

REVISED
State Corporation Commission
2020 Fiscal Impact Statement

1. Bill Number: HB1428

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: Sickles

3. Committee: Labor and Commerce

4. Title: Virginia Health Benefit Exchange.

5. Summary: Creates the Virginia Health Benefit Exchange, which will be established and operated by a new division within the State Corporation Commission (SCC). The Exchange shall facilitate the purchase and sale of qualified health plans and qualified dental plans to qualified individuals and qualified employers. The Exchange shall make qualified plans available to qualified individuals and qualified employers by July 1, 2023, unless the SCC postpones this date. The measure authorizes the SCC to review and approve accident and sickness insurance premium rates applicable to health benefit plans in the individual and small group markets and health benefit plans providing health insurance coverage in the individual market through certain non-employer group plans. The Exchange will be funded by assessments on health insurers. A health plan will not be required to cover any state-mandated health benefit if federal law does not require it to be covered as part of the essential benefits package. The essential health benefits are items and services included in the benchmark health insurance plan, which is the largest plan in the largest product in the Commonwealth's small group market as supplemented in order to provide coverage for the items and services within the statutory essential health benefits categories. The SCC may contract with other eligible entities and enter into memoranda of understanding with other agencies of the Commonwealth to carry out any of the functions of the Exchange, including agreements with other states or federal agencies to perform joint administrative functions. Such contracts are not subject to the Virginia Public Procurement Act (§ 2.2-4300 et seq.). The measure repeals a provision enacted in 2013 that prohibits an agent, employee, officer, or agency of the Commonwealth from taking any action to establish a health benefit exchange.

The measure requires the Department of Taxation to include on the appropriate individual tax return forms a checkoff box or similar mechanism for indicating whether the individual, or spouse in the case of a married taxpayer filing jointly, (i) is an uninsured individual at the time the return is filed and (ii) consents to the Department of Taxation providing the individual's tax information to the Department of Medical Assistance Services for purposes of determining the uninsured individual's or spouse's eligibility for medical assistance. Finally, the measure requires the Secretary of Health and Human Resources to convene a work group that includes representatives from the SCC, the Department of Medical Assistance Services, the Department of Social Services, and the Department of Taxation to develop systems, policies, and practices to leverage state income tax returns to facilitate the enrollment of eligible individuals in insurance affordability programs through the Virginia Health Benefit Exchange established in this measure.

The Secretary shall report the work group's recommendations to the Governor and the General Assembly by September 15, 2020.

The provisions of the bill expire upon any ruling by the Supreme Court of the United States declaring unconstitutional, or action by the President or Congress that repeals or defunds, the provisions of the Patient Protection and Affordable Care Act in a manner that renders it impossible to perform the duties integral to the Virginia Health Benefit Exchange.

According to the Virginia Department of Taxation (Taxation), the bill would require Taxation to include on individual income tax returns a checkoff box or similar mechanism for indicating whether the individual or spouse in the case of a married taxpayer filing jointly:

- Is an uninsured individual at the time the return is filed; and
- Consents to the Department providing certain taxpayer information to the Department of Medical Assistance Services (“DMAS”) for purposes of determining the uninsured individual's or spouse's eligibility for medical assistance.

Taxation notes that the bill is effective for individual income tax returns filed for Taxable Year 2021.

6. Budget Amendment Necessary: Yes. Neither House Bill 29/Senate Bill 29 nor House Bill 30/Senate Bill 30 provide a specific estimate of start-up costs which are expected to be significant. House Bill 30/Senate Bill 30 do give the State Corporation Commission the authority to apply for a treasury loan, but such authority presumably will not become effective until after the start of the next biennium (July 1, 2020). The proposed language for Item 481 found in House Bill 29/Senate Bill 29 is very problematic. The Bureau of Insurance suggests amending House Bill 29/Senate Bill 29 as follows:

Item 481 (page 211), Line 16, B: Strike “existing nongeneral fund cash balances” and insert “any unused funds appropriated for plan management functions ...”

7. Fiscal Impact Estimates: Fiscal impact estimates are preliminary. The proposed biennium budget includes a non-general appropriation for the State Corporation Commission to operate the on-going operation of the Exchange in the amount of \$13,500,000 for Fiscal Year 2021 and \$41,500,000 for Fiscal Year 2022. This appropriation only authorizes a specific amount for ongoing operations after the Exchange has begun to generate income from assessments. Although some authority is provided in Item 487, which authorizes an interest-free treasury loan for start-up costs, a specific amount for such costs is not provided.

7a. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
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2020	\$100,000	0	GF
2021			
2022			
2023			
2024			
2025			
2026			

8. Fiscal Implications: The Virginia Health Benefit Exchange will be created as a division of the State Corporation Commission and will be funded by assessments on health insurers. The Commission may contract with appropriate entities to perform some of the administrative functions of the Exchange.

Estimated expenses for costs associated with the Exchange were based on a high-level analysis of the budget of the estimated budget of the Pennsylvania State Based Exchange. Virginia's Exchange would use the federal platform for its first year and transition to its own website and platform in the second year of operation for functions including shopping, enrollment and eligibility determinations.

Revenue estimates are based on the 2018 market enrollment and premiums, adjusted for anticipated enrollment changes. The revenue estimate assumes that the Exchange will receive .5% of premiums assessed of health insurers in its first year while the Exchange makes use of the federal platform, and 3% of premiums in its second year when the Exchange transitions to its own website and platform.

According to the Virginia Department of Taxation, House Bill 1428 is "routine and does not require additional funding" as to Administrative Costs. Further, "this bill would not have a direct impact on General Fund revenues."

9. Specific Agency or Political Subdivisions Affected: State Corporation Commission and the Department of Taxation

10. Technical Amendment Necessary: See Item 11 for the State Corporation Commission comments. According to the Virginia Department of Taxation, House Bill 1428, as currently drafted, would require Taxation to include the checkoff box or other mechanism authorizing the disclosure of taxpayer information on individual income tax returns for Taxable Year 2021. Such returns will not be filed until May 2022. If the intent was the make information available to the

Department of Medical Assistance Services (DMAS) sooner, Taxation recommends making this requirement effective for taxable years beginning on and after January 1, 2020.

11. Other Comments: The State Corporation Commission has offered substantive and technical comments to stakeholders on House Bill 1428 to be included in the amendment in the nature of a substitute to the bill.

Five bills creating an Exchange were introduced in the 2020 Session, including House Bill 1428. Delegate Sickles has stricken House Bill 1018. There are also two other similar bills, Senate Bill 226 and Senate Bill 598, which were incorporated into Senate Bill 732, and Senate Bill 732 is identical to the introduced version of House Bill 1428.

The Virginia Department of Taxation offers the following Other Comments:

Current Law

Unless an exception applies, the Tax Commissioner, commissioner of the revenue, treasurer, and their staff may not divulge any information acquired in the performance of their duties with respect to the transactions, property, including personal property, income or business of any person, firm or corporation (“confidential tax information”). It is also unlawful for any person to disseminate any confidential tax document which he knows or has reason to know is a confidential tax document. Any person who violates these provisions is guilty of a Class 1 misdemeanor.

Proposed Legislation

This bill would require the Department of Taxation to include on individual income tax returns a checkoff box or similar mechanism for indicating whether the individual or spouse in the case of a married taxpayer filing jointly:

- Is an uninsured individual at the time the return is filed; and
- Consents to the Department providing certain taxpayer information to the Department of Medical Assistance Services (“DMAS”) for purposes of determining the uninsured individual's or spouse's eligibility for medical assistance.

If the individual, or spouse in the case of a married taxpayer filing jointly, voluntarily consents, Taxation would be authorized to disclose the individual’s or spouse’s:

- Name;
- Address;
- Social Security number;
- Number and type of personal exemptions;
- Tax-filing status; and
- Adjusted gross income.

Taxation would only be authorized to disclose such information to DMAS upon entering a written agreement with the agency regarding the disclosure of taxpayer information.

The bill would require the Secretary of Health and Human Resources to convene a work group that includes representatives from the State Corporation Commission, DMAS, the Department of Social Services, and the Department to develop systems, policies, and practices to leverage state income tax returns to facilitate the enrollment of eligible individuals in insurance affordability programs through the Virginia Health Benefit Exchange established by this bill. The Secretary would be required to report the work group's recommendations to the Governor and the General Assembly by September 15, 2020.

This bill would be effective for individual income tax returns filed for Taxable Year 2021.

Date: 2/4/20/V.Tompkins