

State Corporation Commission 2020 Fiscal Impact Statement

1. Bill Number: SB226

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

2. Patron: Edwards

3. Committee: Commerce and Labor

4. Title: Virginia Health Benefit Exchange.

5. Summary: Creates the Virginia Health Benefit Exchange, which will be established and operated by a new division within the State Corporation Commission (SCC). The Exchange shall facilitate the purchase and sale of qualified health plans and qualified dental plans to qualified individuals and qualified employers. The Exchange shall make qualified plans available to qualified individuals and qualified employers by July 1, 2023, unless the SCC postpones this date. The measure authorizes the SCC to review and approve accident and sickness insurance premium rates applicable to health benefit plans in the individual and small group markets and health benefit plans providing health insurance coverage in the individual market through certain non-employer group plans. The Exchange will be funded by assessments on health insurers offering plans in the Exchange. A health plan will not be required to cover any state-mandated health benefit if federal law does not require it to be covered as part of the essential benefits package. The essential health benefits are items and services included in the benchmark health insurance plan, which is the largest plan in the largest product in the Commonwealth's small group market as supplemented in order to provide coverage for the items and services within the statutory essential health benefits categories. The SCC may contract with other eligible entities and enter into memoranda of understanding with other agencies of the Commonwealth to carry out any of 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 (Â§ 2.2-4300 et seq.). The measure repeals a provision enacted in 2013 that prohibits an agent, employee, officer, or agency of the Commonwealth from taking any action to establish a health benefit exchange.

6. Budget Amendment Necessary: Yes. Neither House Bill 29/Senate Bill 29 no House Bill 30/Senate Bill 30 provide a specific estimate of start-up costs which are expected to be significant. House Bill 30/Senate Bill 30 do give the State Corporation Commission the authority to apply for a treasury loan, but such authority presumably will not become effective until after the start of the next biennium (July 1, 2020). The proposed language for Item 481 found in House Bill 29/Senate Bill 29 is very problematic. We suggest amending House Bill 29/Senate Bill 29 as follows:

Item 481 (page 211), Line 16, B: Strike "existing nongeneral fund cash balances" and insert "any unused funds appropriated for plan management functions ..."

7. Fiscal Impact Estimates: Fiscal impact estimates are preliminary. The proposed biennium budget includes a non-general appropriation for the State Corporation Commission to operate the on-going operation of the Exchange in the amount of \$13,500,000 for Fiscal Year 2021 and \$41,500,000 for Fiscal Year 2022. This appropriation only authorizes a specific amount for

ongoing operations after the Exchange has begun to generate income from assessments. Although some authority is provided in Item 487, which authorizes an interest-free treasury loan for start-up costs, a specific amount for such costs is not provided.

7a. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2020	\$100,000	0	GF
2021			
2022			
2023			
2024			
2025			
2026			

- 8. Fiscal Implications:** The Virginia Health Benefit Exchange (Exchange) would be created as a division of the State Corporation Commission and be funded by assessments on health insurers. The Commission may contract with appropriate entities to perform some of the administrative functions of the Exchange.

The estimated expenses for costs associated with creation and operation of an exchange were based on a high-level analysis of the budget of the estimated budget of the Pennsylvania State Based Exchange. If an exchange is created and operated by the Commission in Virginia, the Commission would plan to use the federal platform for its first year and transition to its own website and platform in the second year of operation for functions including shopping, enrollment and eligibility determinations.

Revenue estimates are based on the 2018 market enrollment and premiums, adjusted for anticipated enrollment changes. The revenue estimate assumes that the exchange will receive .5% of premiums assessed of health insurers in its first year while the exchange makes use of the federal platform, and 3% of premiums in its second year when the exchange transitions to its own website and platform.

- 9. Specific Agency or Political Subdivisions Affected:** State Corporation Commission

- 10. Technical Amendment Necessary:** In addition to the amendments discussed at Item 11, the State Corporation Commission offers the patron of Senate Bill 226 the following technical comments:

- § 38.2-326 (the Commission's plan management functions) appears to conflict with the provisions of Senate Bill 162. Consideration should be given regarding the repeal of § 38.2-326 along with removing references to § 38.2-326 in the sweep-in provisions of §§ 38.2-4214, 38.2-4319, and 38.2-4509. If the Virginia Department of Health (VDH) is to continue its current role in plan management that involves providing certificates of quality assurance required for health plans to be considered qualified health plans eligible to participate in federal or state exchanges, §32.1-16 would also need to be amended to reference the Marketplace Virginia.
- Section 38.2-6403 (Line 262) includes a provision that the Advisory Committee include "one representative of a participating qualified health plan". The Bureau of Insurance recommends striking the word "participating" given the fact that participation by carriers in the exchanges has changed annually based upon which carriers apply for and are approved to offer coverage.
- Section 38.2-6410 regarding assessments does not provide the rate or basis of the assessment or whether there would be a minimum assessed if no business was written. Consideration should be given regarding the addition of clarifying language around rate, basis, and minimum assessments, as well as inclusion of the following on Line 548 after "appropriate.":

"Such assessment shall be apportioned, assessed, and paid as prescribed by §38.2-403."

- Subsection B of § 38.2-6410 B provides that the Marketplace shall have funding from the sources described in subsection A in an amount sufficient to support its ongoing operations beginning not later than the January 1 that follows the date the Marketplace begins making health plans available. Insurer annual statements are due to the Bureau of Insurance on March 1. As a result, the Commission suggests the following amendment to allow the Bureau the time necessary to complete review of annual statements to ensure correct assessment amounts are collected:
- On Line 550, strike "January" and insert "March".
- On Line 422, after "Act", strike the remainder of Lines 456 and 457 since that provision of the federal law has now been repealed.
- On Line 427, after "coverage", insert "throughout each service area" due to a change in federal rules.
- On Lines 517 and 521, after "health benefit plans", insert "subject to § 2701 of the PHSA and" due to a change in federal rules.

11. Other Comments: The State Corporation Commission is directed to establish and operate the Marketplace Virginia. To facilitate that process, the Commission asks the patron to consider two amendments to Senate Bill 226 which it believes will increase the chances for a successful implementation of the new division within the Commission:

Beginning on Line 243, strike subsection E in its entirety. Also, on Line 307, after “website”, strike “developed and maintained by the Virginia Secretary of Health and Human Resources”. These amendments will ensure that responsibility for all aspects of technology infrastructure for the Marketplace Virginia, including its Internet website, will be under the direction of the Commission. As a result of the amendment on Line 307, on Line 329, after the words “subsidy program”, strike “and” insert “provide a link to” so that the Commission will inform individuals of the various programs listed in subdivision 8 of § 38.2-6405 and provide a link to these programs only.

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Date: 1/16/20/V. Tompkins