	☒ Introduced	☐ Substitute	☐ Engrossed
Second House	☐ In Committee	☐ Substitute	☐ Enrolled

2. Patron: Byron

3. Committee: Commerce and Labor

4. Title: Virginia Health Benefit Exchange.

5. Summary: Creates the Virginia Health Benefit Exchange to make qualified health plans and qualified dental plans available to qualified individuals in the Commonwealth and to provide for the establishment of a Small Business Health Options Program to assist qualified small employers in this Commonwealth in facilitating the enrollment of their employees in qualified health and dental plans offered in the small group health insurance market. The intent of the Exchange is to reduce the number of uninsured, promote a transparent and competitive health insurance marketplace, promote consumer choice and education and assist individuals with access to programs, premium assistance tax credits and cost-sharing reductions. The Exchange will be established and operated by a new division within the State Corporation Commission. The Exchange will fund its operations primarily through special fund revenues generated by assessment fees on health insurers offering plans in the Exchange. The measure shall expire if any section, clause, provision, or portion of Title I, subtitle D of the federal Patient Protection and Affordable Care Act shall be repealed or held invalid or unconstitutional by any court of competent jurisdiction.

6. Budget Amendment Necessary: Yes, Item 473 of House Bill 30 (General Fund appropriation)

7. Fiscal Impact Estimates: The costs to carry out the provisions of this bill are not available. See Item 8.

8. Fiscal Implications: The second enactment clause of House Bill 464 requires that the State Corporation Commission submit a report to the Governor and the General Assembly on December 1, 2012 that describes the budget for implementing and carrying out the provisions of the Virginia Health Benefit Exchange Act. The report shall identify the funding mechanism that the Commission will use to fund the operation of the Exchange beginning January 1, 2015. To meet the requirements of the second enactment clause of this bill, a general fund appropriation not to exceed \$850,000 for fiscal year 2013 will be needed to prepare the report and proposed budget required under this bill.

Based on the current federal timeline requiring submission by June 29, 2012 for applications by states for federal funding to implement an exchange, federal funding may not be available

to the state to implement this bill since it does not take effect until July 1, 2012. However, the federal government may change the deadline.

At this time there is not sufficient information to determine any potential impact on the Department of Medical Assistance Services and the Virginia Department of Health.

In addition to the fiscal impact of the creation of a new Exchange division within the State Corporation Commission, House Bill 464 gives the Commission's Bureau of Insurance additional responsibilities related to the Exchange, including, in consultation with the Exchange, certifying a health benefit plan as a qualified health plan and other related functions. The Commission recognizes that additional resources will be needed in order for the Bureau of Insurance to perform these functions, including possible system enhancements and software purchases. The report that the State Corporation Commission will submit on December 1, 2012 will include a proposed budget in which the costs to both Commission divisions for operating the Exchange will be quantified.

9. Specific Agency or Political Subdivisions Affected: State Corporation Commission, Virginia Department of Health, and the Department of Medical Assistance Services

10. Technical Amendment Necessary: The State Corporation Commission offered the patron of House Bill 464 the following technical comments for clarity and consistency among and between defined terms and/or for conformity with the corresponding federal requirements:

- Line 25 – After the definition of Bureau, we suggest adding a definition for “Commission” to mean the State Corporation Commission.
- Line 30 – In the definition of “eligible entity,” we suggest that the Bureau of Insurance be named, so that the definition reads “Eligible entity means the Bureau of Insurance, the Department of Medical Assistance Services....”
- Line 41 – “health plan” should be “health benefit plan....”
- Line 73 – The reference to the Social Security Act should be 1882(g)(1).
- Line 80 – In order to clarify that all types of dental plans may participate as qualified dental plans, we suggest that the definition of “health carrier” be amended on line 80 as follows:
 - “...health service corporation, a dental plan organization, dental services plan, or any other entity....”
- Line 88 – The definition of “qualified employee” should be amended to “~~qualified~~ eligible employee.”

- Line 90 – The definition of “qualified employer” is limited here to only employers whose principle place of business is in Virginia. The federal law is more expansive. We suggest that the definition be amended on line 93:
 - “...provided that the employer (i) has it principal place of business in the Commonwealth and elects to provide coverage through the SHOP exchange to all of its eligible employees, wherever employed; or (ii) elects to provide coverage through the SHOP exchange to all of its eligible employees who are principally employed in this Commonwealth.”
- Lines 106, 118, 121, 152, 192, 240, 429, and 430 – “employees” should be “eligible employees”
- Line 108 – The definition of “small employer” should be amended to allow for self-employed persons to qualify for insurance under the SHOP exchange as of January 1, 2016, as follows:
 - “Small employer” means an employer that employed an average of (i) at least two but not more than ~~(i) prior to January 1, 2016, 50 employees...~~ or (ii) commencing January 1, 2016, up to 100 employees....”
- Line 127 – The definition of “state-mandated health benefit” should be amended at line 126:
 - “...accident and sickness insurance, an accident and sickness subscription contract, or a health maintenance organization health care plan ~~or a contract for a health-related condition~~ that....”
- Lines 152, 237, 239, 240, 259, and 268 – Qualified dental plans should be included here as they have been included along with qualified health plans in other applicable text throughout.
- Lines 191 and 241 – The term “SHOP Program” is undefined; it likely should be “SHOP exchange.”
- Lines 203 – 211 – We recommend striking subsection E of Section 38.2-6405. The Exchange will not be a purchaser of insurance. We suggest that this provision is not appropriate or necessary.
- Line 237 – “qualified plan” should be “qualified health plan.”

- Line 261 – The reference to “12 c” should be “12 b.”
- Line 297 – The term “health insurance issuers” should be the defined term “health carriers.”
- Line 341 and Line 457 – Virginia’s insurance laws refer to “agents” and “producers,” but do not refer to “brokers;” therefore, we suggest striking the term “broker” wherever it appears, including these two lines noted.
- Lines 358, 435, 438, 443, 446 – “health plan” should be “health benefit plan.”
- Line 402 – The term “issuer” should be “health carrier.”
- Line 403 – A period should be placed after “purchase separately”
- Lines 421-423 – Hearings meeting the requirements of the Administrative Process Act conflict with lines 167 – 170 of the bill. On Line 421, after “conducted,” strike the remainder of lines 421-423 and insert “by the Commission in accordance with its rules of practice and procedure.”
- Line 437 - The term “Individual Exchange” should be the “American Health Benefit Exchange.”
- Line 483 – “health plan” should probably be “health carrier.”
- Lines 502 through 505 – We suggest the following changes to more accurately reflect that the Commission will actually contract with eligible entities on behalf of the Exchange:

The ~~Exchange~~ Commission may contract with other eligible entities and enter into memoranda of understanding with other agencies of the Commonwealth to carry out any of ~~it's~~ the functions of the Exchange, including agreements with other states or federal agencies to perform joint administrative functions. Such contracts are not subject to the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

11. Other Comments: House Bill 464 is identical to Senate Bill 496. Senate Bill 488 is similar to HB 464. The following bills create the Virginia Health Exchange Authority as a political subdivision of the Commonwealth: House Bill 357, House Bill 402, Senate Bill 383 and Senate Bill 615. All of these bills have been assigned to subcommittees in their respective houses.

Date: 01/24/12/V. Tompkins
cc: Secretary of Commerce and Trade
Secretary of Health and Human Resources