

Department of Planning and Budget

2015 Fiscal Impact Statement

1. Bill Number: SB1345

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: McEachin

3. Committee: Rules

4. Title: State and Local Government Conflict of Interests Act and General Assembly Conflicts of Interests; establishing the Virginia Independent Ethics Review Commission; penalty.

5. Summary: The bill establishes the Virginia Independent Ethics Review Commission, a seven-member independent 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; (iii) issue advisory opinions; (iv) grant waivers for certain travel and 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 legislative Virginia Conflict of Interest and Ethics Advisory Council, created in the 2014 Session but unfunded, and the House of Delegates and Senate Ethics Advisory Panels. The bill prohibits any single gift or any combination of gifts with a value exceeding \$100 to those persons subject to the Conflicts of Interests Acts and members of their immediate family from any single source in a calendar year, but exempts meals accepted as part of a widely attended event and travel-related gifts for which the Commission has granted a waiver. The bill removes the required disclosure forms from the Code, outlines the required information to be reported on the disclosure forms, and authorizes the Commission to prescribe the forms. The bill requires all disclosure forms be filed electronically with the Commission and permits the clerks of governing bodies to submit the disclosure forms on behalf of any local official. The bill also extends the current prohibition on political fundraising during regular sessions of the General Assembly to special sessions as well.

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 provision in Central Appropriations of \$500,000 in FY 2016 funding for ethics reform activities. This bill creates the Virginia Independent Ethics Review Commission to facilitate compliance with the State and Local Government Conflict of Interests Act. The new commission will have a membership of 7, 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 bill stipulates that such staff may not be provided by another agency.

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 variable, primarily depending on the number of meetings held and the travel costs for members, especially members traveling from outside of the Richmond area.

The new commission will be required to develop new disclosure forms, make the forms available electronically, collect and review electronically submitted disclosures, track the disclosures (maintained as public records for five years) – essentially the development of a disclosure form processing system. The commission is further tasked to establish and maintain a searchable database to provide public access to this information.

- With regard to the assignment of responsibility for developing a disclosure form processing system, it is possible that costs can be somewhat contained by utilizing or expanding the conflict of interest disclosure system already established and active at the Secretary of the Commonwealth (SOC) who currently supports the disclosure process. It should be noted that the funding and associated positions (\$70,000 and two positions each year) for this disclosure form processing function at SOC was removed by a General Assembly budget amendment in the 2014 session, so these savings are no longer available from the SOC. The SOC is currently absorbing these costs. It should also be noted that the funding that was removed from SOC was moved into the legislative advisory council established in 2014 session's HB1211, but later vetoed by the Governor.
- With regard to the requirements creating and maintaining a publicly searchable database, the variables are not yet defined to make a solid estimate. However, it should be noted that the Secretary of the Commonwealth (SOC) provided rough estimates in response to 2014 session bills HB204 where SOC was being assigned this same responsibility. In that bill, SOC estimated the database development to cost around \$65,000, with ongoing annual maintenance costs of 10 percent. The SOC now believes that estimate to be low.

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 reviewing and approving waiver requests for travel and certain prohibited gifts, issuing formal advisory opinions, conducting semiannual audits, initiating investigations into alleged violations, and referring violations to the appropriate legal authorities:

- Waivers for travel and certain prohibited gifts: The bill states that the commission will receive, review, and approve or deny applications for waivers submitted by persons required to file the disclosure form to accept any transportation, lodging, meal, hospitality, or other travel-related thing of value provided by a third party that exceeds the limitations prescribed in the bill. The commission is also tasked to

receive, review, and approve or deny applications for waivers submitted by persons required to file the disclosure form to accept any loan in excess of \$5,000 from any noncommercial lender. The commission is given 10 days of receipt of an application for a waiver to approve or deny the waiver and has 48 hours to post the waiver on its website after a decision is made.

- **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 are public record and shall be published on the commission website within 48 hours of issuance.
- **Audits:** The commission is tasked to conduct a semiannual 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 may be initiated upon the commission's own motion or in response to the signed and sworn complaint of any citizen of the Commonwealth. Investigations are to begin within 30 days of the commission's discovery of the facts giving rise to the alleged violation. An investigation will not begin until the subject of the investigation has been notified and provided a general statement of the alleged violation and the applicable statutes with respect to such violation. During the investigation, the commission, its executive director, and its staff are to conduct interviews, take statements, receive and inspect documents and records, and gather other evidence as may be relevant. The commission shall have the authority to issue subpoenas to compel the production of documents, records, and other information. The commission shall complete its investigation no later than 180 days after the initiation of the investigation and within 30 days of completion of the investigation shall make a written report of its findings and shall provide of a copy of that report to the subject of the investigation. If the commission finds that no violation was committed, the Commission shall put in the written report its reasons for dismissal of the complaint and shall notify the subject of the investigation and the complainant, if there is one. In all other cases, the written report shall include the pertinent findings of fact and the commission shall schedule a hearing on the matter. Within 30 days following the conclusion of a hearing conducted, the commission shall issue a final order. The final order shall 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 shall be published on the commission 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 involving a state officer or employee to the Office of the Attorney General and a matter involving a local officer or employee by its final order to the attorney for the Commonwealth within the political subdivision for which he was elected or is employed. Violations to the requirements of the General Assembly Conflicts of Interests Act are to be referred to the Office of the Attorney General

Although insufficient data exists to determine the fiscal impact due to this proposal, the proposed legislation could result in an increase in the jail population since Class 1 misdemeanor outcomes result in sentences of up to 12 months in jail (and a fine up to \$2,500). Any increase in jail population will increase costs to the state. The Commonwealth presently pays the localities \$4.00 a day for each misdemeanor or otherwise local responsible prisoner held in a jail. It also funds a significant portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's FY2013 Jail Cost Report (November 1, 2014), the estimated total state support for local and regional jails averaged \$30.54 per state inmate, per day in FY 2013.

The 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 identical to House Bill 1947.