

## **Fiscal Impact Review 2019 General Assembly Session**

**Date:** February 8, 2019

**Bill number:** SB 1329 (Senate Substitute); major information technology project procurement; terms and conditions

**Review requested by:** Senator Ruff; Senate General Laws and Technology

### **JLARC Staff Fiscal Estimates**

JLARC staff do not concur with the DPB fiscal impact statement that SB 1329 (Senate Substitute) would result in additional costs for VITA of \$125,000 annually. The bill is not expected to result in a fiscal impact on VITA.

SB 1329 (Senate Substitute) would require that the liability terms and conditions for major information technology project contracts not exceed twice the value of the contract, unless an exception is approved by the Secretary of Administration based on a determination that the project would present an exceptionally high risk to the Commonwealth. This determination would be made by VITA staff, who would assess the project's risk prior to the issuance of the RFP. VITA is already required to review the risks associated with major information technology projects, and the bill would not require additional assessments of RFPs beyond what VITA already conducts.

***An explanation of the JLARC staff review is included on the pages that follow.***

**Authorized for release:**



**Hal E. Greer, Director**

## **Bill summary**

SB 1329 (Senate Substitute) would require that, in any contract for a major information technology project, the terms and conditions relating to the indemnification obligations and liability of a supplier not exceed twice the value of the contract in aggregate. The bill would allow for an exception to this requirement for projects that are deemed to be of exceptionally high risk to the Commonwealth. This risk would be determined by VITA staff, who would assess the level of risk presented by major information technology projects prior to the issuance of a Request for Proposals (RFP). If the risk assessment concludes that the project presents an exceptionally high risk, and the limitation on liability provisions in the RFP are not adequate to protect the Commonwealth, the Chief Information Officer (CIO) could submit a written recommendation to the Secretary that 1) describes how the risks are not sufficiently mitigated by the liability provisions in the RFP and 2) recommends a reasonable alternative maximum liability amount.

The bill provides that there would be no limitation on a supplier's liability for (i) any intentional or willful misconduct, fraud, or recklessness or (ii) claims for bodily injury, including death, and damage to real property or tangible personal property resulting from the supplier's negligence.

A "major information technology project" is defined in §2.2-2006 as an information technology project that either has a total estimated cost of more than \$1 million or has a total estimated cost of less than \$1 million and has been designated a major information technology project by the CIO, at his discretion.

## **Fiscal implications**

SB 1329 (Senate Substitute) is not expected to have a fiscal impact on VITA because VITA already performs the risk assessments for major information technology projects that would be required by the bill. Such risk assessments are required in statute (§2.2-2016.1). VITA staff indicate that SB 1329 (Senate Substitute) would not require them to expand their current risk assessments or assess the risks of additional RFPs. The bill would require additional documentation, preparation of a written recommendation to the Secretary, and an annual report listing all exceptions granted by the Secretary, but these activities could be performed using existing staff resources.

## **Budget amendment necessary? No**

**Agencies affected:** VITA

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