

Department of Planning and Budget 2010 Fiscal Impact Statement

1. Bill Number: HB654

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

2. Patron: Armstrong

3. Committee: House General Laws

4. Title: Administrative Process Act; review of agency decision.

5. Summary: This bill makes a final decision under the Administrative Process Act reviewable by a de novo appeal.

6. Fiscal Impact Estimates: See Item 8.

7. Budget Amendment Necessary: Yes.

8. Fiscal Implications: The analysis provided is preliminary. This bill is expected to impact agencies as diverse as the circuit courts, the Office of the Attorney General (OAG), and most executive branch agencies who have case decisions rendered under the Administrative Process Act (Virginia Code § 2.2-4000 et seq.). The executive branch agencies experiencing the most significant impact would likely be the Department of Alcoholic Beverage Control (ABC), the Department of Health Professions (DHP), the Department of Medical Assistance Services (DMAS), the Department of Professional and Occupational Regulation (DPOR), the Department of Social Services (DSS), and the Virginia Department of Health (VDH).

The *Supreme Court* anticipates a “weighty impact” on the circuit courts based on a significant increase in the number of appeals and the complexity of trying the cases de novo rather than based on the administrative record.

The *OAG* anticipates that they would need a minimum of 6 new attorney positions (estimated cost of \$672,000) and 3 paralegal positions (estimated cost of \$240,000), totaling \$912,000.

ABC reports that in fiscal year 2009, legal fees payable to the OAG were \$164,000. This number is anticipated to at least double to \$328,000 if this bill were to pass. *ABC* also indicates that additional administrative costs associated with case preparation and possibly overtime for special agents would average \$30/hour.

DMAS reports an estimated fiscal impact of \$640,900 per year, including 9 FTE positions. This is based on an estimated 50% increase in provider formal appeals. In addition, *DMAS* points out that the increased uncertainty of the process would likely require the agency to settle or compromise significantly more cases. Therefore, it would be very difficult to predict the cost of this trial strategy to the Commonwealth for these cases.

DSS reports an estimated fiscal impact of \$244,354 per year based on an average of 20% appeals of benefits cases and 50% appeals of child protective services cases. These numbers do not include the required 15.5% in local matching funds.

Generally, the costs noted by these agencies do not include overtime, costs to travel to various courts around the state, out-of-the office time for agency personnel who would be required to testify, and other similar costs that are difficult to quantify, as they would differ for each agency and likely for each case. However, taken in the aggregate, they would likely prove to be significant and a strain on agency resources.

The total financial impact cannot be quantified due to the uncertainty over the number of agencies that would be affected as well as the number of cases that would be appealed. However, it is projected that this bill would cost agencies at least \$1,961,254 as discussed above.

- 9. Specific Agency or Political Subdivisions Affected:** OAG, Supreme Court (primarily the circuit courts), executive branch agencies including ABC, DHP, DMAS, DPOR, DSS, VDH, and others whose case decisions are made in accordance with the Administrative Process Act.

10. Technical Amendment Necessary: No.

11. Other Comments: No.

Date: revised on 2/9/2010 dpb