

Commission on Local Government

Estimate of Local Fiscal Impact

2022 General Assembly Session

Bill: SB 282

Special Session:

Patron: Ebbin

Date: 1/28/2022

In accordance with the provisions of §30-19.03 of the Code of Virginia, the staff of the Commission on Local Government offers the following analysis of the above-referenced legislation:

Bill Summary:

Supplementing compensation of public defender. Requires the governing body of any county or city that elects to supplement the compensation of the attorney for the Commonwealth, or any of his deputies or his employees, above the salary of any such officer, deputy, or employee to supplement the compensation of the public defender, or any of his deputies or employees. The bill provides that such supplemental compensation is proportional if the public defender, his deputies, and his other employees are each paid in amounts commensurate to the closest equivalent position in the local Office of the Commonwealth's Attorney, as adjusted for seniority and experience level. The bill has a delayed effective date of July 1, 2024

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### Executive Summary:

Localities have evaluated a negative fiscal impact ranging from \$0 - \$0.8 million.

Localities reported negative fiscal impacts stemming from increases in salary payments to their local public defenders. Several noted that the actual negative impacts were indeterminate given the circumstances some localities operate their public defenders offices in. Rural localities noted that they frequently shared public defenders offices with other localities, which would require choosing which Commonwealth Attorney would serve as the basis for proportionate compensation. Furthermore, localities noted that due to promotions/turnover, and differences in position schedules, the fiscal impacts of providing proportionate compensation were indeterminate at this time.

Some localities noted they would experience no fiscal impact from the bill, as they did not provide for public defenders or Commonwealth's attorneys.

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### Local Analysis:

**Locality:** Augusta County

**Estimated Fiscal Impact:** \$0.00

There is not enough information to assess a cost. The County does not fund the public defenders office, so does not have data on the number of employees, etc. The County does not provide a supplement to the Commonwealth Attorney. Staff receive Career Prosecutor pay when they qualify for the additional pay, some of which are paid by the Comp Board and some paid by local funds until they are funded by the Comp Board.

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Locality: City of Alexandria..

Estimated Fiscal Impact: \$0.00

The City Commonwealth's Attorney and equivalent Public Defender staff positions are classified in the same grade level in the City's compensation plan. Based on this information, the City believes the current compensation plan meets this proposed bill to "proportionally supplement" Public Defender's office pay "commensurate with" Commonwealth Attorney pay to the closest equivalent position. Using these assumptions, estimated impact is \$0. The City pays Commonwealth Attorney salaries and benefits and receives Compensation Board reimbursement from the State for most but not all of their positions. The Public Defender's office is paid by the State and the City continues to supplement their salaries.

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**Locality:** City of Danville

**Estimated Fiscal Impact:** \$0.00

The City of Danville does not supplement Commonwealth Attorney staff above the amount the Compensation Board states as the City share of salaries.

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Locality: City of Manassas

Estimated Fiscal Impact: \$380,000.00

This would be a shared cost between the City of Manassas and Prince William County. The City's share is estimated to be \$380,000.

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**Locality:** City of Virginia Beach

**Estimated Fiscal Impact:** \$630,000.00

The City of Virginia Beach currently supplements the Office of the Public Defender in the total amount of \$500,000. At the time of our analysis last fiscal year, this was approximately the amount needed to to bring every employee of the Office of the Public Defender to the base salary of the pay range of each of what we estimated to be equivalent titles . However, it should be noted that the bottom of the pay range is not the actual salary of many of the Commonwealth positions and we have no way determining true position equivalents.

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Locality: City of Winchester

Estimated Fiscal Impact: \$20,000.00

This number is the amount the City Supplements our comm attorney (pre benefits). I do not have the salary of the public defender, as we do not supplement their salary currently.

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**Locality:** County of Albemarle

**Estimated Fiscal Impact:** \$180,000.00

A recent study by the Charlottesville Public Defender's Office (serving Albemarle County and Charlottesville City) indicates that it would take \$180,000 from Albemarle to bring the Public Defender's Office salaries on par with Commonwealth Attorney's Office salaries. This amount would be Albemarle's proportional share of the supplement required under SB 282.

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Locality: County of Fauquier

Estimated Fiscal Impact: \$75,000.00

The County began supplementing the Public Defender's Office in FY 2015. The adjustments is based on the closest equivalent base salary scale amount of each position, adjusted for experience, to the State base salary scale amount. However if such a measure would make the public defender and Commonwealth attorney equivalent, equivalent state funding should be the same as well. Thus meaning Compensation Board and Virginia Indigent Defense Commission should receive equivalent funding by positions and district from the State. These levels of funding are not currently equivalent thus resulting in a negative fiscal impact to localities.

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**Locality:** County of Mecklenburg

**Estimated Fiscal Impact:** \$1.00

There would be a fiscal impact as a result of this bill. The amount is not known.

1. The comparison basis set forth within this bill contemplates offices of the Public Defenders as if they are fixed at a 1:1 basis to local governments. However, while this may be true of certain larger cities or the new offices established in Prince William and Chesterfield in recent years, it is not true of all offices. For example, the Office of the Public Defender based in Halifax County also covers Mecklenburg and Lunenburg Counties. If all three counties have varying numbers of Commonwealth's Attorneys and salary rates, to whom shall the public defender's office be fixed? The county in which the office is physically located? An average of the communities? The lowest? The highest? Furthermore, how are contribution rates to be determined and who is responsible to be the fiscal agent? This situation reaffirms the fact that Public Defenders are employees of an agency of the Commonwealth of Virginia and are not employees of the local governments.

2. A fiscal analysis can not be completed without information on the salaries and classifications of the Public Defender, to which the local government does not have access, and without knowledge of how the VIDC applied sums provided (\$5.7 million in FY 22) through Item 48.D. of Chapter 552 of the Virginia Acts of Assembly, 2021 Special Session I.

3. Who is responsible for designating "closest equivalent position"? The Compensation Board and VIDC have different positional titles, and at times certain local governments have a different title as well. What standard prevails? Additionally, some small Commonwealth's Attorney Offices do not have a full range of positions. What if there is only the elected CWA and a Attorney I, but the Public Defender has a mid-career employee? What then is the equivalent position?

4. What happens when there is positional turnover on either side? Must positions be relinked? What if the link causes an amount to decrease? Or if VIDC employees are promoted?

5. What if the Public Defender base salary is higher than the Compensation Board reimbursement amount? Would there be a credit deducted from the proportional amount in such a case?

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Locality: Nottoway County

Estimated Fiscal Impact: \$182,000.00

This would have great impact on Nottoway County as it currently supplements the salary of the Attorney for the Commonwealth, one Compensation Board funded assistant attorney and one non-funded assistant attorney.

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**Locality:** Prince William County

**Estimated Fiscal Impact:** \$800,000.00

This includes employer paid taxes (FICA/Medicare). Note: at full staffing, the number could be as high as \$850k.

**Locality:** Rappahannock County

**Estimated Fiscal Impact:** \$1,000.00

Here in Rappahannock County we supplement the Commonwealth's Attorney salary by approximately 15%. A 15% increase to our local public defender cost would probably be less than \$1,000, but we are a very small locality. Statewide the cost would be significant.

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Locality: Town of Blacksburg

Estimated Fiscal Impact: \$0.00

The Town does not fund this service.

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**Locality:** Town of Leesburg

**Estimated Fiscal Impact:** \$0.00

The Town does not employ either public defenders or any Commonwealth Attorneys. That is a Loudoun County function.

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Locality: Town of Luray

Estimated Fiscal Impact: \$0.00

While the Town does not supplement funding for the Commonwealth Attorney, this requirement of the County would place an additional burden on the tax payers.

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