

Commission on Local Government

Estimate of Local Fiscal Impact

2020 General Assembly Session

Bill: SB645

Patron: Surovell

Date: 1/27/2020

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:

Local arbitration agreements. Requires a locality, for any procurement contract for goods and services and any purchasing decision, to ensure that solicitations require the bidder to disclose certain information regarding pre-dispute arbitration clauses and consider each bidder's policies and practices related to arbitration. The bill requires each locality to seek to contract with qualified entities and business owners that can demonstrate or will certify that they do not use pre-dispute arbitration clauses in contracts with employees or consumers, and evaluate bidders based on disclosures required under the bill, in the event no bidder can demonstrate or will certify that they do not use pre-dispute arbitration clauses in contracts with employees or consumers. The bill authorizes a locality to cancel, terminate, or suspend, in whole or in part, the contract of any contractor who violates a provision of the bill, and declare the contractor ineligible for further contracts with such locality.

~~~~~

**Executive Summary:**

Localities have evaluated a negative fiscal impact ranging from \$0.00 - \$200,000.00. Most of the localities responded that the bill would have little to no fiscal impact because they do not have any contracts with pre-dispute arbitration clauses or the provisions of the bill do not apply to them as small towns are exempted from most VAPA requirements. Other localities that responded with no cost noted that the cost of the bill is indeterminate because the number of current contracts and advertisements is unknown but would require additional staff to comply. Of those localities that responded with a cost noted that the cost would be related to additional staffing to track and evaluate ongoing submittals, and the bill would significantly increase paperwork requirements that may make bidding less attractive, which could ultimately increase localities costs.

\*\*\*\*\*

**Local Analysis:**

**Locality:** City of Emporia

**Estimated Fiscal Impact:** \$0.00

Minimal fiscal impact. Improves the locality's recourse for non-performance.

~~~~~

Locality: City of Harrisonburg

Estimated Fiscal Impact: \$0.00

The city is not able to determine the fiscal impact of this legislation. However, the city can determine that this would create an undue burden on current city staff and possibly to an increase in staff to comply with this proposed legislation.

~~~~~  
**Locality:** City of Norfolk

**Estimated Fiscal Impact:** \$45,000.00

The fiscal impact is estimated at a minimum of \$45,000 in annual costs to the city. This cost estimate is derived from the need for additional staffing to track and evaluate ongoing submittals. Another potential impact to the cost is the significant increase in paperwork requirements that may make bidding less attractive. If there are fewer submissions, it could impact the ability of the city to receive affordable options. The requirements regarding paperwork, FOIA, and document retention could increase the cost of doing business for small and local vendors limiting their ability to compete and increase the city's costs if new processes or programs are needed to accommodate the requirements.

~~~~~  
Locality: City of Roanoke

Estimated Fiscal Impact: \$200,000.00

From the City of Roanoke's perspective, there are two expenses tied to this bill: first, the increase in the price the City would pay if we can't award to the lowest bidder due to this clause and the second expense is in City personnel costs to evaluate the bids and then negotiate offending terms. This impacts both legal and procurement. Though we do not readily know the value of all City contracts, which would include construction, if only 10% of our contracts are impacted, the increase could be well over \$100,000. The second expense could lead to the need for one additional employee to assist in the process which could also be close to \$100,000 (with benefits) and even higher if it is an employee in our City Attorney's office.

~~~~~  
**Locality:** City of Virginia Beach

**Estimated Fiscal Impact:** \$63,501.00

Review of every bid to discern the presence of or details regarding the existence of pre-dispute arbitration clauses would require the City to hire an additional staff member. This employee's salary and benefits are the estimated fiscal impact listed above. However, if this prohibition / dissuasion of pre-dispute arbitration clauses are not extended to state, or other public sector, contracts as well as local contracts, then it is unlikely the City would be allowed to use cooperative contracts, which would increase the cost of large purchases by an unknown amount.

~~~~~  
Locality: City of Winchester

Estimated Fiscal Impact: \$0.00

According to our Procurement agent, this is a good code because if there is binding pre-dispute arbitration in effect, it would hinder (the local government) us from seeking damages and or other provisions in a given contract. Pre-dispute arbitration could limit discovery before any legal action could be entered into. This law would also require the vendor to give us notice of any pre-dispute arbitration.

~~~~~

**Locality:** Prince Edward County

**Estimated Fiscal Impact:** \$20,000.00

The cost would be the cost to have an attorney and an auditor review each procurement contract and the companies records as state in the bill. But the real cost to a local government could easily be in the hundreds of thousands of dollars or even more by the chilling affect this bill would have on the willingness of contractors and providers to bid on projects of local governments or even the provision of goods and services. Companies will take great exception to being asked about disclosing employees right to dispute or arbitrate. Frankly it is not the business of the municipally to ask such questions and it will create an uneasiness from bidders since this is an employer/employee issue.

Section 2.2-4377.2.B is especially worrisome as the required disclosure in that section would provide competitors with information on the company that many feel is private or proprietary. Probably the biggest issue is Article 2.2-4377.4 where it states the contractor must open its books so the municipality can investigate post award. This in no way is acceptable.

Overall local governments will not receive the lowest prices possible for their citizens who will be the ones that will pay the extra costs. Firms who only receive a small amount of their revenue from local governments will merely cease to provide bids on all sorts of projects and on the provision of goods and services.

Finally, I see a legal issues with the 2.2-4377.5 Penalty. This states that if they violate any provisions of the article the municipality can deem the contractor ineligible for future contracts. This is also not reasonable and would not be withheld if disputed. It is very difficult to deny an contractor the ability to submit for a public contract.

~~~~~  
Locality: Town of Ashland

Estimated Fiscal Impact: \$0.00

Unable to develop a realistic estimate due to the number of contracts currently in place and advertised annually.

~~~~~  
**Locality:** Town of Blacksburg

**Estimated Fiscal Impact:** \$0.00

This is how we would prefer our contracts.

~~~~~  
Locality: Town of Buchanan

Estimated Fiscal Impact: \$0.00

Our town currently does not have any contracts with pre-dispute arbitration clauses.

~~~~~  
**Locality:** Town of Scottsville

**Estimated Fiscal Impact:** \$0.00

Small towns are exempt from most VPPA requirements and would absorb no new administrative costs from this bill. If a small town chose to follow this guidance, or for a town just over the population threshold, this bill would not create any appreciable new costs in procurement. The clause language is clear and easily copied among procurement boilerplate.

~~~~~