

Department of Planning and Budget

2010 Fiscal Impact Statement

1. Bill Number: HB 1

House of Origin	<input type="checkbox"/>	Introduced	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Engrossed
Second House	<input type="checkbox"/>	In Committee	<input type="checkbox"/>	Substitute	<input checked="" type="checkbox"/>	Enrolled

2. Patron: Loupassi

3. Committee: Passed both houses

4. Title: Unsolicited commercial electronic mail (spam)

5. Summary:

Under current law it is a Class 1 misdemeanor to use a computer network to falsify or forge electronic mail routing information in connection with the transmission of unsolicited bulk electronic mail or to sell such equipment. The offense is elevated to a Class 6 felony if the transmission involved a large number of recipients (10,000 or more in a 24-hour period, 100,000 or more in a 30-day period, or one million or more in a one-year period) or if the offender used a minor to assist in the transmission of such high volumes.

The statute was invalidated by the Virginia Supreme Court as being overbroad because it prohibited all bulk e-mails, including political, religious, or other speech protected by the First Amendment.

The proposed legislation narrows the applicability of the statute to unsolicited commercial electronic mail, or “spam”. Commercial electronic mail is defined as electronic mail intended mainly to advertise or promote a commercial product or service. The definition of spam explicitly excludes “commercial electronic mail transmitted to a recipient with whom the sender has an existing business or personal relationship.”

6. Fiscal Impact Estimates: Final. See Item 8.

Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2011	\$50,000	General
2012	\$0	
2013	\$0	
2014	\$0	
2015	\$0	
2016	\$0	

7. Budget Amendment Necessary: None. The conferees included an appropriation for \$50,000 in HB 30 for the impact of this bill (Item 380#3c).

8. Fiscal Implications:

This proposal seeks to narrow a previously overturned statute and define a smaller group of activities as a misdemeanor or felony. For someone convicted of a Class 6 felony, a judge has the option of sentencing him to up to one year in jail, or 1 to 5 years in prison. Therefore, this proposal could result in an increase in the number of persons sentenced to jail or prison.

There is not enough information available to reliably estimate how many additional inmates in jail could result from this proposal. Any increase in jail population will increase costs to the state. The Commonwealth presently pays the localities \$8.00 a day for each misdemeanor or otherwise local responsible prisoner held in a jail, \$8.00 a day for each state responsible inmate held for sixty days or less, and \$14.00 a day for each state responsible inmate held for more than sixty days. It also funds a considerable 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 most recent Jail Cost Report (November 2009), the estimated total state support for local jails averaged \$32.66 per inmate, per day in FY 2008.

Due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 781 of the 2009 Acts of Assembly requires that a minimum impact of \$50,000 be assigned to the bill.

9. Specific Agency or Political Subdivisions Affected: None.

10. Technical Amendment Necessary: None.

11. Other Comments: None.