

## Department of Planning and Budget 2022 Fiscal Impact Statement

**1. Bill Number:** SB376

<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:** Petersen

**3. Committee:** Commerce and Labor

**4. Title:** Prescription Drug Affordability Board; established; drug cost affordability review.

**5. Summary:** Establishes the Prescription Drug Affordability Review for the purpose of protecting state residents, state and local governments, commercial health plans, health care providers, pharmacies licensed in the Commonwealth, and other stakeholders within the health care system from the high costs of prescription drug products.

The bill directs the Governor to appoint members and alternate members of the Board. The Board is required to meet in open session at least four times annually, with certain exceptions and requirements. Members of the Board are required to disclose any conflicts of interest, as described in the bill. The bill also creates a stakeholder council for the purpose of assisting the Board in making decisions related to drug cost affordability. The Board is tasked with identifying prescription, generic, and other drugs, as defined in the bill, and, in the Board's discretion, conducting an affordability review of the prescription drug product. Factors for the Board to consider that indicate an affordability challenge are listed in the bill. Any person aggrieved by a decision of the Board may request an appeal of the Board's decision, as provided in the bill, and the Attorney General shall have authority to enforce the provisions of the bill.

The bill also creates the Prescription Drug Affordability Fund to be used for funding operations of the Board and reimbursing other state agencies for implementing the provisions of the bill. The Board is required to report to the General Assembly twice annually, beginning on July 1, 2023, and December 1, 2023.

Provisions of the bill shall apply to state-sponsored and state-regulated health plans and health programs and obligate such policies to limit drug payment amounts and reimbursements to an upper payment limit amount set by the Board, if applicable, following an affordability review. Medicare Part D plans shall not be bound by such decisions of the Board.

The bill contains a severability clause and has a delayed effective date of January 1, 2023.

6. **Budget Amendment Necessary:** Yes, see item 8.
7. **Fiscal Impact Estimates:** Preliminary, see item 8.
8. **Fiscal Implications:** The bill creates a Prescription Drug Affordability Board (the Board) with members to be appointed by the Governor. However, the bill does not identify the agency in which it will be housed for administrative purposes. The State Corporation Commission (SCC) has stated that while placing the Board in Title 38.2 of the Code of Virginia, which relates to the regulation of Insurance and over which the State Corporation Commission (SCC) has regulatory authority, does not make it part of the SCC.

While the bill does not specify which agency will oversee the Board's operations, there will be significant costs for the establishment of the Board on whichever agency is responsible for administrative purposes.

The bill states that the board shall meet at least four times annually, that the board is composed of five members, the Governor may appoint three alternate members, and that the chair may hire an executive director, general counsel, and staff to support the board's activities. Staff of the Board shall receive a salary as provided in the budget of the Board. A member of the board may receive compensation as a member of the board in accordance with the state budget and is entitled to reimbursement for expenses under standard state travel regulations as provided in the state budget. Therefore it is estimated that for five members to attend at least four meetings per year would cost \$2,300 for mileage, \$3,000 for lodging, \$1,000 for incidentals, and \$1,000 for compensation annually. This is based on \$115 for mileage, \$150 for lodging, \$50 for incidentals, and then \$50 for compensation per member per meeting. Any additional meetings or members would increase the costs by the amounts above.

The bill also provides that the Office of the Attorney General may pursue any appropriate available remedy under state law in enforcing the provisions of this article. The cost of an Assistant Attorney General I to handle enforcement of the bill is \$138,000 annually including salary and fringe benefits.

Based on expenditure data for the Capital Square Preservation Council, the cost for an executive director is roughly \$150,000 annually.

It is unknown how many staff members will be needed to support the board's activities and the anticipated salaries. Using other boards and commissions to derive an estimate, it is found that the Behavioral Health Commission, which was established in FY22, was provided \$348,774 for four positions and associated office-related costs that are phased-in over the year to reflect the timing necessary to startup the Commission. This amounts to \$87,193.50 per position annually.

According to the National Academy for State Health Policy, which drafted the original model language for prescription drug affordability boards, Maryland has a similar approach as it

relates to the board's authority to conduct affordability reviews and set upper pay limits. Costs for Maryland to implement and support five positions was estimated to be \$763,639 annually, with one-time startup costs of approximately \$25,000.

Using the assumptions above, the total estimated cost of this proposal is \$669,074 in the first year and \$644,074 thereafter.

**9. Specific Agency or Political Subdivisions Affected:** None.

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

**11. Other Comments:** The bill is silent on which agency would be responsible for housing the Board.