

Commission on Local Government

Estimate of Local Fiscal Impact

2021 General Assembly Session

Bill: HB2045

Special Session:

Patron: Bourne

Date: 1/25/2021

In accordance with the provisions of §30-19.03 of the Code of Virginia, the staff of the Commission on Local Government offers the following analysis of the above-referenced legislation:

Bill Summary:

Civil action for deprivation of rights; duties and liabilities of certain employers in employing or contracting for the services of law-enforcement officers. Creates a civil action for the deprivation of a person's rights by a law-enforcement officer and provides that a plaintiff may be awarded compensatory damages, punitive damages, and equitable relief as well as reasonable attorney fees and costs. The bill provides that sovereign immunity and limitations on liability or damages shall not apply to such actions and that qualified immunity is not a defense to liability for such deprivation of rights. Finally, the bill provides that any public or private entity that employs or contracts for the services of a law-enforcement officer owes a duty of reasonable care to third parties in its hiring, supervision, training, retention, and use of such officers under its employment or contract.

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### Executive Summary:

Localities have evaluated a negative fiscal impact ranging from \$0.00 - \$1,000,000.00. Almost all localities responded with a cost, and noted that the bill would expand potential local government liability by eliminating sovereign immunity as a defense and requiring the locality to indemnify a law enforcement officer if a judgment is rendered against the officer, including for civil liability. One locality suggested that there would likely be increased pressure to settle cases early because the case standards would be in the plaintiff's favor; therefore, a single case could cost hundreds of thousands up to millions of dollars. Additionally, localities noted that the bill would increase – (i) liability insurance premiums, (ii) attorney fees, (iii) employee salaries, (iv) staff turnover and retirements, and (v) replacement and training costs. Furthermore, localities indicated that the provisions of the bill would limit their ability to recruit qualified officers. Only one locality responded with no cost, and noted the cost of the bill is indeterminate but it would increase the expenditure through litigation.

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### Local Analysis:

**Locality:** City of Manassas

**Estimated Fiscal Impact:** \$25,000.00

There is no way to adequately gauge the potential fiscal impact. While in some regards this bill tracks existing federal civil rights law, it significantly expands potential local government liability by eliminating sovereign immunity as a defense, and requiring the City to indemnify a law enforcement officer if a judgment is rendered against him or her. This bill would require it even in the case of really egregious actions by a "rogue" officer, and it appears to even require indemnification of an officer that has committed a criminal offense that gives rise to civil liability. This will undoubtedly cause our insurance premiums to increase which is the basis for this estimated fiscal impact.

We believe there will be increased pressure to settle these cases early, with a significant portion of the settlement going to attorney fees. We don't think there is any way to project a potential fiscal impact in terms of dollars, but it could easily be in the hundreds of thousands if not millions for a single case. It is realistic to expect more cases filed in state rather than federal court, more settlements because this bill would stack the case in the plaintiff's favor, and probably a resulting increase in insurance premiums for local governments.

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Locality: City of Winchester

Estimated Fiscal Impact: \$50,000.00

The \$50,000 is for possible Attorney fees. It would be hard to quantify the result of our Insurance costs, if multiple claims had to be paid out. This would also impact a localities ability to attract and retain good officers.

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**Locality:** County of Fauquier

**Estimated Fiscal Impact:** \$0.00

The potential legal and insurance liability costs are immeasurable to determine fiscal impact. These changes set the stage for considerably more litigation against the state, localities and Constitutional Officers. It will also make recruitment and retention of officers considerably more difficult if there is personal liability on deputies/officers. General Assembly made it clear that there will be changes made to sovereign immunity during the regular session (no changes were made in the special session). There could be prospective cost issues, including the need for excess coverage on liability policies, loda costs, etc.

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Locality: Mecklenburg County

Estimated Fiscal Impact: \$1,000,000.00

The cost is unlimited, as the County won't be able to get or keep qualified officers. Officers could lose everything they have worked for over one arrest that could be interpreted as wrong by a jury. The County currently understands that the locality is responsible for their employees. The Sheriff who is a Constitutional officer hires all Sheriff deputies, but the County is ultimately liable for any issues with the officers as they are with any other County employee. Is the State going to take this same immunity away from DSS workers who take someone's child due to suspected child abuse. Are they liable if no charges are brought? How is anyone to perform their job if this is in the back of your mind at all times. Lawlessness will run rampant.

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**Locality:** Pulaski County

**Estimated Fiscal Impact:** \$300,000.00

It is difficult to fully quantify, but I will try:

This measure would facilitate retirements, increase attrition and turnover, and ultimately increase our replacement and training costs. It would also limit our ability to recruit quality officers.

This measure will require us to potentially purchase expensive additional liability umbrella policies for each officer.

Etc...Etc...Etc...  
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Locality: Town of Ashland

Estimated Fiscal Impact: \$702,000.00

If this bill becomes law we expect to have to increase salaries by approximately \$10,000 per sworn officer plus the cost of taxes and benefits to attract and retain officers. In addition, the Town would have to cover at least a portion of the cost of additional insurance per officer.

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**Locality:** Town of Blacksburg

**Estimated Fiscal Impact:** \$130,000.00

This is an annual amount. This bill could cause an increase in our law enforcement liability insurance as well as potential increases in training costs. We already take reasonable care in our hiring, supervision, training and retention but any new regulations will add additional requirements that will increase costs. Also this will have an impact on the ability to hire new officers.

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Locality: Town of Leesburg

Estimated Fiscal Impact: \$250,000.00

It is impossible to accurately estimate this since we have no historical data to analyze but we would recommend comparing fully insured liability premiums in populous states such as California and Illinois and where governmental immunity is not an allowed defense to the fully insured premiums where it is an allowed defense. Based upon this concept, we believe it would raise the Town's liability premiums and out of pocket attorney fees by about \$250,000 per year. We vigorously oppose this legislation and do not believe it serves the public interest.

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**Locality:** Town of Scottsville

**Estimated Fiscal Impact:** \$500.00

This is a difficult estimate because it creates new policy.

The fiscal impact for small local governments relates to employee liability insurance, which in the Town of Scottsville's case is contracted with Virginia Risk Sharing Association (VRSA). An insurance policy with annual premiums covers many forms of liability, included when the Town is sued for some kinds of civil damages. The Town's total insurance premium is now about \$16,000 annually. The law enforcement liability part of the coverage is about \$4,000.

I expect that this bill will cause new suits to be brought around the state, and both damages and settlements to be paid. VRSA members pool their risk and pay premiums together, so even if small towns like Scottsville have perfect police officer conduct and no suits, such towns will pay higher premiums.

My \$500 estimate is a guess at a 10-15% increase in premiums based on expected claims. The case load and damages awarded may change dramatically year by year.

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