



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2070
Amendment in the Nature of a Substitute
(Patrons Prior to Substitute – Gilbert, et al.)

LD#: 15105363

Date: 2/24/2015

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 lobbyists, 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 a single gift or combination of gifts with a value exceeding \$100 (reduced from \$250 for a tangible gift, as specified in current *Code*), with certain specified exceptions.

The proposal also renames the Governor's Development Opportunity Fund and prohibits persons or entities seeking grants/loans from the Fund from giving a gift or making a contribution greater than \$50 to the Governor, his campaign, or any associated political action committee, with violation subject to a civil penalty. In addition, the proposal would expand the duties of the Virginia Conflict of Interest and Ethics Advisory Council to include receiving, reviewing, and approving or denying requests for waivers relating to gifts with a value that exceeds established limitations. The proposal also removes some specific requirements for disclosure forms from the *Code*, outlines the information to be included in the forms, and authorizes the Council to prescribe the forms.

In addition, the proposal expands the definition of "executive action" to include procurement actions for the purposes of disclosure statements filed by lobbyists. As a result, the proposal would expand the list of items that must be reported on this form. Currently, under § 2.2-426, lobbyists who knowingly submit disclosure forms with a material misstatement of fact are guilty of a Class 5 felony. The proposal would reduce the penalty for this offense from a Class 5 felony to a Class 6 felony.

The proposal also increases the penalty for certain acts and clarifies the penalty for others. Under current provisions (§ 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. As proposed, the penalty for a state or local official who files a disclosure statement knowing it contains a material misstatement of fact is increased from a Class 1 misdemeanor to a Class 6 felony. This penalty would mirror the proposed penalty in § 2.2-426 for lobbyists who knowingly submit disclosure forms with a material misstatement of fact.

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. However, 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. The proposal includes language that explicitly defines a material misstatement of fact by a legislator on a disclosure form as a Class 6 felony.

Analysis:

According to General District Court Case Management System (CMS) data for fiscal year (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 or under § 2.2-433 for a violation of lobbyist regulations. Examining FY2010 to FY2014 Circuit Court CMS data, there were no felony convictions under § 2.2-426 for a material misstatement on a Lobbyist's Disclosure Statement.

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 proposal increases a penalty applicable to state and local officials from a misdemeanor to a felony and clarifies a felony penalty applicable to legislators. In addition, the proposal expands the requirements for items that must be reported on the disclosure forms filed by lobbyists, legislators, and other public officials. For these reasons, 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. Similarly, 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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