



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 410 (Patron – McWaters)

LD#: 14103345

Date: 1/6/2014

Topic: Prohibited gifts and disclosures

Fiscal Impact Summary:

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

- **Juvenile Correctional Centers:**
Cannot be determined, likely to be small
- **Juvenile Detention Facilities:**
Cannot be determined, likely to be small

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 806 of the 2013 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposed legislation amends numerous sections of the *Code of Virginia* relating to gifts and filing of disclosure statements by legislators and others.

Under the proposal, members of the General Assembly and certain state and local officials would be prohibited from soliciting or accepting certain gifts. The proposal expands the requirements for items that must be disclosed by General Assembly members and certain state and local officials. Proposed changes to the Statement of Economic Interests, or disclosure form, as well as the Lobbyist's Disclosure Statement, would reflect the new prohibition and disclosure requirements. The proposal would make it a Class 1 misdemeanor for a lobbyist to provide a prohibited gift to any executive or legislative official.

Currently, under § 30-123, any legislator who knowingly violates a provision of the General Assembly Conflict of Interests Act (§§ 30-102 through 30-111) is guilty of a Class 1 misdemeanor. In addition, the disclosure form for General Assembly members contains an Affirmation that the information is full, true, and correct, which must be notarized. Any person willfully swearing to a false statement on a notarized document can be prosecuted for perjury, which is punishable as a Class 5 felony under § 18.2-434. Similarly, under § 2.2-426, a lobbyist who signs the disclosure statement knowing that it contains a material misstatement of fact is guilty of a Class 5 felony, while a violation of lobbyist regulations is a Class 1 misdemeanor under § 2.2-433. Per § 2.2-3120, an official who knowingly violates the State and Local Government Conflict of Interests Act (§§ 2.2-3102 through 2.2-3119) is guilty of a Class 1 misdemeanor or, for certain violations, a Class 3 misdemeanor.

Analysis:

According to General District Court Case Management System (CMS)¹ data for fiscal year (FY) 2012 and FY2013, one offender was convicted of a Class 1 misdemeanor under § 2.2-3112 for failing to disqualify himself from participating in a government transaction in which he had a personal interest. This offender did not receive an active term of incarceration to serve after sentencing. During the same two-year period, there were no misdemeanor convictions under § 30-123 for violation of the General Assembly Conflict of Interests Act or under § 2.2-433 for violation of lobbyist regulations. Examining FY2012-FY2013 Circuit Court CMS¹ data, there were no felony convictions under § 2.2-426 for a material misstatement on a Lobbyist's Disclosure Statement during the two-year period.

Sentencing Guidelines data for FY2012 and FY2013 indicate that 50 offenders were convicted of a Class 6 felony for perjury under § 18.2-434 (in these cases, perjury was the primary, or most serious, offense at sentencing). More than half (54%) of these offenders did not receive an active term of incarceration to serve after sentencing. Approximately one-third (30%) of the offenders were given a local-responsible (jail) term, for which the median sentence was three months. The remaining 16% received a state-responsible (prison) term with a median sentence of 1.8 years. Data do not contain sufficient detail to identify the number of perjury cases involving notarized documents or a Statement of Economic Interests.

Impact of Proposed Legislation:

State adult correctional facilities. The proposed legislation would prohibit General Assembly members from soliciting, accepting, or receiving certain gifts and would expand the requirements for gifts that must be reported on the disclosure form that General Assembly members and lobbyists must file. By expanding reporting requirements on these forms, the proposal could potentially result in additional felony convictions for perjury under § 18.2-434 and for misstatements by lobbyists under § 2.2-426. In this way, the proposed legislation may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, the databases available to the Commission do not contain sufficient detail to estimate the number of instances that may be affected by the proposal. While the magnitude of the impact cannot be quantified, any impact is likely to be small.

Local adult correctional facilities. The proposal could also affect local-responsible (jail) bed space needs. The magnitude of the impact cannot be determined, but any impact is likely to be small.

Adult community corrections programs. Because the proposal could result in additional convictions with supervision requirements for the offenders, the proposal may affect community corrections resources. While the potential impact on community corrections cannot be quantified, any impact is likely to be small.

Virginia's sentencing guidelines. The guidelines cover perjury convictions under § 18.2-434. The guidelines do not cover convictions for material misstatements under § 2.2-426 as the primary (most serious) offense; convictions for such an offense, however, 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 correctional centers. The Department of Juvenile Justice (DJJ) reports that, while this proposal may cause a limited increase in commitments, the impact of this proposal on bed space needs of juvenile correctional centers cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal's impact on detention center bed space will be limited; however, the exact impact cannot be determined.

¹ Formerly referred to as the Court Automated Information System (CAIS).

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 806 of the 2013 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.

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