

## Department of Planning and Budget

### 2011 Fiscal Impact Statement

**1. Bill Number:** HB1399ER

|                        |                                       |                                     |  |
|------------------------|---------------------------------------|-------------------------------------|--|
| <b>House of Origin</b> | <input 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 checked="" type="checkbox"/> Enrolled |

**2. Patron:** Janis, B.

**3. Committee:** Passed Both Houses

**4. Title:** Virginia Fraud Against Taxpayers Act; waiver of sovereign immunity.

**5. Summary:** This bill is in response to the Virginia Supreme Court's decision in *Ligon v. Goochland*, 279 Va. 312 (2010) where the Supreme Court concluded that the language in the Virginia Fraud Against Taxpayers Act (the Act) does not contain an explicit waiver of sovereign immunity allowing employees of the Commonwealth and its political subdivisions to bring retaliatory discharge actions against their employers under the Act. The bill provides that the language in the Act be changed to contain an explicit waiver of sovereign immunity so that an employee of the Commonwealth, its agencies, or any political subdivision can create a cause of action against its employer if an adverse employment action is taken against the employee by his employer because the employee has opposed any practice by his employer prohibited by the Act or participated in an investigation, action, or hearing under the Act.

**6. Budget Amendment Necessary:** No (see item 8). If the bill becomes law, state agencies impacted by the bill, including the OAG, may need to submit budget amendments in the next budget development cycle for any documented significant unbudgeted costs.

**7. Fiscal Impact Estimates:** Final - indeterminate but possibly significant

**8. Fiscal Implications:** The existing Act provides protection for employees who are not employees of the Commonwealth and its political subdivisions. Protection is provided when employees are discharged, threatened, harassed, or in any other manner discriminated against by their employer because the employee has opposed any practice referenced in § 8.01-216.3 or because the employee has initiated, assisted, or participated in any manner in any investigation under this article. Under the Act, employees are entitled to all relief necessary to make the employee whole.

The Virginia Supreme Court's decision in *Ligon v. Goochland*, 279 Va. 312 (2010) found that employees of the Commonwealth and its political subdivisions are not protected under the Act. Under this amendment, the Act would also provide protection to the employees of the Commonwealth and its political subdivisions. The enrolled bill provides that any relief

awarded to an employee under this section shall be reduced by any amount awarded to the employee through a state or local grievance process.

Relief provided under the Act includes reinstatement with the same seniority status that the employee would have had before the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. The Office of the Attorney General (OAG) has indicated that there have only been two retaliation cases since the Act came into effect in 2003. However, according to the OAG, based on recoveries experienced by private companies, costs can be over a million dollars per case. There is no way to determine the number of retaliation cases that would occur if the Commonwealth and its political subdivisions were no longer exempt from the Act so the fiscal impact is indeterminate but possibly significant.

**9. Specific Agency or Political Subdivisions Affected:** The Commonwealth and its political subdivisions

**10. Technical Amendment Necessary:** No

**11. Other Comments:** None

**Date:** February 25, 2011

**Document:** CLC/HB1399ER

c: Secretary of Administration