



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 374

Amendment in the Nature of a Substitute

(Patron Prior to Substitute – Williams Graves)

LD#: 22105583

Date: 01/31/2022

Topic: Construction subcontractor information

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Direct Care:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

** 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 552 of the Acts of Assembly of 2021, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

Summary of Proposed Legislation:

The proposal adds § 2.2-4303.02 to the *Code of Virginia* relating to the Virginia Public Procurement Act. The proposal requires all bidders or offerors on contracts for construction of \$250,000 or more to submit a list of subcontractors intended to be used and the following: (i) a statement declaring that the bidder or offeror has reviewed the qualifications and performance history of each listed subcontractor and found such qualifications and performance history to be sufficient to qualify the subcontractor to perform the subcontract work and (ii) a statement indicating that the bidder or offeror has received a written statement from each listed subcontractor verifying that such subcontractor (a) has not defaulted on any projects within the last three years, (b) has not been suspended or disbarred by any public body within the last three years, and (c) is not currently in bankruptcy.

The bill allows the public body to disqualify any listed subcontractor but requires the public body to notify the bidder or offeror of such disqualification and allow the bidder or offeror reasonable time to find a qualified replacement.

In addition, the bill provides that any bidder or offeror that does not submit the required list and statements may have its bid or proposal disqualified and that any bidder or offeror that is found to have knowingly provided false information shall be debarred from contracting with any public body for a period up to one year and is guilty of perjury, a Class 5 felony under § 18.2-434.

The proposal adds that every bidder or offeror on a contract for construction of \$250,000 or more with a locality having a population in excess of 50,000 shall comply with the provisions of this proposed section. Compliance by any other bidders or offerors on a contract for the same level of construction but with a locality having a population of 50,000 or less shall be optional.

Analysis:

Sentencing Guidelines data for fiscal year (FY) 2020 and FY2021 indicate that 53 offenders were convicted of a Class 5 felony for falsely swearing an oath under § 18.2-434. Of these, 34.0% of the offenders did not receive an active term of incarceration to serve after sentencing, 58.5% of the offenders were given a local-responsible (jail) term for which the median sentence was five months, and the remaining 7.5 % received a state-responsible (prison) term with a median sentence of 2.6 years.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the applicability of an existing felony offense, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, existing databases do not provide sufficient detail to estimate the number of new felony convictions that may result from enactment of the proposal. Therefore, the impact of the proposal on prison bed space needs cannot be determined.

Local adult correctional facilities. Similarly, the proposal may increase the local-responsible (jail) bed space needs of the Commonwealth. However, the magnitude of the impact cannot be determined.

Adult community corrections programs. Because the proposal could result in felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections resources cannot be quantified.

Virginia's Sentencing Guidelines. Felony convictions under § 18.2-434 are covered by the Sentencing Guidelines as the primary, or most serious, offense. No adjustment to the Guidelines is necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase direct care (juvenile correctional center or alternative commitment placement) 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 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 552 of the Acts of Assembly of 2021, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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