

## Department of Planning and Budget 2016 Fiscal Impact Statement

**1. Bill Number:** HB1135

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

**2. Patron:** Kory

**3. Committee:** General Laws

**4. Title:** Purchase of Virginia-grown food products by state agencies and institutions and local school divisions.

**5. Summary:** Provides for the Department of General Services to establish procurement procedures to facilitate the purchase of Virginia-grown food products by state agencies and institutions and local public school divisions to the maximum extent possible. The bill also exempts local school divisions from competitive sealed bidding under certain circumstances when procuring Virginia-grown food products for student consumption.

**6. Budget Amendment Necessary:** No.

**7. Fiscal Impact Estimates:** Preliminary; fiscal impact is indeterminate. See Item 8, below.

**8. Fiscal Implications:** The fiscal impact of the bill is indeterminate and would depend on the procurement procedures established by the Department of General Services (DGS) and any reciprocity imposed by other states.

The bill directs DGS to establish procurement procedures to facilitate the purchase of Virginia-grown food products by state agencies and institutions and local public school divisions to the maximum extent possible. Any cost to establish such procedures would be absorbed by DGS within existing resources.

Any impact of the proposed legislation on the cost of food products purchased by state agencies and institutions would depend on the procurement procedures established by DGS. For example, if established procedures were to prioritize purchase of Virginia-grown food products only if the cost was equivalent to products grown out-of-state, a change in food costs would not be expected. Alternatively, if procedures were to prioritize purchase of Virginia-grown food products if the cost did not exceed a certain percentage of the price of products grown out-of-state, the cost of affected food products could increase by as much as the given percentage.

According to DGS, any procurement procedures established in accordance with the proposed legislation would be considered an in-state preference, which is often reciprocated by other

states. Reciprocal preference laws penalize out-of-state firms that benefit from preferential purchasing in their home state. Therefore, Virginia businesses could be penalized when competing for an out-of-state procurement if reciprocity was imposed by the given state. According to the National Association of State Procurement Officials' 2015 Survey of State Procurement Practices, 26 of 46 responding states and jurisdictions had some kind of reciprocal preference law as of August 2015 (50 states in addition to the District of Columbia and Puerto Rico were surveyed).

If procurement procedures established by DGS to facilitate the purchase of Virginia-grown food products or reciprocity imposed by other states were to affect the proceeds of Virginia businesses, state tax revenue could be affected. However, the impact is indeterminate.

The bill also exempts local school divisions from competitive sealed bidding or competitive negotiation when procuring a Virginia-grown food product for student consumption if the quality is substantially equivalent or better than an out-of-state product, it can be supplied in sufficient quantity, and the price is reasonable and can be paid from its existing budget without supplemental appropriation. However, the exemption applies only if the purchase can be paid from the school division's existing budget and the local school division would still have the option of using competitive sealed bidding or competitive negotiation.

According to the Department of Education (DOE), federal laws allow schools and institutions receiving funds through the Child Nutrition Programs to apply a geographic preference when procuring locally grown or locally raised agricultural products. They also encourage schools to purchase locally grown and locally raised products "to the maximum extent practicable and appropriate." However, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Title 2 Code of Federal Regulations, part 200.319. 2015, requires free and open competition when using federal funds for procurement. Any costs for DOE to draft and update procurement guidelines would be absorbed within existing resources.

- 9. Specific Agency or Political Subdivisions Affected:** The Department of General Services, Department of Education, local public school divisions, and state agencies subject to DGS procurement regulations. All state agencies and institutions are subject to DGS regulations unless they are operating under the Restructured Higher Education Act in the operational area of procurement or are otherwise exempted by DGS or in the Code of Virginia.

**10. Technical Amendment Necessary:** No.

**11. Other Comments:** None.