

Department of Planning and Budget 2015 Fiscal Impact Statement

1. Bill Number: SB1289

House of Origin	<input checked="" type="checkbox"/>	Introduced	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Engrossed
Second House	<input type="checkbox"/>	In Committee	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Enrolled

2. Patron: Ebbin

3. Committee: Rules

4. Title: State and Local Government Conflict of Interests Act, General Assembly Conflicts of Interests Act; Virginia Independent Commission on Ethics established; penalty.

5. Summary: The bill establishes the Virginia Independent Commission on Ethics (the Commission), an independent ethics commission authorized to (i) prescribe, receive, and review all disclosure forms required by the State and Local Government Conflict of Interests Act, the General Assembly Conflicts of Interests Act, and the lobbying laws; (ii) conduct annual audits of those disclosure forms and work with the State Board of Elections and local electoral boards to conduct random audits of campaign finance reports; (iii) issue advisory opinions; (iv) grant waivers for certain gifts; (v) investigate alleged violations of the State and Local Government Conflict of Interests Act, the General Assembly Conflicts of Interests Act, and the lobbying laws; and (vi) refer certain violations to the appropriate authority for prosecution. The Commission replaces the current legislative Virginia Conflict of Interest and Ethics Advisory Council established in the 2014 session and the House of Delegates and Senate Ethics Advisory Panels. The bill also prohibits persons subject to the Conflicts of Interests Acts from receiving any single or combination of tangible gifts with a value in excess of \$100 and any single or combination of intangible gifts with a value in excess of \$250, but exempts gifts received at a widely attended event or gifts for which a waiver has been granted by the Commission.

6. Budget Amendment Necessary: See Item 8 below.

7. Fiscal Impact Estimates: Preliminary and indeterminate.

8. Fiscal Implications: The overall fiscal impact of this bill is indeterminate as there are many unknowns, but costs are expected to be offset, if not fully covered, with the funding provision in Central Appropriations of \$500,000 in FY 2016 for ethics reform activities. This bill creates the Virginia Independent Commission on Ethics to facilitate compliance with the State and Local Government Conflict of Interests Act. The new Commission will have a membership of nine, all nonlegislative citizen members appointed by the House, Senate, and the Governor.

One of the most significant costs will be for the staffing of the Commission and it is not clear just how many people will be needed to support the duties of the Commission. While it is

known that the Commission will employ an executive director and a chief council, it is not known what other supporting staff may be hired by the executive director. The bill allows the executive director to hire staff as needed to carry out the responsibilities of the Commission.

The Commission will meet quarterly and upon the call of the chairman or when a majority of members request one. Members will receive no compensation, but will be eligible for reimbursement of expenses incurred from their duties with the Commission. These reimbursement costs are indeterminate as they are variable, primarily depending on the number of meetings held and the travel costs for members.

The bill is unclear as to the processing responsibilities associated with disclosure forms. The bill stipulates that the Commission will be required to “prescribe” disclosure forms, make the forms available on its website with instructions, and maintain a searchable database of properly filed forms on its website. The Commission is tasked to maintain disclosures as public records for five years in the Commission’s office. However, the bill does not tie these requirements to existing Code in § 2.2-428 that requires the Secretary of the Commonwealth (SOC) to maintain a disclosure database. In terms of potential processing costs, please consider the following:

- The bill is unclear as to how the new Commission will acquire the technology necessary to process and track disclosure forms. The SOC originally developed and currently maintains a disclosure form system/database, but § 2.2-428 states that SOC will only be required to maintain it through January 1, 2016. It is assumed that the new Commission is expected to have the necessary technology in place at that time. If the Commission’s development timelines experience delays, it is possible the SOC will be required to continue to maintain their system for a prolonged period of time.
- At this time, the cost of creating and maintaining a publicly searchable database is unknown. While the SOC projected the cost to be around \$65,000 in response to a 2014 session bill requiring the SOC to develop such a searchable database, the agency expects costs to be higher for this bill for two reasons: First, the SOC now believes the 2014 estimate to be low; Second, the agency points out that their estimate was for an extension to their existing disclosure database and this bill appears to call for a stand-alone searchable database to be developed by the Commission.

In addition to the Commission’s duties to conduct training seminars and educational programs regarding ethics within state and local government, the bill calls for the Commission to establish formal processes for the issuing of formal advisory opinions, conducting semiannual audits, initiating investigations into alleged violations, and referring violations to the appropriate legal authorities:

- Advisory opinions: Upon the request of any person subject to the requirements of the bill, the Commission is tasked to furnish informal advice or formal advisory opinions or guidance with respect to ethics, conflicts issues, or such person's duties. Formal

advisory opinions will become public record.

- **Audits:** The Commission is tasked to conduct an annual audit of a random sample of the disclosure forms filed. These audits are to be performed in accordance with generally accepted auditing standards and should review each disclosure form to determine compliance, accuracy, and whether filing deadlines were met.
- **Investigations:** Investigations into alleged violations of the Acts may be initiated upon the Commission's own motion or in response to the signed and sworn complaint of any citizen of the Commonwealth. During an investigation, the Commission, its executive director, and its staff is to perform interviews, take statements, receive and inspect documents and records, and gather other evidence as may be relevant. The Commission will have the authority to issue subpoenas to compel the production of documents, records, and other information. If the Commission finds that a violation was committed, a written report will include the pertinent findings of fact and the Commission will schedule a hearing on the matter. At any hearing, the Commission is to have the authority to issue subpoenas to compel the attendance of witnesses or the production of documents, records, and other information, and is to issue such subpoenas upon the request of the subject of the investigation. At the conclusion of the hearing, the Commission is to deliberate on the evidence and determine whether there has been a violation of the Acts. Within 30 days following the conclusion of a hearing conducted, the Commission is to issue a final order. The final order is to set forth the alleged violation, the findings of fact, and the conclusions of law. It may also include recommendations for disciplinary action, civil penalties, or criminal prosecution. Final orders are public record and are to be published on the Commission's website.
- **Violations:** If the Commission, after conducting an investigation, finds a person subject to the requirements of the State and Local Government Conflict of Interests Act has knowingly violated one or more provisions of that Act, it is to refer the matter by its final order to the Supreme Court of Virginia. The Supreme Court is to appoint an attorney for the Commonwealth to prosecute the alleged violation.

Though indeterminate at this time, the general changes to disclosure rules set-out in this bill are not expected to create a significant cost to state agencies or other political subdivisions.

9. Specific Agency or Political Subdivisions Affected: All state agencies and political subdivisions.

10. Technical Amendment Necessary: No.

11. Other Comments: The bill is similar to House Bill 1947 and Senate Bill 1345.