



## Fiscal Impact Statement for Proposed Legislation

### *Virginia Criminal Sentencing Commission*

#### House Bill No. 408 (Patron – Oder)

**LD#:** 08-8231668

**Date:** 1/4/2008

**Topic:** Foreclosure rescues

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
Cannot be determined
- **Local Adult Correctional Facilities:**  
Cannot be determined
- **Adult Community Corrections Programs:**  
Cannot be determined

- **Juvenile Correctional Centers:**  
None (\$0)
- **Juvenile Detention Facilities:**  
None (\$0)

#### Summary of Proposed Legislation:

The proposal adds Article 2.2 (§§ 55-66.15 through 55-66.17) to Chapter 4 of Title 55 of the *Code of Virginia* relating to the marketing and performance of foreclosure rescues. The proposal defines a “foreclosure rescue transaction” as a transaction (i) by which residential property is conveyed where the homeowner maintains a legal or equitable interest in the property conveyed, and (ii) that is designed to avoid or delay actual or anticipated foreclosure proceedings against a homeowner’s residential property. “Foreclosure-related services” means any goods or services related to, or promising assistance in connection with: (i) avoiding or delaying actual or anticipated foreclosure proceedings concerning residential property; or (ii) curing or otherwise addressing a default or failure to timely pay a residential mortgage loan obligation.

Under the proposed § 55-66.16, it would be a Class 5 felony for any person to engage in, arrange, offer, promote, or carry out a foreclosure rescue transaction concerning residential property in the Commonwealth for compensation or gain, whether at the time of the transaction or in the future. It would also be a Class 5 felony for any person to solicit, arrange, or accept an advance fee in connection with providing foreclosure-related services; however, the proposal would not prohibit a licensed attorney from soliciting, arranging, or accepting an advance fee or retainer for legal services in connection with (i) the preparation and filing of a bankruptcy petition, or (ii) court proceedings to avoid a foreclosure. An advance fee is any money or consideration paid in advance of actually receiving services.

Under the proposed § 55-66.17, it would be a Class 5 felony for any person (i) to advertise or promote the availability of foreclosure-related services; (ii) to advertise or promote such services with the intent to engage in a foreclosure rescue transaction; (iii) to advertise or promote such services without clearly disclosing (a) the precise goods and services offered, and (b) a precise description of how the promoter will assist persons in avoiding foreclosure; or (iv) who is a licensed mortgage broker or lender to advertise or promote such services in connection with the unlawful placement of a residential mortgage

loan. Victims would have civil cause of action and could pursue any actor for civil judgment for damages sustained.

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**Analysis:**

Certain criminal offenses related to real estate transactions may be covered under Title 6.1 (Banking and Finance) of the *Code of Virginia*. According to calendar year (CY) 2005 and CY2006 Local Inmate Data System (LIDS) data, there were no offenders held pre- or post-trial in jail for any violation of Title 6.1. Any person who fraudulently engages in a foreclosure rescue transaction, however, may be subject to civil liability under § 55-66.3.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** Because it creates two new felony offenses, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. The magnitude of the impact, however, cannot be quantified with existing data.

**Local adult correctional facilities.** The proposal may increase local-responsible (jail) bed space needs. The magnitude of the impact, however, cannot be quantified with existing data.

**Adult community corrections resources.** 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 community corrections resources. Since the number of cases that may be affected by the proposal cannot be determined, the potential impact on community corrections programs cannot be quantified.

**Virginia's sentencing guidelines.** As new crimes, convictions under proposed §§ 55-66.16 and 55-66.17 would not be covered by the sentencing guidelines as the primary (most serious) offense at conviction. If enacted, however, convictions under these statutes may augment the guidelines recommendation if a covered offense is the most serious at conviction. No adjustment to the guidelines would be necessary under the proposal.

**Juvenile correctional centers.** According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase juvenile correctional center (JCC) bed space needs.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

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**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 and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**

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