



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 876 (Patron – Rust)

LD#: 12103730

Date: 1/9/2012

Topic: Motor vehicle fuels sales tax

Fiscal Impact Summary:

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

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

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 890 of the 2011 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal repeals Articles 4 and 4.1 of Chapter 17 of Title 58.1 (miscellaneous taxes) and adds Chapter 22.1 to Title 58.1 of the *Code of Virginia* relating to motor vehicle fuels sales tax. A significant amount of overlap exists between the portions of the *Code* that the proposal repeals and the proposed statutes that would be inserted. However, the proposed additions to the *Code* expand a number of procedural requirements relating to the motor vehicle fuels sales tax. For instance, the proposal establishes a procedure for obtaining certificates of registration to engage in the business of a distributor and to sell fuel to a retail dealer for retail sale within certain transportation districts. The proposal also creates numerous civil penalties associated with the requirements established by the proposal.

The proposal also specifies numerous criminal penalties relating to the mandatory procedures and taxes that are outlined in the proposed statutes. For instance, under the proposed § 58.1-2299.3, any distributor who neglects, fails, or refuses to pay or collect tax upon every taxable fuel sale is guilty of a Class 1 misdemeanor. Under the proposal, anyone who advertises that he will absorb all or part of the tax levied under the proposed chapter or that he will relieve the purchaser of the payment of all or any part of such tax would be guilty of a Class 2 misdemeanor. Several of the crimes outlined in the proposal mirror acts prohibited under §§ 58.1-2272 and 58.1-2273, which specify the penalties for certain violations of the Virginia Fuels Tax Act. In addition to numerous misdemeanors, the proposal creates several new Class 6 felonies relating to the willful commission of certain acts with the intent to evade the taxes imposed under the proposed chapter or assisting another in efforts to evade such taxes. Under the proposed § 58.1-2299.10, for example, willfully failing to pay the taxes imposed under the proposed chapter and diverting the proceeds for other purposes with the intent to evade the taxes is a Class 6 felony and is

punishable by up to five years imprisonment. Currently, sections of the *Code* pertaining to motor vehicle fuels sales tax in certain transportation districts do not specify criminal penalties.

Analysis:

According to General District Court Automated Information System (CAIS) data for fiscal years 2010 and 2011, three offenders were convicted for a misdemeanor violation of the Fuel Tax Act under §§ 58.1-2272 or 58.1-2273. None of the offenders received an active term of incarceration to serve after sentencing. According to CAIS Circuit Court data for the same time period, there were no felony convictions for a violation of § 58.1-2273 during this two year period.

Impact of Proposed Legislation:

State adult correctional facilities. By defining new Class 6 felony offenses, 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 the proposal; therefore, the magnitude of the impact on prison beds cannot be determined.

Local adult correctional facilities. Similarly, the proposal may have an impact on local-responsible (jail) bed space needs, but 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 programs cannot be quantified.

Virginia's sentencing guidelines. As new crimes in the *Code of Virginia*, the proposed felonies would not be covered by the sentencing guidelines as the primary (most serious) offense. A conviction for such an offense, however, 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 correctional centers. According to the Department of Juvenile Justice, the legislative proposal is not expected to impact juvenile correctional center bed space needs.

Juvenile detention facilities. According to the Department of Juvenile Justice, the legislative proposal is not expected to impact juvenile detention facility bed space needs.

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 890 of the 2011 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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.