Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 713

(Patron – Kilgore)

LD#: 12102843 **Date:** 12/14/2011

Topic: Embezzlement

Fiscal Impact Summary:

- **State Adult Correctional Facilities:** $50,000 *
- **Local Adult Correctional Facilities:** Cannot be determined
- **Adult Community Corrections Programs:** Cannot be determined
- **Juvenile Correctional Centers:** None ($0)
- **Juvenile Detention Facilities:** None ($0)

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 890 of the 2011 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of $50,000.

Summary of Proposed Legislation:

This proposal would add a paragraph B to §§ 26-88 of the *Code of Virginia*, the Uniform Power of Attorney Act, to create a specific embezzlement offense for using power of attorney to fraudulently convert funds or property from the principle.

It further clarifies, in §§ 26-94, that penalties and criminal prosecution, available under other applicable sections of the *Code of Virginia*, apply to violations of the Uniform Power of Attorney Act.

Analysis:

According to Sentencing Guidelines data for FY2010 and FY2011, 1,218 cases included a conviction for embezzlement of $200 or more under § 18.2-111. Embezzlement was the primary (or most serious) offense in 1,189 cases. Of these:

- 686 (57.7%) were not sentenced to an active period of incarceration;
- 381 (32%) received a local-responsible (jail) term, with a median sentence of 3 months; and
- 122 (10.3%) received a state-responsible (prison) term, with a median sentence of 24 months.

Information as to whether, and how many, of these cases involved the use of power of attorney to fraudulently convert funds or property is not available.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal would create a specific embezzlement offense for using power of attorney to fraudulently convert funds or property, where one does not currently exist. Consequently, it could increase the need for state-responsible (prison) beds. The number of additional felony convictions that may result from the proposal cannot be estimated; therefore, the impact of the proposal cannot be determined.

Local adult correctional facilities. Because nearly one-third of the embezzlement convictions under § 18.2-111 resulted in local-responsible (jail) sentences, the proposal may increase local-responsible (jail) bed space needs. However, data are not available to estimate the magnitude of the impact.

Adult community corrections resources. Because the proposal may result in additional felony offenders on community supervision, the proposal may impact local and state community corrections resources. However, the full cost of the impact on adult community corrections cannot be estimated.

Virginia's sentencing guidelines. Since this proposal would create a specific offense that does not currently exist, it is not included in the sentencing guidelines as a primary (most serious) offense. A conviction under this provision, however, could augment the guidelines recommendation as an additional offense, if the most serious offense at sentencing is covered by the guidelines. No adjustment to the sentencing guidelines would be necessary under the proposal.

Juvenile correctional centers. The Department of Juvenile Justice projects that this proposal will have no impact on juvenile correctional center bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice projects that this proposal will have no impact on juvenile detention facility bed space needs.

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; therefore, Chapter 890 of the 2011 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of $50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is $0 for periods of commitment to the custody of the Department of Juvenile Justice.

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