



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 838 ***(Patron – Ebbin)***

LD#: 20104975

Date: 1/8/2020

Topic: Nonpayment of wages

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 amends § 40.1-29 and adds § 11-4.6 to the *Code of Virginia*, relating to the failure to pay wages. Under the proposal, an employer that knowingly fails or refuses to pay wages, unless the failure to pay was because of a bona fide dispute between the employer and its employee, is guilty of a Class 1 misdemeanor if the value of the wages earned and not paid by the employer is less than \$10,000 or a Class 6 felony if the value of the wages earned and not paid is \$10,000 or more or if the conviction is a second or subsequent conviction. The proposal also provides that an employee has a private cause of action against an employer who fails to pay wages and may recover the wages due plus interest, as well as attorney fees and, under certain circumstances, an amount equal to triple the amount of wages due.

Currently, under § 40.1-29, criminal liability attaches if an employer's nonpayment of wages is willful and with intent to defraud. In addition to the Class 6 felony described above for unpaid wages of \$10,000 or more, any second or subsequent conviction, regardless of the value of the wages, is a Class 6 felony.

The measure also provides that construction contracts entered into on or after July 1, 2018, shall be deemed to include a provision under which the general contractor and subcontractor at any tier are jointly and severally liable to pay the wages due to any subcontractor's employees. If the wages due to the subcontractor's employees are not paid, the general contractor is subject to criminal and civil penalties for which an employer is liable for failing or refusing to pay wages.

Analysis:

According to fiscal year (FY) 2018 and FY2019 General District Court Case Management System data, one offender was convicted under § 40.1-29 for unlawfully withholding wages. The offender did not receive an active term of incarceration to serve after sentencing. Circuit Court CMS data indicate that there were no felony convictions under § 40.1-29 during this same time period.

Impact of Proposed Legislation:

State adult correctional facilities. By removing the intent to defraud as the trigger for criminal penalties under § 40.1-29, the proposal may result in additional felony convictions under this provision. Thus, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. Data are not available to estimate the number of additional felony convictions that would result from enactment of the proposal. Therefore, 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. Because the number of new convictions that may result from enactment of the proposal cannot be determined, the magnitude of the impact on jail bed space needs cannot be estimated.

Adult community corrections programs. Because the proposal could result in misdemeanor and felony convictions with subsequent supervision requirements for additional offenders, the proposal may increase the need for adult community corrections resources. However, the potential impact on state and local community corrections programs cannot be determined.

Virginia's sentencing guidelines. Felony convictions under § 40.1-29 are not covered by the sentencing guidelines when the offense is the primary, or most serious, offense in a case. However, convictions under this statute could 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.