

Department of Planning and Budget 2013 Fiscal Impact Statement

1. Bill Number: SB944

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: Edwards, J

3. Committee: General Laws and Technology

4. Title: Administrative Process Act; issues on judicial review.

5. Summary: Provides that when a final decision of an agency is appealed under the Administrative Process Act and the decision on review is to be made based on the agency record established from a formal hearing, the duty of the court with respect to issues of fact is to determine whether there was substantial evidence in the record to support the agency decision. The bill also provides that in such appeals the duty of the court with respect to issues of law is to review the agency decision de novo. In addition, the bill provides that the court shall enter judgment either setting aside, modifying, remanding, or affirming the order or decision of the agency. Under the bill the court may augment the agency record in whole or in part upon motion of either party.

6. Budget Amendment Necessary: Indeterminate.

7. Fiscal Impact Estimates: Fiscal impact estimates are not available.

8. Fiscal Implications: The total financial impact of this bill cannot be precisely quantified due to the uncertainty over the number of cases that would be appealed. However, it is projected that this bill would cost agencies in excess of \$4,000,000 annually. Further, it will produce additional costs for localities as well.

This bill is expected to impact the courts, particularly circuit courts, the Office of the Attorney General (OAG), executive branch agencies which have case decisions rendered under the Administrative Process Act (Virginia Code § 2.2-4000 et seq.) and all local governments.

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.

OAG anticipates as a consequence of the de novo provision that it would need a minimum of 6 new attorney positions and 3 paralegal positions. OAG believes the attorney time involved in defending appeals against parties that were previously unable to augment evidence would be very large. When records are supplemented, the dynamic of the case substantially changes. An agency would be required to find evidence to counter the newly introduced

evidence and to make its own motion to supplement the record, which will invite further supplementation by the party complaining of agency action. At some point the court will have to devise a means of limiting supplementation, which will likely be on a case by case basis. Under this bill, agency counsel will likely have an entirely new case to defend from the one that was appealed, perhaps with a different basis than that for the agency action. OAG believes that this will change the face of administrative litigation and will substantially increase the cost of defending appeals. It is OAG's view that trial preparation would be very burdensome to the agency and its attorneys and trials would be extremely lengthy (additional witnesses, additional documentary evidence, etc.). Ultimately, with these proposed changes, agency attorney time would be overwhelmingly dedicated to agency appeal trials.

As described above, the bill would increase costs for all executive branch agencies which have case decisions rendered under the Administrative Process Act. For example, the Department of Health Professions (DHP) assumes that the number of appeals would double, and that there would also be at least a 30% increase in formal hearings. Fewer respondents would be willing to settle for a consent order or at the informal conference stage. Additionally, there would be an increase in the time for enforcement staff for attending/testifying at the appeals trial. Board members could be subpoenaed, and there would be costs for staff, board members and counsel to attend trials in venue. In order to accomplish the current case load of investigations, enforcement and administrative proceedings and add the tasks involved in de novo appeals, there would be a need for additional staff. DHP believes that their costs would increase by at least \$1,000,000 per year.

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

10. Technical Amendment Necessary: No.

11. Other Comments: None.

Date: 1/21/13