

## Department of Planning and Budget 2022 Fiscal Impact Statement

**1. Bill Number:** HB119

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

**2. Patron:**    March

**3. Committee:** General Laws

**4. Title:**    Public-Private Competition Act; created, repeals Competitive Government Act, etc.

**5. Summary:**    Creates the Public-Private Competition Act, which prohibits public bodies from engaging in any commercial activity, defined in the bill to mean any activity that can be performed by an existing private business. The bill creates an exemption for commercial activities that public bodies are required to perform pursuant to the Constitution of Virginia. The bill also repeals the Competitive Government Act, which requires the Governor to (i) conduct a study at least once every two years to examine whether at least three commercial activities being performed by state employees at state agencies and institutions are being accomplished in the most cost-efficient and effective manner and (ii) outsource any commercial activity for which the study determines that outsourcing may result in reduced costs or otherwise provide a measurable benefit to the Commonwealth.

**6. Budget Amendment Necessary:** Preliminary - Indeterminate, see Item 8.

**7. Fiscal Impact Estimates:** See Item 8.

**8. Fiscal Implications:** The bill would prohibit all state agencies (in all branches) and all local agencies from engaging in any activity that can be performed by an existing private business. The fiscal implications depend upon what government activities are potentially “commercial” in nature, and the degree to which existing businesses can perform those activities at an equal or lower cost. Because the bill prohibits public bodies from performing these activities, these activities may have to be performed at a higher cost if services obtained from a private business cost more than the comparable public service.

Data on job duties from the Department of Human Resource Management’s (DHRM) PMIS/Cardinal system are only available for executive branch employees, excluding higher education. Of the approximately 50,000 executive branch employees in PMIS/Cardinal (salaried and wage), about 37,000 positions can be matched to commodity codes used for potentially commercial activities. These include Officials and Administrators (agency heads and other officials), Professionals (career administrators, accountants & finance, analysts, attorneys, economists, doctors, procurement, audit), Technicians (engineering, laboratory, etc.), Protective Service Workers (such as State Troopers, Correctional Officers, and Jailers), Paraprofessionals (library specialists, education support, etc.), Office and Clerical (such as

paralegals and administrative support), Skilled Craft (trades technicians, etc.), and Service & Maintenance (food service, housekeeping, etc.). In addition, there are up to 78,000 employees that could be affected at higher education, legislative, judicial, and independent agencies. Data on the number of potentially affected local employees is not available. The ability of existing private business to provide these activities is not known, and may require posting of requests for information or proposals.

However, DHRM data from the most recent bi-annual compensation comparison required by § 2.2-1202, which was last completed in 2021 by Deloitte on behalf of DHRM, found that the Commonwealth's base salaries lag behind the private sector by 15.7 percent, on average. This suggests that commercial activities may not be provided at a lower cost. In addition, to the extent that this bill results in the need to lay off state and local employees, substantial severance costs would occur. In addition, some state and local employees are engaged in revenue-generating or collecting activities. If those are outsourced, there may be a net loss in revenue to the degree that the private sector provides similar services at a higher cost. Federal grants may still require that state employees monitor or audit activities that had been outsourced, but this bill may prohibit their employment, which could hinder the Commonwealth's ability to attract or retain grant funding.

Beyond the question of the cost of an outsourced program is the issue of private sector capacity. The bill prohibits public bodies from performing activities that "can be performed by an existing private business," without regard to whether the business has the sustainable capacity to continue providing the service. This could potentially lead to service interruptions if the private sector discontinues the service or reduces the quality of services. To the extent that this bill intends the word "can" to mean that an existing business "has the general ability" to provide a service rather than "has the capacity" to ensure its ongoing provision at a certain level of quality, this could result in life and safety concerns, particularly in human services and public safety. Although some of these concerns could be addressed in part through ongoing contract administration and oversight, strictly applied the bill would require all such positions to also be outsourced.

- 9. Specific Agency or Political Subdivisions Affected:** All state and local agencies are affected (except for K-12, which is required in the Constitution of Virginia). The bill uses the definition of "public body" in the Virginia Public Procurement Act (§ 2.2-4301) which is "Any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this chapter. 'Public body' shall include (i) any independent agency of the Commonwealth, and (ii) any metropolitan planning organization or planning district commission which operates exclusively within the Commonwealth of Virginia."

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

**11. Other Comments:** None.

Date: January 26, 2022