Department of Planning and Budget
2016 Fiscal Impact Statement

1. **Bill Number:** SB333

House of Origin	☒ Introduced	☐ Substitute	☐ Engrossed
Second House	☐ In Committee	☐ Substitute	☐ Enrolled

2. **Patron:** DeSteph

3. **Committee:** Education and Health

4. **Title:** Certificates of public need; creates three-phase process to sunset requirements for medical care.

5. **Summary:** Creates a three-phase process to sunset certificate of public need (COPN) requirements for many categories of medical care facilities and projects, with the requirement for a certificate of public need (i) for the establishment of a new imaging service or addition of new equipment for imaging services eliminated beginning July 1, 2016, for ambulatory and outpatient surgery centers eliminated beginning July 1, 2017, and (iii) for hospitals and all other categories of projects other than nursing homes and facilities and equipment for open heart surgery and organ or tissue transplant services eliminated beginning July 1, 2018. The bill also creates a new permitting process for categories of facilities and projects exempted from the certificate of public need process that requires the Commissioner of Health to issue a permit but allows the Commissioner to condition a permit (a) on the agreement of the applicant to provide a specified level of care at a reduced rate to indigents, accept patients requiring specialized care, or facilitate the development and operation of primary medical care services in designated medically underserved areas of the applicant's service area or (b) on compliance of the applicant with quality of care standards. The bill allows the Commissioner to refuse to issue a permit if he determines that the project for which the permit is sought would be detrimental to the provision of health services in underserved areas of the Commonwealth.

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

7. **Fiscal Impact Estimates:** Preliminary, see item #8.

7a. Revenue Impact: While some revenues would be eliminated, new fees are authorized which would generate new revenue that cannot be determined. The table below only illustrates the lost revenue:

Lost COPN Fees

Fiscal Year	*Dollars*	*Fund*
2017	(260,248)	0200
2018	(73,716)	0200
2019	(242,854)	0200
2020	(576,818)	0200

8. **Fiscal Implications:** The fiscal impact of this bill cannot be fully determined at this time and estimates are preliminary.

Department of Health

Provisions of the bill both eliminate projects requiring COPN reviews and subsequently the fee revenues associated with those reviews. It also creates new permitting requirements and directs the Board of Health to establish permit fees. While other states may have existing permitting processes, there is no readily available data with which to compare this proposal. Further study is needed before reasonable estimates may be made concerning the fiscal impact of the permitting practices proposed in this bill.

The tables below illustrate the average number of COPN applications received during the past three years in each of the three phases described in the proposed bill. The number of applications shown in each phase would be exempted from COPN review if the proposed bill is passed. This table also shows the average fees collected for the COPN applications shown in each phase which would be eliminated under the proposed bill.

Average # of Applications Received Related to HB193 Past 3 years	**Phase 1**	**Phase 2**	**Phase 3**	**Average Total**
3 Year Average	20	5	23	48

Average Fees Collected Related to HB193 Past 3 Years which would be eliminated	**Phase 1**	**Phase 2**	**Phase 3**	**Average Total**
3 Year Average	$ 260,248	$ 73,716	$ 242,854	$ 576,818

During the past three years an average of 53 projects were reviewed; averaging 21 projects per Project Review Analyst (PRA). Of the 53 projects, 48 would meet the exemption criteria for review described in the proposed bill. An average of $576,818 in fees has been collected from these types of COPN projects over the past three years.

Phase 1

It is estimated that Phase 1 of the bill would result in an annual reduction of $260,248 in fee revenues. The estimated $390,327 in fee balances that remain in Phase 1 is likely to be sufficient to cover remaining program costs in FY 2017.

Phase 2

The agency has stated that the bill would have a fiscal impact in FY 2017 but it would not be significant as only 5 projects are projected to be eliminated with the resultant loss of $73,716 in fee revenues.

Phase 3
Eliminates another 23 projects requiring PRA review and would reduce the fees collected annually by $242,854. This means there would only be an average of 5 projects and $73,667 in fee collections remaining in the COPN program.

The provisions of this bill do not replace the COPN program with the permitting process as 5 COPN projects are not addressed by the contents of this bill. Therefore, retaining a PRA position at a cost of $73,667 would be critical in maintaining compliance with COPN project review timeframes, since noncompliance results in automatic project approval.

Furthermore, the bill states that the Commissioner shall issue permits within 30 days of application receipt; condition permits in a manner similar to the Certificate of Public Need program; that the Board of Health shall adopt regulations which include quality of care standards for permit holders, establish requirements for monitoring compliance with quality care standards, procedures for issuance and revocation of permits, and promulgate permit fees to support the program.

Since permits must be issued within 30 days of receipt, it is assumed that the numbers of permits will exceed the average of 53 COPN projects, which previously required a COPN review each year. The experience of removing the COPN review as a barrier to development in other states has resulted in an increase in the number of projects overall, all requiring permit review and monitoring. The Department anticipates that the permitting process may exceed the level of rigor required in a COPN application review. A substantial amount of PRA time will have to be devoted to establishing the required conditions related to each permit, and to monitoring and enforcing compliance with the charity care and quality of care standards mandated for permit holders. Accordingly, maintaining the COPN at the current staffing level until actual experience with the permitting program dictates otherwise seems warranted.

The bill also charges the Board of Health with the responsibility of establishing fees to support the program. If an estimated minimum of 100 permits are issued, and the average annual cost to maintain the COPN program at the current staffing level is approximately $604,000 annually, the average permit fee would have to be approximately $6,040 to sustain the program. It is anticipated in this Fiscal Impact Statement that the current staffing and administrative costs of COPN will be used for the permitting process, and that the fee for permitting will be set at levels sufficient to cover these costs.

<u>Department of Medical Assistance Services</u>
Any substantive changes to Certificate of Public Need (COPN) requirements are likely to have an impact on the cost of health care. However, analysis varies widely as to the ultimate impact COPN requirements have on these costs and there are differences between specific legislation. While it is assumed that COPN legislation may have fiscal implications for the Department of Medical Assistance Services (DMAS), there is insufficient data to provide a definitive estimate. Under any scenario, it is unlikely that any COPN change would have a direct fiscal impact in the 2016-2018 biennium due to the time needed for capital planning

and the delayed recognition of costs in Medicaid payment rates. Any significant costs are not likely to occur until after 2020 and, even then, such costs would be difficult to estimate based the unknowns associated with COPN changes and the rapidly evolving nature of the health care system.

While a specific fiscal impact cannot be determined, the agency believes that the provisions of the bill will lead to an increase in the Commonwealth's health care capacity (i.e. number of medical scanning machines, outpatient surgery centers, operating rooms, hospital beds, etc.). Utilization of scanning machines is likely to increase in the 2016-2018 biennium; however, the agency does not expect substantial cost increases as in general Medicaid members do not significantly utilize these services. There also could be increases in cost per unit in hospitals and Medicaid reimbursable capital expenditures, both of which would start to affect hospital operating reimbursements after 2020. The bill also deregulates ICF-IDs which could result in increased utilization beginning in 2019.

9. **Specific Agency or Political Subdivisions Affected:** Department of Medical Assistance Service, Department of Health, and Health Care providers in Virginia.

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

11. **Other Comments:** HB193 introduced by Delegate O'Bannon and SB561 introduced by Senator Newman are companion bills.