

**State Corporation Commission  
2013 Fiscal Impact Statement**

**1. Bill Number:** HB2246

**House of Origin** ☒ Introduced ☐ Substitute ☐ Engrossed

**Second House** ☐ In Committee ☐ Substitute ☐ Enrolled

**2. Patron:** O'Bannon

**3. Committee:** Commerce and Labor

**4. Title:** Health benefit exchange; regulation of navigators.

**5. Summary:** Health benefit exchange; regulation of navigators. Establishes requirements for persons that serve as navigators in any health benefit exchange established for the Commonwealth of Virginia. Navigators are required by the federal Affordable Care Act to perform certain functions relating to the operation of an exchange, including informing individuals and small employers about the availability of qualified health plans; facilitating enrollment of qualified individuals into health plans; and performing outreach and education efforts. Requires an individual or entity to obtain a license from the State Corporation Commission prior to acting as a navigator. A navigator is prohibited from engaging in activities that would require an insurance agent or producer license under this title; from providing advice concerning the benefits, terms, and features of a particular health plan or offering advice about which health plan is better or worse for a particular individual or employer; from making recommendations concerning the substantive benefits, terms, or conditions of health plans; or from enrolling an individual or employee in a qualified health plan offered through an exchange. The Commission would be required to establish a certification and training program that includes initial and continuing education requirements, establish an examination, and would be required to adopt rules, to the extent permitted by the Affordable Care Act, that require a navigator to carry and maintain errors and omissions insurance. Navigators would also be required to obtain a surety bond or provide evidence of financial responsibility.

**6. Budget amendment necessary:** No

**7. Fiscal Impact Estimates:** Not Available. See Line 8.

**8. Fiscal implications:** To fulfill its responsibilities under this bill, the State Corporation Commission would need to complete a procurement process to secure a testing vendor to develop and administer a navigator program. The absence of specific training requirements from the federal Department of Health and Human Services (HHS) would make it difficult to establish qualifications for minimally competent navigators and to develop regulations without knowing what would already be required by HHS concerning navigator qualifications. House Bill 2246 also would require significant new staffing and information technology resources at the Commission. Based upon the facts as they exist today, the Commission's Bureau of Insurance could not implement the requirements of House Bill 2246 within the established timeframe.

**9. Specific agency or political subdivisions affected:** State Corporation Commission Bureau of Insurance

**10. Technical amendment necessary:** No

**11. Other comments:** The Department of Health & Human Services (HHS) is responsible under the ACA for the development of requirements for the certification and training of navigators in a federally facilitated exchange. The State Corporation Commission has no information as to when the guidance for these federal requirements will be released by HHS. The Commission further understands that a state-specific navigator program in the Commonwealth may prove to be duplicative of a federal program in the future. In short, state regulation of navigators may not be in lieu of but rather in addition to federal regulation, and conflicting provisions of state law likely would be pre-empted by federal law.

Senate Bill 1261 is identical to House Bill 2246.

**Date:** 01/28/13/V. Tompkins

cc: Secretary of Commerce and Trade

Secretary of Health and Human Resources