



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2411 **As Engrossed** ***(Patron Prior to Engrossment – Adams, L.R.)***

LD#: 19104121

Date: 1/10/2019

Topic: Timber theft

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Direct Care:**
Cannot be determined **
- **Juvenile Detention Facilities:**
Cannot be determined **

** Provided by the Department of Juvenile Justice

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2018, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal adds § 55-334.2 and amends other sections of the *Code* related to timber theft. The proposal specifies that a person who buys and removes timber from a landowner's property is guilty of larceny if he fails to pay the landowner by the date specified in their agreement, or if there is no written agreement, within 60 days of removing the timber. The proposal requires that a person who is convicted of larceny of timber be ordered to pay three times the value of the timber removed. An exception is provided for a purchaser who made timely payment to a person he believed in good faith to be the rightful owner of the timber. The bill requires a timber buyer, in certain cases, to furnish at the request of the landowner an accounting of each load removed from the property, with supporting documentation. A person who fails to provide such information, or who provides false information, is guilty of a Class 3 misdemeanor. Finally, the proposal extends from 30 days to 90 days the period during which the owner of land on which a person encroached and cut timber has the right to notify such trespasser and to appoint a timber estimator to determine the amount of damages.

Under the proposal, a person who violates § 55-334.2 would be guilty of larceny. If the value of the timber is \$500 or more, the person would be guilty of grand larceny, a felony punishable by imprisonment of 1 to 20 years (§ 18.2-95). If the value of the timber is less than \$500, the person would be guilty of petit larceny, a Class 1 misdemeanor (§ 18.2-96). The 2018 General Assembly increased the threshold at which larceny becomes a felony from \$200 to \$500, effective July 1, 2018.

Currently, under § 55-334.1, any person who knowingly and willfully takes, steals, and removes from the lands of another any timber growing, standing or lying on the lands is guilty of larceny. The existing provision does not explicitly cover failure to pay a landowner for a timber purchase, as is proposed.

Analysis:

Existing data sources do not contain sufficient detail to identify the number of individuals who would be convicted for timber theft for failing to remit payment under the proposed § 55-334.2. Offenders convicted under the proposed § 55-334.2 may be sentenced similarly to those currently convicted under § 55-334.1 for larceny of timber. According to Circuit Court Case Management System (CMS) data for fiscal year (FY) 2013 through FY2018, one individual was convicted of a felony under § 55-334.1. This was the primary, or most serious, offense in the case. The offender received a state-responsible (prison) sentence of 3.8 years. Based on General District Court CMS data for the same six-year period, there were no misdemeanor convictions for larceny of timber under § 55-334.1.

Offenders convicted under the proposed § 55-334.2 may also be sentenced similarly to those currently convicted under § 18.2-178 for obtaining money or property by false pretense. Examining felony convictions under § 18.2-178 (in cases in which it is the primary, or most serious, offense), FY2017-FY2018 Circuit Court CMS data reveal that one-third (31.4%) of the offenders received a state-responsible (prison) term with a median sentence of 1.5 years. Another one-third (32.5%) received a local-responsible (jail) term for which the median sentence was seven months. The remaining offenders convicted of a felony under § 18.2-178 did not receive an active term of incarceration to serve after sentencing. For misdemeanor convictions under § 18.2-178 (as the primary offense), General District Court CMS data reveal that approximately half (47.6%) of the offenders received a jail term; for these individuals the median sentence was one month.

Impact of Proposed Legislation:

State adult correctional facilities. Because it creates a new felony offense for which imprisonment is authorized, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. Existing databases do not provide sufficient detail to estimate the number of new felony convictions likely to result from enactment of the proposal. As a result, the magnitude of the impact on prison beds cannot be quantified.

Local adult correctional facilities. Similarly, the proposal may also increase the local-responsible (jail) bed space needs of the Commonwealth. However, the magnitude of the impact cannot be determined.

Adult community corrections programs. Because the proposal could result in felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections resources cannot be quantified.

Virginia's sentencing guidelines. As a new felony, convictions under § 55-334.2 would not be covered by the sentencing guidelines as the primary, or most serious, offense. Such convictions, however, could augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines is necessary under the proposal.

Juvenile direct care. According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal's impact on the bed space needs of juvenile detention facilities cannot be determined.

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 2 of the Acts of Assembly of 2018, Special Session I, 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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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