

Department of Planning and Budget 2015 Fiscal Impact Statement

1. Bill Number: HB2336

House of Origin	☒ Introduced	☐ Substitute	☐ Engrossed
Second House	☐ In Committee	☐ Substitute	☐ Enrolled

2. Patron: Peace

3. Committee: General Laws

4. Title: Virginia Public Procurement Act; IT procurement; terms and conditions; limitation on liability.

5. Summary: Provides that terms and conditions relating to the liability of a contractor contained in any solicitation for the procurement of information technology goods or services shall be reasonable and limited to an amount deemed necessary to protect the interests of the public body, which amount shall in no event exceed twice the value of the contract.

6. Budget Amendment Necessary: No.

7. Fiscal Impact Estimates: Indeterminate, see Item 8.

8. Fiscal Implications: This bill would limit the liability of a procured contractor for information technology goods and services to be no more than twice the value of the contract. The bill would have a direct impact on the Virginia Information Technologies Agency (VITA) in its role as the IT procurement agency for executive branch agencies, but would also impact all public bodies procuring IT goods and services under the Virginia Public Procurement Act.

VITA indicates that it is already the agency's practice to limit a supplier's liability to two times the aggregate or annual value of either the contract or the accepted deliverables, with certain exceptions. For instance, VITA's IT contracts typically have no liability limitation for:

- Intentional or willful misconduct or negligence of any employee, agent, or subcontractor of Supplier,
- Claims for bodily injury, including death, and real and tangible property damage,
- Supplier's indemnification obligations,
- Supplier's confidentiality and security compliance obligations, and
- Supplier's data privacy and security obligations.

This legislation would cap liability in each of these areas, which may result in the risk associated with public IT contracts being shifted from the vendor to the public body. Vendors may achieve cost savings from the reduction in liability, but it is unclear whether those

savings would be passed along to the public body or offset any increases in liability to the public body.

VITA also indicates that there may be situations where a procurement project may have a low cost, but have a significantly high level of risk, such as a current project to replace the credit card terminals at the Department of Motor Vehicles (DMV). The value of the contract is less than \$1 million, but the potential liability is greater than \$1 million because the DMV processes more than six million credit card transactions annually. If a vulnerability in the hardware or software used by the vendor for the credit card terminals results in damages such as fraudulent charges on citizen credit cards, then under the provisions of this legislation the vendor would be only responsible for less than \$2 million of the liability.

- 9. Specific Agency or Political Subdivisions Affected:** Any entity defined as a “public body” in the Virginia Public Procurement Act, including any “legislative, executive, or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty.”

10. Technical Amendment Necessary: No.

11. Other Comments: This bill is identical to SB1420.

C: Secretary of Technology

Date: January 28, 2015

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