



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1947 (Patron – McClellan)

LD#: 15102192

Date: 12/30/2014

Topic: 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**
- **Juvenile Detention Facilities:**
Cannot be determined**

** Provided by the Department of Juvenile Justice

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the 2014 Acts of Assembly, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal adds and amends numerous sections of the *Code of Virginia*, relating to ethics, gifts, and disclosure statements filed by lobbyists, legislators, and other public officials. Under the proposal, members of the General Assembly and certain state and local officials would be prohibited from accepting a single gift or combination of gifts with a value exceeding \$100 (reduced from \$250 for a tangible gift, as specified in current *Code*), with certain specified exceptions. In addition, the proposal reduces the threshold for reporting gifts from \$50 to \$25 and expands the definitions of dependents and immediate family members for disclosure purposes.

The proposal also increases the penalty for certain acts and clarifies the penalty for others. Under current provisions (§ 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. As proposed, the penalty for a state or local official who files a disclosure statement knowing it contains a material misstatement of fact is increased from a Class 1 misdemeanor to a Class 5 felony. This penalty mirrors the current Class 5 felony penalty specified in § 2.2-426 for lobbyists who knowingly submit disclosure forms with a material misstatement of fact.

Currently, under § 30-123, any legislator who knowingly violates any provision of the General Assembly Conflict of Interests Act (§§ 30-102 through 30-111) is guilty of a Class 1 misdemeanor. However, the disclosure form for General Assembly members contains an Affirmation that the information is full, true, and correct. During the 2014 General Assembly session, the requirement that this disclosure form be notarized was replaced with the statement that a signature on the form is deemed to constitute a valid notarization and has the same effect as if performed by a notary public. If a false statement on the General Assembly disclosure form can be prosecuted in the same manner as false statements on notarized documents, a violation could be prosecuted as perjury, which is punishable as a Class 5 felony under

§ 18.2-434. The proposal includes language that explicitly defines a material misstatement of fact by a legislator on a disclosure form as a Class 5 felony.

Under the proposal, the Senate and House Ethics Advisory Panels would be eliminated and the Virginia Conflict of Interest and Ethics Advisory Council, created by 2014 General Assembly, would be replaced by the Virginia Independent Ethics Review Commission. Duties of the Commission include receiving disclosure forms, conducting audits of disclosure forms, investigating alleged violations, and referring certain violations to the appropriate authority for prosecution. The proposal also removes some specific requirements for disclosure forms from the *Code*, outlines the information to be included in the forms, and authorizes the new Commission to prescribe the forms. By outlining the information to be included in the disclosure forms prescribed by the Commission, the proposal removes the current minimum values and categories specified in *Code* for reporting certain economic interests and liabilities, which could then be set at different values by the Commission.

Analysis:

According to General District Court Case Management System (CMS) data for fiscal year (FY) 2010 to FY2014, 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 five-year period, there were no misdemeanor convictions under § 30-123 for a violation of the General Assembly Conflict of Interests Act or under § 2.2-433 for a violation of lobbyist regulations. Examining FY2010 to FY2014 Circuit Court CMS data, there were no felony convictions under § 2.2-426 for a material misstatement on a Lobbyist's Disclosure Statement.

Sentencing Guidelines data for FY2013 and FY2014 indicate that 66 offenders were convicted of a Class 5 felony for perjury under § 18.2-434 (in these cases, perjury was the primary, or most serious, offense at sentencing). Nearly half (47%) of these offenders did not receive an active term of incarceration to serve after sentencing. Approximately one-third (36%) of the offenders were given a local-responsible (jail) term, for which the median sentence was six months. The remaining 17% received a state-responsible (prison) term with a median sentence of two 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 proposal increases a penalty applicable to state and local officials from a misdemeanor to a felony and clarifies a felony penalty applicable to legislators. In addition, the proposal expands the requirements for items that must be reported on the disclosure forms filed by legislators and other public officials. For these reasons, the proposal 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. Similarly, the proposal could 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 cannot be quantified, any impact is likely to be small.

Virginia's sentencing guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the impact of the proposal on juvenile correctional center (JCC) bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal's impact on the bed space needs of juvenile detention facilities cannot be determined.

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 2 of the 2014 Acts of Assembly, Special Session I, 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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