



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 648

(Patron – McEachin)

LD#: 14100332

Date: 12/23/2013

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:**
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 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 several sections of the *Code of Virginia* and adds § 30-103.1, relating to prohibited gifts to legislators and disclosures required by the General Assembly Conflict of Interests Act. Under the proposal, members of the General Assembly would be prohibited from soliciting or accepting certain gifts. The proposal also expands the requirements for items that must be disclosed by General Assembly members. 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 a member or member-elect of the General Assembly.

Per § 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.

Analysis:

According to FY2012-FY2013 Circuit Court Case Management System (CMS)¹ data, there were no felony convictions under § 2.2-426 for a material misstatement on a Lobbyist's Disclosure Statement. Examining FY2012-FY2013 General District Court CMS¹ data, no individuals were convicted of a Class 1 misdemeanor for violating the General Assembly Conflict of Interests Act. During the same two-

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

year period, there were no misdemeanor convictions under § 2.2-433 for violating existing lobbyist regulations.

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 or accepting certain gifts and would expand the requirements for gifts that must be reported on the disclosure forms 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. By expanding the applicability of existing felony and misdemeanor offenses, the proposal could also affect the local-responsible (jail) bed space needs of the Commonwealth. 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 adult community corrections resources. While the potential impact on community corrections resources 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. According to the Department of Juvenile Justice (DJJ), the proposal will not increase juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice (DJJ) reports that the proposal will not increase the bed space needs of juvenile detention facilities.

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