



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 801 (Patron – Delaney)

LD#: 20100296

Date: 11/15/2019

Topic: Classification of an employee of a contractor

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 854 of the 2019 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal adds several sections to the *Code of Virginia* to establish regulations to classify employees of a contractor. The proposal specifies that an individual performing delivery or construction labor services for the contractor shall be presumed to be an employee of the contractor unless it is shown to the satisfaction of the Commissioner of Labor and Industry that (i) the individual has been and will continue to be free from control or direction over the performance of the services performed by the individual for wages, both under his contract of service and in fact; (ii) the services are either outside the usual course of the business for which such services are performed or such services are performed outside of all the places of business of the enterprise for which such services are performed; and (iii) such individual is customarily engaged in an independently established trade, occupation, profession, or business. Other factors applicable to such a determination in the case of an individual performing construction labor services are whether the individual maintained a workplace that is subject to inspection pursuant to occupational safety and health laws and whether the individual has been assigned an experience rating tax rate for purposes of unemployment compensation. A violation of any provision or regulation specified in the proposal is subject to civil penalties and debarment from public contracts.

The measure also requires a contractor entering into a public contract to provide an affidavit, under penalty of perjury, attesting that (a) each individual performing delivery services or construction labor services is properly classified; (b) the contractor has completed a federal I-9 immigration form and has such form on file for each employee; (c) the contractor has complied with requirements for participation with the E-verify program for each employee; (d) the contractor has no reasonable basis to believe that

any individual performing services for such contractor is an undocumented worker; and (e) the contractor is not barred from contracting with the public body.

According to the proposal, any contractor who knowingly provides a false affidavit under § 40.1-116.10 to an agency of the Commonwealth or any political subdivision thereof is guilty of perjury and punishable as provided in § 18.2-434.

Analysis:

Sentencing Guidelines data for fiscal year (FY) 2018 and FY2019 indicate that 74 offenders were convicted of a Class 5 felony for falsely swearing an oath under § 18.2-434. The perjury offense was the primary, or most serious, offense at sentencing in 51 of the cases. Of these, 33.3% of the offenders did not receive an active term of incarceration to serve after sentencing. Another 51% of the offenders were given a local-responsible (jail) term for which the median sentence was three months. The remaining 15.7 % received a state-responsible (prison) term with a median sentence of 1.7 years.

Impact of Proposed Legislation:

State adult correctional facilities. Because it expands the applicability of an existing felony, the proposed legislation may increase the future state-responsible (prison) bed space needs of the Commonwealth. Existing databases do not provide sufficient detail to estimate the number of new felony convictions that may result from enactment of the proposal. As a result, the magnitude of the impact on prison beds cannot be quantified.

Local adult correctional facilities. Similarly, the proposal may increase the local-responsible (jail) bed space needs of the Commonwealth. 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 an additional number of offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections resources cannot be quantified.

Virginia's sentencing guidelines. Felony convictions under § 18.2-434 are covered by the sentencing guidelines as the primary, or most serious, offense. No adjustment to the guidelines is 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 854 of the 2019 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.