



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 844

(Patron – Baskerville)

Date Submitted: 1/7/04

LD #: 04-4756228

Topic: Establishment of Virginia Clean Election Commission, Fund, & Act

Proposed Change:

The proposal establishes provisions for the Virginia Clean Election Act by adding §§ 24.2-951 through 24.2-963 and § 58.1-344.3 to the *Code of Virginia*. The Act would:

- Establish and define the duties of the Virginia Clean Election Commission;
- Define and determine election fund procedures and requirements;
- Establish penalties for violations of the Virginia Clean Election Act; and
- Set criteria for reporting requirements, for independent expenditures, and for contributions made by individual taxpayers on their tax returns.

The proposed legislation defines two new crimes. Any person who willfully or knowingly violates the Virginia Clean Election Act would be guilty of a Class 1 misdemeanor, punishable by up to 12 months incarceration. Any person who willfully or knowingly makes a false statement in any report required by the Virginia Clean Election Act would be guilty of a Class 5 felony, punishable by one to ten years incarceration.

The current *Code of Virginia* does not include the Virginia Clean Election Act. As new crimes, convictions under the proposed legislation would not be covered by the guidelines as the primary, or most serious, offense but may augment the guidelines recommendation if a covered offense is the most serious at conviction.

Data Analysis:

Although the *Code of Virginia* currently does not include the Virginia Clean Election Act, there are several offenses related to elections and voting defined in existing *Code*. Based on FY2000 and FY2001 Pre/Post-Sentence Investigation (PSI) data, only three offenders were convicted of an election/voting offense as the primary offense. All of these were convicted of election fraud under § 24.2-1016 for making a false material statement or entry on a statement, form, or report required by Title 24.2 (a Class 5 felony). Of these, one was sentenced to probation, one was sentenced to a local-responsible (jail) sentence of ten days, and one was sentenced to a state-responsible (prison) term of 2.75 years (this offender was also convicted of a Class 1 misdemeanor under § 24.2-1004(A) for voting when not qualified, assisting an unqualified person to vote or unlawfully depositing ballots).

The Commission provides analyses of the impact on prison and jail bed space and community corrections placement needs in accordance with § 30-19.1:4. Impact analyses do not comment on the merits of the bill under review.

Impact of Proposed Legislation:

The impact of the proposed Virginia Clean Election Act cannot be determined. The criminal justice databases maintained by the Commonwealth are insufficient to provide information on the number of additional offenders who may be prosecuted if the proposal is passed into law. Existing data sources reveal that there are currently few election/voting offenses prosecuted and, of those, only one received a state-responsible sentence. There may also be an impact on local-responsible (jail) bed space. If so, the state's share for a jail inmate is about half (52%) of the cost for a prison inmate for the same length sentence. Any impact on community corrections cannot be quantified.

No adjustment to the sentencing guidelines would be necessary under the proposal.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities and \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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