



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 127 (Patron – Cole)

LD #: 18101401

Date: 12/18/2017

Topic: Construction fraud

Fiscal Impact Summary:

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

- **Juvenile Direct Care:**
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 836 of the 2017 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal amends § 18.2-200.1 of the *Code of Virginia* relating to construction fraud. Currently, any person who obtains an advance of money or other thing of value, with fraudulent intent, upon a promise to perform construction or other work and fails or refuses to perform the work promised without returning the advance is deemed guilty of larceny. The proposal modifies this provision such that an individual who obtains an advance without fraudulent intent but who later fraudulently fails or refuses to perform the work would be guilty under this section. The proposed change parallels the language in § 18.2-200 relating to the failure to deliver crops in return for advances.

Offenses that are deemed larceny in the *Code of Virginia* are subject to the penalties provided in §§ 18.2-95 or 18.2-96. Larceny is punishable by imprisonment of one to twenty years if the value is \$200 or more or as a Class 1 misdemeanor if the value is less than \$200.

Analysis:

According to Sentencing Guidelines data for fiscal year (FY) 2016 and FY2017, 95 offenders were convicted of a felony under § 18.2-200.1 for construction fraud. The construction fraud conviction was the primary, or most serious, offense in 91 of the cases. Of these, nearly one-third (31.9%) received a state-responsible (prison) term with a median sentence of two years. Another 34.1% of these offenders received a local-responsible (jail) term for which the median sentence was seven months. The remaining offenders (34.1%) did not receive an active term of incarceration to serve after sentencing.

General District Court Case Management System (CMS) data for FY2016 and FY2017 indicate that 45 offenders were convicted of misdemeanor construction fraud under § 18.2-200.1. Most (66.7%) were not given an active term of incarceration to serve. The median sentence for the 33.3% who were sentenced to a local-responsible (jail) term was one month.

Impact of Proposed Legislation:

State adult correctional facilities. Because it expands the applicability of an existing felony, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. However, existing data do not provide sufficient detail to estimate the number of new felony convictions that could result from enactment of the proposal. Therefore, the impact on prison bed space needs cannot be determined.

Local adult correctional facilities. By expanding an existing felony and misdemeanor offense, the proposal may increase the local-responsible (jail) bed space needs. However, the magnitude of the impact cannot be determined.

Adult community corrections programs. Because the proposal could result in felony convictions and subsequent supervision requirements for additional offenders, the proposal may increase the need for adult community corrections resources. The impact on community corrections programs cannot be calculated.

Virginia's sentencing guidelines. Felony convictions for construction fraud under § 18.2-200.1 are covered by the sentencing guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile direct care. According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) 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 836 of the 2017 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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