

## Department of Planning and Budget

### 2022 Fiscal Impact Statement

**1. Bill Number:** HB983

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

**2. Patron:** Scott, P.A.

**3. Committee:** Courts of Justice

**4. Title:** Provision of abortion; abortion on the basis of genetic disorder, sex, or ethnicity prohibited.

**5. Summary:** Removes from the list of persons who can perform first trimester abortions any person jointly licensed by the Board of Medicine and Nursing as a nurse practitioner acting within such person's scope of practice. The bill adds procedures and processes, including the performance of an ultrasound, required to effect a pregnant person's informed written consent to the performance of an abortion. The bill adds language classifying facilities that perform five or more first trimester abortions per month as hospitals for the purpose of complying with regulations establishing minimum standards for hospitals. The bill also provides that a person who performs an abortion with knowledge that the abortion is sought solely and exclusively on account of a genetic disorder, the sex, or the ethnicity of the unborn child is guilty of a Class 4 felony.

**6. Budget Amendment Necessary:** Yes, item 292, 299, and 404.

**7. Fiscal Impact Estimates:**

**7a. Expenditure Impact:**

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2023	\$364,674 - \$816,829	2 - 3	01000
2023	\$1,050		02601
2024	\$764,687 - \$799,642	5 - 6	01000
2024	\$1,050		02601
2025	\$759,059 - \$794,014	5 - 6	01000
2025	\$1,050		02601
2026	\$757,859 - \$792,814	5 - 6	01000
2026	\$1,050		02601
2027	\$757,859 - \$792,814	5 - 6	01000
2027	\$1,050		02601
2028	\$757,859 - \$792,814	5 - 6	01000
2028	\$1,050		02601
2029	\$757,859 - \$792,814	5 - 6	01000
2029	\$1,050		02601

**7b. Revenue Impact:**

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2023	\$1,050	02601
2024	\$1,050	02601
2025	\$1,050	02601
2026	\$1,050	02601
2027	\$1,050	02601
2028	\$1,050	02601
2029	\$1,050	02601

- 8. Fiscal Implications:** The provisions of this legislation would have a fiscal impact on the Virginia Department of Health (VDH), Local Jails, and the Compensation Board.

Virginia Department of Health

The provisions of the legislation would require VDH to conduct inspections of abortion facilities, write inspection reports, and review plans of correction. The inspections would include both standard licensure inspections as well as complaint and revisit inspections. VDH anticipates the need for five FTEs: one Policy and Planning Specialist II, one Program Administration Specialist I, and three Health Care Compliance Specialist II.

The Policy and Planning Specialist II would be responsible for development of draft regulations for abortion facilities, including tracking and responding to public comment, conducting public hearings, and presenting proposals to the Board; for creation, publication, and maintenance of guidance documents; for receiving, processing, and drafting responses and recommendations for variance requests; and for being the primary point-of-contact with the Office of the Attorney General and any outside counsel, especially in the event of litigation.

VDH was party to multiple lawsuits when it previously regulated abortion facilities between 2011 and 2020, and anticipates that litigation involving VDH would be increased if this legislation is enacted. VDH estimates this position would have a salary of \$91,519 and fringe benefits of \$45,832.

The Program Administration Specialist I will receive, process, and fill records requests under the Virginia Freedom of Information Act (FOIA) as well as respond to inquiries from media, consumers, and potential or current licensees. Based on experience from VDH's previous abortion facility regulatory program, it received FOIA requests that encompassed broad spans of time and numerous types of records from many employees, which required extensive record searches and redaction efforts, especially because of the need to ensure all protected health information was withheld. At the time VDH had a position dedicated to these efforts to ensure VDH could meet the statutory deadlines imposed by FOIA on records request responses without compromising other agency operations. VDH anticipates that regulatory development would begin in FY2023 and that FOIA requests and other public inquiries

related to the abortion facility licensure would also begin that same fiscal year. Inspections are not anticipated to begin until FY2024. VDH estimates this position would have a salary of \$54,771 and fringe benefits of \$36,579.

The three Health Care Compliance Specialists II would conduct inspections of abortion facilities, write inspection reports, and review plans of correction. The inspections would include both standard licensure inspections as well as complaint and revisit inspections. These positions would have to conduct statewide travel. Lodging expenditure projections include hotel and sales tax. Because of the controversial nature of abortion and its regulation, VDH sends two positions per inspection for safety and also provides a rental vehicle to transport inspectors from their lodging to the abortion facility, so that the details (color, make, model, license plate) of their state vehicles are not associated with individual inspectors. Expenditures related to the three Health Care Compliance Specialist II positions are expected to begin FY2024. VDH used historical expenditure data from its prior abortion facility regulatory program to project the expenditures for three Health Care Compliance Specialists II. VDH used a salary of \$73,422 and a fringe benefit of \$41,276, for a total of \$114,698 per position.

The above projections reflect salaries at the 75th percentile for those role titles and current fringe benefit rates. Additionally, per each of these FTE, VDH anticipates expenditures for an office phone (\$650), computer (\$3,000), other equipment and supplies (\$600), and general liability/surety/workers compensation (\$650). These additional expenditures are based on current expenditures for existing VDH staff and are expected to begin FY2023. For total travel expenses for the three Health Care Compliance Specialists II, VDH also anticipates expenditures for state-issued vehicles (\$12,000); rental vehicles (\$1,120); lodging, meals, and incidentals (\$75,600); and gasoline (\$2,499).

Based on experience with VDH's previous abortion facility regulatory program, VDH needed to provide additional security at every State Board of Health meeting during which abortion facility regulations were discussed. VDH anticipates this would have additional security costs (\$700 per meeting, based on historical data) which would occur at least once per year for FY2023 – FY2025. VDH also held six public hearings—two in northern Virginia, two in Richmond, and two in Tidewater—for the regulations. VDH anticipates there would be one meeting in each identified region in FY2023 and FY2024. Each public hearing likewise required security (\$700) and rented space for the public hearing (\$500). For the public hearings in northern Virginia, VDH anticipates it would send four employees, with a lodging cost of \$258 and per diem rate of \$79 per employee. For the public hearings in Tidewater, VDH again anticipates it would send four employees, with a lodging cost of \$106 and per diem rate of \$64 per employee.

VDH's Office of Family Health Services indicated that the cost of publishing the materials required in the proposed subsection F of § 18.2-76 of the Code of Virginia will be less than \$5,000 and can be absorbed by existing agency staffing and resources.

Based on the sensitive nature of this information an Administrative Office Specialist II would be necessary. This position would be the first point-of-contact for applicants and have primary responsibility for administrative tasks for the Program, such as establishing and maintaining filing systems and other records at a salary of \$37,192 and a fringe benefit of \$32,153.

However, the Office of Information Management (OIM) is projecting a total expenditure of \$521,500 in FY2023 to create an application portal for the abortion facility licensure program, which they believe would be more secure and practical. VDH does not currently have an electronic system that is able to securely store applications and facility information. VDH is currently relying on a paper based system and given the sensitive nature of this information an electronic system is needed. An online searchable portal will also help with the anticipated increase in FOIA requests. The estimated scope of this IT project would include (1) an internet portal with restricted access so only registered users can login and submit applications; (2) an administration portal used by application review staff to review, approve, deny and/or correspond with an applicant; and (3) a public view on the internet with list of facilities and the current status that can be searchable with predefined criteria. The total given above reflects the need for development at \$380,000 (4,000 hours at an hourly rate of \$95), testing at \$52,500 (750 hours at an hourly rate of \$70), creation of security documentation for \$14,000 (200 hours at an hourly rate of \$70), and a project manager at \$75,000 (1,000 hours at an hourly rate of \$75). VDH OIM also estimates that ongoing maintenance starting in FY2024, which supposes no major changes to the application portal after initial development, to be 20% of the initial development cost or \$104,300.

The State Board of Health, the State Health Commissioner, or VDH do not have the authority to set abortion facility licensure fees above \$75, as those fees are set in Code of Virginia § 32.1-130. There is no authority to levy special assessments or other fees to offset the increased expenditures. Based on that fee and the most recent licensure numbers prior to deregulation, VDH estimates that it may receive \$1,050 in annual licensure fee revenue from abortion facilities.

<b>Expenditures</b>	<b>Cost</b>	<b>Note</b>
Policy and Planning Specialist II (1)	\$137,351	
Program Administration Specialist I (1)	\$91,350	
Healthcare Compliance Specialist II (3)	\$344,094	Begins FY24
Administrative Office Specialist II (1)	\$69,345	Not necessary if Portal is funded
Application Portal Development (One-time)	\$521,500	Not necessary if Admin Office Spec II is funded
Application Portal Maintenance (ongoing starting FY24)	\$104,300	Not necessary if Admin Office Spec II is funded
Board Security and Public Hearings	\$5,628	FY23 – FY25

### Local Jails

For someone convicted of a Class 4 felony, the court must impose either a term of imprisonment of not less than two years nor more than 10 years together with a fine of not more than \$100,000, or imprisonment only. Therefore, this proposal could result in an increase in the number of persons sentenced to prison.

Due to the lack of data, the Virginia Criminal Sentencing Commission (VCSC) has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 552, 2021 Acts of Assembly, Special Session I, requires that a minimum impact of \$50,000 be assigned to the bill.

According to the VCSC, the proposal could also increase the local-responsible (jail) bed space needs, but the magnitude of the impact cannot be determined. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanor or otherwise local-responsible prisoner held in a jail and \$12.00 a day for each state-responsible prisoner. It also funds a portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2021), the estimated total state support for local jails averaged \$37.58 per inmate, per day in FY 2020.

- 9. Specific Agency or Political Subdivisions Affected:** The Virginia Department of Health, local jails, and the Compensation Board.

**10. Technical Amendment Necessary:**

**11. Other Comments:**