

Department of Planning and Budget 2012 Fiscal Impact Statement

1. Bill Number: SB 24

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

2. Patron: Stuart, Richard H.

3. Committee: Courts of Justice

4. Title: Welfare and other entitlement fraud; penalties.

5. Summary: The proposed legislation requires a 180-day mandatory minimum sentence for misdemeanor entitlement fraud, a one year mandatory minimum sentence for felony entitlement fraud, a lifetime bar on receipt of entitlement and a repayment of three times the benefits received. The programs covered by the bill are housing assistance programs, medical assistance, food stamps, energy assistance, and any other program designated under regulations of the State Board of Social Services, State Board of Health, or Board of Medical Assistance Services.

6. Budget Amendment Necessary: Yes

7. Fiscal Impact Estimates: See item 8

8. Fiscal Implications:

Mandatory Sentencing

The proposed legislation would require mandated minimum sentences for committing misdemeanor and felonious fraud. Such requirements would have a fiscal impact on jails and prisons.

Anyone convicted of a misdemeanor offense under the bill would receive a mandatory minimum sentence of 180 days in jail. The Compensation Board reimburses localities \$4.00 per day for each misdemeanant held in jail. Because most persons convicted of a misdemeanor under these statutes have not received any active jail time in recent years, the proposed legislation could result in more inmates being held in jail and, thus, additional costs for the state. Based on the projections of the Virginia Criminal Sentencing Commission, the proposed legislation would result in \$48,180 in additional per diem payments to state and local governments in FY 2013 and \$49,640 in subsequent years. Felony convictions under the relevant statutes would receive a mandatory minimum sentence of one year in prison. Although that required sentence is near the low end of the statutory range (up to 12 months in jail or 1-20 years in prison), in recent years few people convicted of a felony offense under these statutes received any prison time at all. Therefore, the proposed legislation could result in more people being committed to prison. Pursuant to §30-19.1:4 of the Code of Virginia,

the Virginia Criminal Sentencing Commission estimates a fiscal impact of \$3,694,072 (the highest annual cost over the next six years). The amount is based on the projection that the legislation will result in 133 additional inmates being incarcerated in prison.

Benefits Ban

The proposed legislation provides that persons convicted under sections 18.2-186.2¹, 63.2-522, and 63.2-523 be barred (as allowed by federal law) from receiving assistance from local or state housing assistance programs or any programs designated under regulations under the Boards of Social Services, Health and Medical Assistance Services. Such a lifetime ban will require data sharing related to fraud convictions between programs, agencies, and political subdivisions. Currently, convictions and amounts owed are maintained by individual courts. This information, along with accurate personal identifiers and specific information related to the fraud conviction must be available to all impacted programs, including local partners. Moreover, it would be preferable that the information be provided in a format such that it could seamlessly interface with existing agency systems so that a manual lookup of each individual applying for services is not required. There is no system, or comparable system, to serve as a basis to estimate the cost, effort and staffing for implementing the necessary infrastructure to support the provisions of the proposed legislation. Based on the experience of implementing statewide information projects the cost of this project could be in the millions.

Assuming data can be shared between the impacted programs; the lifetime ban would potentially decrease the number of individuals accessing services and to the extent that these services are supported with general fund an associated savings would be generated. Federal law limits the ban on Medicaid to one year; therefore, once jail and prison sentences are factored in it is not assumed that the ban provision would generate any significant savings in the Department of Medical Assistance Services. The Departments of Health and Housing and Community Development have not identified specific dollar amounts; however, it is assumed the lifetime ban will not generate any significant general fund savings in these departments. Most programs administered by Housing and Health are not entitlement in nature and any funding made available due to the institution of a ban would be used to support other eligible individuals and/or decrease agency wait lists.

The Department of Social Services reports that federal law allows the required disqualification for all of its programs, except food stamps. However, savings are only expected to accrue in the Temporary Assistance for Needy Families (TANF) and mandated child care programs, since (similar to departments above) it is assumed that any excess funding would be used to support other eligible individuals and waitlists. Based on FY 2011 data, it is estimated that \$66,606 general fund and \$130,926 TANF would be saved due to those convicted of fraud no longer being able to receive benefits.

¹ This section specifies that persons are barred from “entitlement programs” as opposed to “programs” in other sections. However, since entitlement programs are not defined a distinction is not made in the subsequent analysis.

Civil Penalty

In addition to the recoupment of fraudulently received benefits, the proposed legislation proscribes that a civil penalty of three times the amount of the benefit fraudulently received² must be levied upon conviction. Any monies collected under this provision would be deposited into the general fund. Similar to other civil penalties, it is assumed that these penalties will be assessed and collected by the courts. While this provision is expected to have a positive impact on the general fund, a specific dollar amount cannot be determined. Based on data from the Departments of Medical Assistance Services and Social Services, the three year average of court ordered restitution for fraud convictions is approximately \$1.4 million. Based on this number, \$4.2 million in civil penalties could be levied each year. While the total amount of civil penalties can be estimated, the actual amount of collection cannot be determined. There is no clear indication of which of the amounts potentially owed (restitution, court costs, civil penalties) by a convicted individual would be paid first or how much. Often times, payment plans with a wide variety of terms are implemented as individual circumstance allows. It is unlikely that any civil penalties will augment the general fund in the upcoming biennium since collection would only occur after a conviction and subsequent incarceration. Although agency experiences suggest that only a small percentage of civil penalties will be collected from this population, additional analysis is ongoing. This fiscal impact statement will be revised as more information becomes available.

It should be noted that the bill also eliminates the existing option of levying a fine of up to \$10,000 on anyone guilty of Medicaid fraud and replaces it with the civil penalty provision as outlined above. Although an amount is not currently available, any fine collected under this provision would have been deposited in to the literary fund.

9. Specific Agency or Political Subdivisions Affected:

Department of Health
Department of Housing and Community Development
Department of Medical Assistance Services
Department of Social Services
Department of Corrections

10. Technical Amendment Necessary: None

11. Other Comments: None

Date: 1/17/12

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² The civil penalty for housing fraud only relates to state and local funds; it is assumed that any federal amounts are not counted.