

Department of Planning and Budget 2012 Fiscal Impact Statement

1. Bill Number: SB319

House of Origin	<input checked="" type="checkbox"/>	Introduced	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Engrossed
Second House	<input type="checkbox"/>	In Committee	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Enrolled

2. Patron: Carrico

3. Committee: Commerce and Labor

4. Title: Unemployment compensation; misconduct and qualification for benefits; tests for nonprescribed controlled substances

5. Summary: This bill (i) provides that an unemployed individual is not eligible to receive unemployment benefits until a representative of the Virginia Employment Commission (VEC) has screened the individual to determine whether probable cause exists to believe the individual is engaged in the use of nonprescribed controlled substances. Probable cause is deemed to exist for any individual for whom a screening indicates reasonable cause to believe such use is occurring, or for any individual who, within the preceding 10 weeks, has been discharged from employment for misconduct consisting of use of a nonprescribed controlled substance. Once probable cause exists to believe an individual is using illegal drugs, VEC shall require a formal substance abuse assessment of the individual, which may include drug testing to be performed in accordance with or as equivalent to United States Department of Transportation-qualified drug screens (the bill repeals the allowance of tests to comply with any other standards). An individual who fails or refuses to participate in a screening or assessment without good cause or who tests positive for the use of a nonprescribed controlled substance shall be ineligible to receive unemployment benefits. In addition, the bill (ii) states that an individual who has been discharged from employment for misconduct consisting of use of a nonprescribed controlled substance will also be barred, during the following 10 weeks, from receiving unemployment benefits otherwise payable as a result of other employment; (iii) repeals the provision that currently permits VEC to consider evidence of mitigating circumstances in determining whether misconduct occurred is repealed; (iv) states that any benefits paid to an employee who has been discharged from employment for use of a nonprescribed controlled substance shall not be charged to the account of the employer that discharged the employee; and (v) denies benefits to an individual who has been rejected for offered employment as the result of either failing to appear for a drug screen that is a condition of a job offer or for testing positive for a nonprescribed controlled substance.

6. Budget Amendment Necessary: Yes, Item 124.

7. Fiscal Impact Estimates: Preliminary.

7a. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
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2012	\$0	0.00	n/a
2013	\$5,634,791	77.80	Not Specified
2014	\$5,634,791	77.80	Not Specified
2015	\$5,634,791	77.80	Not Specified
2016	\$5,634,791	77.80	Not Specified
2017	\$5,634,791	77.80	Not Specified
2018	\$5,634,791	77.80	Not Specified

8. Fiscal Implications: This bill requires VEC to screen applicants for use of nonprescribed controlled substances upon application for benefits. As such, the bill may result in additional costs to VEC due to additional requirements for developing a screening instrument, administering and evaluating screenings, formal substance abuse assessments, initial adjudication, and on appeal:

- Developing the screening instrument: The bill requires VEC to develop, in concert with the Department of Behavioral Health and Developmental Services (DBHDS), a screening instrument to determine whether probable cause exists to believe an individual is engaged in the use of a nonprescribed controlled substance. According to VEC, the development of an appropriate screening instrument may be complex and time-consuming and may cost as much as **\$100,000**. According to VEC, is unlikely that this cost could be paid from the federal grant funds the agency receives from the U.S. Department of Labor. Consequently, this cost would have to be come from some other source.
- Administering and evaluating screenings: The bill requires VEC staff to administer the screening test to every individual who applies for benefits. The screening is to be done at the time such application is made. During the period of January 1, 2008, through September 30, 2011, a total of 1,508,404 regular state unemployment insurance claims were filed with VEC; for an annual average of 402,404 per year. VEC estimates that the bill would increase the amount of time needed to review each claim by approximately 10 minutes per claim. In addition, the bill requires that VEC reassess the individual not more than every six months. Assuming a maximum of two screenings per year per the average of 402,404 claims per year, an additional ten minutes per claim would create an additional 8,048,080 hours of work for VEC staff. Based on the annual number of hours worked by a full-time employee (FTE) of 2,080, approximately **64.5 FTEs** would be needed to administer and evaluate screenings required by the bill. VEC estimates these positions to cost **\$3,003,442 per year** (based on the average salary of \$46,565 for a workforce services representative).
- Formal substance abuse assessments: For instances when a screening results in probable cause to believe an individual is engaged in the use of nonprescribed controlled substances, VEC must require claimants to participate in a “formal substance abuse assessment.” According to the bill, this may include drug testing to be performed by a laboratory accredited by the equivalent of the U.S. Department of Health and Human Services, the College of American Pathologists, or the American Association for Clinical Chemistry. According to VEC, no empirical data exists that can be used to accurately

forecast the number of individuals who might be required to submit to formal substance abuse assessments required by the bill. As such, this impact statement assumes that 10 percent of individuals who are initially screened would be required to submit to a formal substance abuse assessment. Per an informal survey of four companies that provide drug testing services to employers, VEC determined a range of cost of \$39.00 to \$70.00 per test and settled on a standard of \$45.00 per test (also the price of tests used by the Department of Transportation). Based on a 10 percent referral rate and an average cost of \$45.00 for a formal substance abuse assessment, VEC estimates that the cost of administering formal substance abuse assessments may total **\$1,810,800 per year**.

- **Initial Adjudication:** For instances where a positive outcome of a screening or assessment, or for when an individual refuses to participate in the screening or assessment, VEC is required, absent a showing of good cause, to issue a determination denying the individual benefits and providing them with appeal rights. VEC estimates that the number of claims that would require formal adjudication may equal what is currently experienced with another eligibility issue – the requirement that claimants be able to work, available for work and actively seeking work each week. During the last four years, VEC has issued an average of 24,334 determinations that found claimants were ineligible for benefits based on this current criterion. These determinations are made by a deputy following a fact-finding interview. A deputy typically issues 2,000 determinations each year. Thus, adding 24,334 more eligibility determinations (assuming that the requirement established by this bill would have similar results as current criterion), VEC estimates that this bill would require the hiring of an additional **12.2 FTEs** at a total cost of **\$646,002 per year** (based on the average salary of \$52,961 for a deputy).
- **Appeals:** Again based on the outcome of current criterion, VEC estimates that this bill may result in 1,367 additional appeals annually (based on an assumption of 17 percent of claims being appeals). Appeals examiners who conduct the hearings and issue the decisions typically handle 1,200 cases annually. Thus, an additional **1.1 FTEs** would be required to handle additional cases presumed to arise from this bill. This would represent an additional cost of **\$74,547 per year**.

	Cost per Year	Positions
Development of screening instrument	100,000	64.50
Conduct/evaluate screenings	3,003,442	0.00
Substance abuse assessment/drug test	1,810,800	0.00
Initial adjudication	646,002	12.20
<u>Appeals</u>	<u>74,547</u>	<u>1.10</u>
Total Estimated Potential Costs	\$5,634,791	77.80

At this time, it is not known whether or not the provisions of this bill would pose a conformity issue with federal unemployment benefit laws. If the bill is not declared as non-conforming,

federal appropriations may be used for the administration costs created by this bill. However, if the provisions of this bill are determined to be non-conforming, no federal dollars will be provided or permitted for use in administering the provisions of this bill. As such, the funding to support the administrative costs created by this bill would need to come from the agency's Special Unemployment Compensation Administration Fund (§ 60.2-314, Code of Virginia), or the state general fund.

Other provisions of this bill, as listed in items (ii) through (v) of the summary in item 5., above, are not anticipated to result in additional administrative costs to VEC, nor in additional costs to the state as a whole. In as much as these provisions may result in fewer benefits being paid to claimants, the bill could result in lower employment taxes charged to employers.

At this time, it is not known how this bill will impact the workload of the Department of Behavioral Health and Developmental Services.

9. Specific Agency or Political Subdivisions Affected: Virginia Employment Commission, Department of Behavioral Health and Developmental Services.

10. Technical Amendment Necessary: No.

11. Other Comments: HB148 and HB562 also require screening for the use of nonprescribed controlled substances in order to be eligible to receive unemployment insurance benefits.

Date: 1/20/2012