

Department of Planning and Budget 2005 Fiscal Impact Statement

1. Bill Number HB2054

House of Origin	<input type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input checked="" type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. Patron Nixon

3. Committee General Laws

4. Title Alternative Dispute Resolution; pilot project.

5. Summary/Purpose:

Allows the Virginia Information Technologies Agency (VITA) to promulgate administrative rules concerning the use of alternative dispute resolution in lieu of the provisions set forth in the Virginia Public Procurement Act concerning procurement protests. The Chief Information Officer of the Commonwealth must report to the General Assembly on the implementation of the rules. The pilot project will expire on July 1, 2008.

6. Fiscal Impact: See item 8.

7. Budget amendment necessary: No

8. Fiscal implications:

During the past year, two contract award protests directed to the Virginia Information Technologies Agency (VITA) were appealed and resolved using alternative dispute resolution (ADR). In these two mediations, VITA used a volunteer mediator from another agency at no cost for all meetings held. VITA expects to be able to likewise access the services of state-trained volunteer mediators for all future contract award protest ADRs facilitated by the proposed legislation.

Resolving procurement protests is a current responsibility of VITA's Supply Chain Management (SCM) organization. While SCM staff time and other resources are consumed by preparing for and participating in an ADR protest, associated costs are no greater than those required to address protests using other approaches. In fact, VITA maintains that ADR has saved the agency and state money, and will continue to do so, given that successful resolution using ADR avoids the expense of litigation.

The anticipated costs of promulgating administrative rules and preparing the required annual legislative reports are minimal and can be absorbed within VITA's existing budget.

The Virginia Public Procurement Act (VPPA) is ambiguous regarding an agency's ability to employ ADR with a protesting vendor in lieu of having the protestor file a lawsuit. To preserve their right to go to court under the VPPA, currently a protestor must simultaneously

pursue a lawsuit and ADR, a less efficient and potentially more costly approach to all parties involved.

If this legislation is approved and VITA undertakes a successful ADR pilot, it could lead to future adoption of similar cost-saving exceptions in other agencies to the provisions for procurement protests.

9. Specific agency or political subdivisions affected: Virginia Information Technologies Agency

10. Technical amendment necessary: No

11. Other comments: None

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cc: Secretary of Technology