

Department of Planning and Budget
2021 Special Session I Fiscal Impact Statement

1. Bill Number: SB1395

House of Origin	<input type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input checked="" type="checkbox"/> Enrolled

2. Patron: McClellan

3. Committee: Passed Both Houses

4. Title: Elections; prohibited discrimination in voting and elections administration; required process.

5. Summary: Prohibits any voting qualification or any standard, practice, or procedure related to voting from being imposed or applied in a manner that results in the denial or abridgment of the right of any United States citizen to vote based on his race or color or membership in a language minority group. The bill further prohibits at-large methods of election from being imposed or applied in a locality in a manner that impairs the ability of a protected class, defined in the bill, to elect candidates of its choice or to influence the outcome of an election, by diluting or abridging the rights of voters who are members of a protected class. Prior to enacting or administering a covered practice, defined in the bill, the governing body of a locality is required to publish the proposed covered practice and accept public comment for a minimum of 30 days on the proposed covered practice; after the public comment period, a 30-day waiting period is required. During this period, any person who will be subject to or affected by the covered practice may challenge the covered practice as (i) having the purpose or effect of denying or abridging the right to vote on the basis of race or color or membership in a language minority group or (ii) resulting in the retrogression in the position of members of a racial or ethnic group with respect to their effective exercise of the electoral franchise. The bill permits the local governing body to instead submit the proposed covered practice to the Office of the Attorney General for issuance of a certification of no objection and, once such certification is issued, to enact or administer the covered practice. Certain unlawful actions, including knowingly communicating false information to voters, that are currently subject to criminal penalties will create civil causes of action under the bill. The bill authorizes the Attorney General to commence civil actions when there is reasonable cause to believe that a violation of an election law has occurred and the rights of any voter or group of voters have been affected by the violation. Civil penalties assessed as a result of such action are payable to the Voter Education and Outreach Fund, established by the bill. Current provisions related to language minority accessibility are moved to a newly created chapter relating to the rights of voters.

6. Budget Amendment Necessary: Yes – Item 402. Budget amendment 402 #1s, as approved by the Senate of Virginia, includes funding to support the impact of this bill as determined by the Virginia Criminal Sentencing Commission below, pursuant to § 30-19.1:4 of the Code of Virginia, and Chapter 56, 2020 Acts of Assembly, Special Session I.

7. Fiscal Impact Estimates: Final; see Item 8.

8. Fiscal Implications:

The proposed legislation is not expected to have a state fiscal impact for the Department of Elections or the Office of the Attorney General and Department of Law.

The bill creates a new Voter Education and Outreach Fund, which penalties from civil actions commenced by the Attorney General for violations of election law that affect the rights of voters shall be deposited into. Any potential revenue into this fund is indeterminate.

According to Office of the Executive Secretary of the Supreme Court, the bill broadens certain criminal offenses related to the impairment of voting rights and it also creates civil remedies for the impairment of voting rights. Therefore, it is possible that this bill could result in some increase in the number of criminal cases adjudicated in general district and circuit courts, as well as resulting in additional civil actions brought in circuit court. However, sufficient data is not available to estimate the size and the accompanying fiscal impact of these possible increases. Therefore, any potential impact to the court system is indeterminate.

The bill modifies current law associated with actions that are punishable as Class 5 felonies, specifying threats or coercion against election officers as additional prohibited behaviors, and expanding applicable locations to any polling place, voter satellite office, or other location being used by a locality for voting purposes. For someone convicted of a Class 5 felony, a judge has the option of sentencing the offender to a term of imprisonment of not less than one year nor more than ten years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both. Therefore, this proposal could result in an increase in the number of persons sentenced to jail or prison.

The bill establishes new Class 1 misdemeanor offenses for intentionally providing a voter with a ballot in a language they do not understand (repurposed from another Code section) or attempting to alter a ballot to invalidate a vote, and also expands an existing Class 1 misdemeanor defining certain voter interference. Anyone convicted of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail and a fine of not more than \$2,500, either or both.

According to the Virginia Criminal Sentencing Commission, not enough information is available to reliably estimate the increase in jail population as a result of this proposal. However, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanant or otherwise local-responsible prisoner held in a jail and \$12.00 a day for each state-responsible prisoner. It also funds a considerable portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November

2020), the estimated total state support for local jails averaged \$34.59 per inmate, per day in FY 2019.

Due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 56, 2020 Acts of Assembly, Special Session I, requires that a minimum impact of \$50,000 be assigned to the bill.

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.

- 9. Specific Agency or Political Subdivisions Affected:** Virginia Department of Elections, State Board of Elections, General Registrars, localities, Office of the Attorney General and Department of Law, the court system, Department of Corrections, Department of Juvenile Justice, local and regional jails.

10. Technical Amendment Necessary: No.

11. Other Comments: This bill is a companion to HB 1890.

Date: 2/17/2021