



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1289

(Patron – Ebbin)

LD#: 15100461

Date: 12/12/2014

Topic: Gifts and disclosures

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
None (\$0)
- **Local Adult Correctional Facilities:**
None (\$0)
- **Adult Community Corrections Programs:**
None (\$0)

- **Juvenile Correctional Centers:**
Cannot be determined*
- **Juvenile Detention Facilities:**
Cannot be determined*

* Provided by the Department of Juvenile Justice

Summary of Proposed Legislation:

The proposed legislation 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, 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 Commission on Ethics. The legislation defines the membership and duties of the Commission on Ethics, which would include receiving disclosure forms, issuing advisory opinions, investigating alleged violations related to gifts and conflicts of interest, and conducting random audits of disclosure forms filed with the Commission. The Commission must notify the Secretary of the Commonwealth of any lobbyist's (and lobbyist's principal's) failure to file a disclosure statement within the time prescribed so the Secretary can assess civil penalties. If the Commission, after conducting an investigation, finds a legislator or public official has knowingly violated the Conflicts of Interests Act, the Commission must refer the matter to the Supreme Court of Virginia with a recommendation for criminal prosecution.

The proposal does not expand the requirements for items that must be reported on the disclosure forms nor does it increase penalties for violations related to gifts or conflicts of interest.

Currently, under § 30-123, a legislator who knowingly violates any provision of the General Assembly Conflicts of Interests Act (§§ 30-102 through 30-111) is guilty of a Class 1 misdemeanor. During the 2014 General Assembly session, the requirement that the 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. 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.

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.

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. Because it does not expand reporting requirements or increase penalties for violations, the proposal is not expected to increase the future state-responsible (prison) bed space needs of the Commonwealth.

Local adult correctional facilities. Similarly, no impact on local-responsible (jail) bed space needs is expected.

Adult community corrections programs. The proposal will not increase the need for community corrections resources.

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 is \$0 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.