Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2070

(Patron – Gilbert)

LD#: 15101176 **Date:** 12/12/2014

Topic: Gifts and disclosures

Fiscal Impact Summary:

- **State Adult Correctional Facilities:** $50,000 *
- **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:** 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 2 of the 2014 Acts of Assembly, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of $50,000.

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 and state and local officials. The proposal eliminates the distinction between tangible and intangible gifts created by the 2014 General Assembly. Under the proposal, members of the General Assembly and certain state and local officials would be prohibited from accepting any single gift or combination of gifts with a value exceeding $100 (reduced from $250 for a tangible gift, as specified in current *Code*). This prohibition would not apply to a gift received by an official at a widely attended event (as defined in the proposal) related to his or her official duties; however, the gift must be reported on the official's disclosure form. As proposed, gifts and entertainment with a combined value of more than $50 must be reported on the disclosure form (reduced from the combined value of $100 specified in existing provisions).

Currently, under § 30-123, any legislator who knowingly violates any provision of the General Assembly Conflicts 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. During the 2014 General Assembly session, the requirement that this disclosure form be notarized was replaced with the statement that a signature on the form is deemed to constitute a valid notarization and has the same effect as if performed by a notary public. If a false statement on the General Assembly disclosure form can be prosecuted in the same manner as false statements on notarized documents, a violation could be prosecuted as perjury, which is punishable as a Class 5 felony under § 18.2-434. 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) data for fiscal years (FY) 2010 to FY2014, 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 five-year period, there were no misdemeanor convictions under § 30-123 for a violation of the General Assembly Conflicts of Interests Act.

Sentencing Guidelines data for FY2013 and FY2014 indicate that 66 offenders were convicted of a Class 5 felony for perjury under § 18.2-434 (in these cases, perjury was the primary, or most serious, offense at sentencing). Nearly half (47%) of these offenders did not receive an active term of incarceration to serve after sentencing. Approximately one-third (36%) of the offenders were given a local-responsible (jail) term, for which the median sentence was six months. The remaining 17% received a state-responsible (prison) term with a median sentence of two 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. The proposed legislation expands the requirements for items that must be reported on the disclosure form that legislators and other officials must file. The 2014 General Assembly replaced the requirement that this form be notarized with a statement that an individual's signature on the form is deemed to constitute a valid notarization. If this statement would allow individuals who make a material false statement on the form to be prosecuted for perjury under § 18.2-434, expanding the reporting requirements for General Assembly members may result in new violations, which could, upon conviction, result in a prison term. In this way, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, the databases available to the Commission do not contain sufficient detail to estimate the number of instances that may be affected by the proposal. While the magnitude of the impact cannot be quantified, any impact is likely to be small.

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 impact of the proposal on juvenile correctional center (JCC) 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 2 of the 2014 Acts of Assembly, Special Session I, 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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