



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1192 (Patron – Lopez)

LD#: 20105199

Date: 01/08/2020

Topic: Aboveground hazardous storage tanks

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 854 of the 2019 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal adds several sections to the *Code of Virginia* to establish regulations applicable to aboveground storage tanks that measure more than 1,320 gallons in capacity and are used to contain hazardous substances other than oil. Regulations pertaining to aboveground storage tanks that store oil are provided in Article 11 of Chapter 3.1 of Title 62.1 of current *Code*.

The proposal defines several criminal penalties for violations of hazardous substance aboveground non-oil storage tank regulations or orders. It would be a misdemeanor, punishable by up to 12 months in jail, to knowingly violate any such regulation or order. Making a false statement, representation or certification in any application, report or other required document would be a felony punishable by one to three years in prison. Any person whose negligence causes the release of a hazardous substance into state waters would be guilty of an undefined misdemeanor with a fine of \$50,000. However, knowingly and willfully releasing a regulated substance into state waters would be a felony with no set penalty other than a fine of up to \$100,000. There are no other felonies in the *Code* that have a fine only penalty. Various other fines and civil penalties are also specified. Each day of violation would constitute a separate offense under the proposal.

It is unclear if the penalties proposed for aboveground hazardous substances storage tanks will parallel the existing penalties defined in § 62.1-44.34:20 for aboveground storage tanks used for oil.

Analysis:

According to the Circuit Court Case Management System (CMS) for fiscal year (FY) 2018 through FY2019, there was one felony convictions under § 62.1-44.34:20, relating to aboveground oil storage tanks, during the two-year period. The offender was sentenced to a local-responsible (jail) terms of one month.

Based on General District Court CMS data for FY2018 to FY2019, one offender was convicted of a misdemeanor under § 62.1-44.34:20 for negligently causing the discharge of oil into state waters. The offender received no active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. By establishing new felony offenses, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. Available data sources do not contain sufficient detail to estimate the number of additional felony convictions that may result from enactment of the proposal. Therefore, the magnitude of the impact on prison bed space needs cannot be determined.

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

Adult community corrections resources. Because the proposal could result in 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 affected cannot be determined, the potential impact on community corrections cannot be quantified.

Virginia's sentencing guidelines. Since the proposal defines new felony offenses, convictions under the proposed section of the *Code* would not be covered by the sentencing guidelines as the primary, or most serious, offense. However, such convictions may augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines would be 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 854 of the 2019 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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.