



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 649 *Amendment in the Nature of a Substitute* *(Patrons Prior to Substitute – Norment, et al)*

LD#: 14104393

Date: 2/10/2014

Topic: Gifts and disclosures

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
None (\$0)
- **Local Adult Correctional Facilities:**
Cannot be determined, likely to be small
- **Adult Community Corrections Programs:**
Cannot be determined, likely to be small

- **Juvenile Correctional Centers:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

Summary of Proposed Legislation:

The proposed legislation amends numerous sections of the *Code of Virginia*, relating to gifts and filing of disclosure statements by legislators, certain state and local officials, and lobbyists. The proposal establishes the Virginia Conflict of Interest and Ethics Advisory Council, which would oversee a centralized process for the filing of disclosure statements, establish standards for the electronic submission of the forms, conduct ethics training, and provide advisory opinions on ethics issues.

Under the proposal, disclosure reports must be filed on a semi-annual, instead of an annual, basis. The bill clarifies the definition of a gift throughout several sections and categorizes gifts as tangible or intangible. Members of the General Assembly and certain state and local officials would be prohibited from soliciting or accepting certain gifts. The proposal also expands the requirements for items that must be disclosed by legislators and officials, including gifts to immediate family members. The bill specifies that certain individuals, such as lobbyists, cannot be considered a personal friend for the purposes of disclosing gifts. The proposal also removes the requirement for General Assembly members to have their disclosure forms notarized, thereby eliminating any felony penalties for making a false statement on the form.

Currently, under § 30-123, any legislator who knowingly violates a provision of the General Assembly Conflict of Interests Act (§§ 30-102 through 30-111) is guilty of a Class 1 misdemeanor. In addition, the disclosure form for General Assembly members contains an Affirmation that the information is full, true, and correct that, under current law, must be notarized. Any person willfully swearing to a false statement on a notarized document can be prosecuted for perjury, which is punishable as a Class 5 felony under § 18.2-434. Similarly, under § 2.2-426, a lobbyist who signs the disclosure statement knowing that it contains a material misstatement of fact is guilty of a Class 5 felony, while a violation of lobbyist regulations is a Class 1 misdemeanor under § 2.2-433. Per § 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)¹ data for fiscal year (FY) 2012 and FY2013, 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 two-year period, there were no misdemeanor convictions under § 30-123 for a violation of the General Assembly Conflict of Interests Act or under § 2.2-433 for a violation of lobbyist regulations. Examining FY2012-FY2013 Circuit Court CMS¹ data, there were no felony convictions under § 2.2-426 for a material misstatement on a Lobbyist's Disclosure Statement during the two-year period.

Sentencing Guidelines data for FY2012 and FY2013 indicate that 50 offenders were convicted of a Class 6 felony for perjury under § 18.2-434 (in these cases, perjury was the primary, or most serious, offense at sentencing). More than half (54%) of these offenders did not receive an active term of incarceration to serve after sentencing. Approximately one-third (30%) of the offenders were given a local-responsible (jail) term, for which the median sentence was three months. The remaining 16% received a state-responsible (prison) term with a median sentence of 1.8 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 the applicability of any felony penalties, the proposed legislation is not expected to increase the future state-responsible (prison) bed space needs of the Commonwealth.

Local adult correctional facilities. By expanding the applicability of existing misdemeanor offenses, the proposal could affect the local-responsible (jail) bed space needs of the Commonwealth. The magnitude of the impact cannot be determined, but any impact is likely to be small.

Adult community corrections programs. Because the proposal could result in additional convictions with supervision requirements for the offenders, the proposal may affect adult community corrections resources. While the potential impact on community corrections resources cannot be quantified, any impact is likely to be small.

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 proposal will not increase juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice (DJJ) reports that the proposal will not increase the bed space needs of juvenile detention facilities.

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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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¹ Formerly referred to as the Court Automated Information System (CAIS).