

Department of Planning and Budget

2021 Special Session I - Fiscal Impact Statement

1. Bill Number: HB5002

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

2. Patron: Ward

3. Committee: Appropriations

4. Title: Department of Small Business and Supplier Diversity; Small Business Procurement Enhancement Program.

5. Summary: The bill creates the Division of Procurement Enhancement within the Department of Small Business and Supplier Diversity (DSBSD) for purposes of collaborating with the Department of General Services, the Virginia Information Technologies Agency, the Department of Transportation, and covered institutions to further the Commonwealth's efforts to meet the goals established under the Small Business Procurement Enhancement Program and the Women-owned and Minority-owned Business Procurement Enhancement Program, as well as implementing initiatives to enhance the development of small businesses, microbusinesses, women-owned businesses, and minority-owned businesses in the Commonwealth.

The bill establishes the Small Business Procurement Enhancement Program with a statewide goal of 42 percent of certified small business utilization in all discretionary spending by state agencies and covered institutions in procurement orders, prime contracts, and subcontracts, as well as a target goal of 50 percent subcontracting to certified small businesses for all new capital outlay construction solicitations that are issued, in instances where the prime contractor is not a small business. In addition, the bill provides for a small business set-aside for the purchase of goods, services, and construction by state agencies and covered institutions, with purchases up to \$100,000 set aside for award to certified small businesses, and purchases up to \$10,000 set aside for award to microbusinesses.

The bill also establishes the Women-owned and Minority-owned Business Procurement Enhancement Program with a statewide goal of 23.1 percent of certified women-owned and minority-owned business utilization in all discretionary spending by state agencies and covered institutions in procurement orders, prime contracts, and subcontracts.

The bill further requires that state agencies and covered institutions require certain proposals or bids to include a small, women-owned, and minority-owned (SWaM) business subcontracting plan detailing intended subcontractor participation. Each state agency and covered institution is required to submit to DSBSD its SWaM business procurement plan on or before September 30, 2021, and to designate an existing employee as a SWaM business

procurement enhancement liaison. Each state agency and covered institution is required to certify to DSBSD annually by September 30 of each subsequent year that it has reviewed and updated as necessary its SWaM business procurement plan. DSBSD is to issue a report to the Governor and the General Assembly on the implementation and effectiveness of both procurement enhancement programs.

Finally, the bill amends the Virginia Public Procurement Act to permit public bodies to establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for the purchase or lease of goods, or for the purchase of services, insurance, or construction, if the aggregate or the sum of all phases is not expected to exceed \$200,000. Under current law, such purchase procedures may only be established for (i) goods and services other than professional services and non-transportation-related construction, if the aggregate or the sum of all phases is not expected to exceed \$200,000; (ii) transportation-related construction, if the aggregate or sum of all phases is not expected to exceed \$25,000; and (iii) professional services, provided the aggregate or the sum of all phases is not expected to exceed \$80,000. The Women-owned and Minority-owned Business Procurement Enhancement Program established by this bill expires July 1, 2028.

6. Budget Amendment Necessary: Yes, Items 78, and 128 in HB1800/SB1100.

7. Fiscal Impact Estimates: Preliminary, see item 8.

7a. Expenditure Impact: Department of General Services (Item 78)

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2021	N/A	N/A	N/A
2022	\$361,500	3.0	GF
2023	\$361,500	3.0	GF
2024	\$361,500	3.0	GF
2025	\$361,500	3.0	GF
2026	\$361,500	3.0	GF
2027	\$361,500	3.0	GF

Expenditure Impact: Department of Small Business and Supplier Diversity (Item 128)

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2021	N/A	N/A	N/A
2022	\$598,403	5.0	GF
2023	\$598,403	5.0	GF
2024	\$598,403	5.0	GF
2025	\$598,403	5.0	GF
2026	\$598,403	5.0	GF
2027	\$598,403	5.0	GF

8. Fiscal Implications: The bill establishes a new Procurement Enhancement division within the Department of Small Business and Supplier Diversity (DSBSD). The new division is to

administer the Small Business Procurement Enhancement Program, and the Women-owned and Minority-owned Business Procurement Enhancement Program.

Under the Small Business Procurement Enhancement Program, the bill requires that DSBSD monitor and guide state agencies and covered institutions in achieving a statewide goal of 42 percent of certified small business utilization in all discretionary spending for procurement orders, prime contracts, and subcontracts. For all new capital outlay construction solicitations that are issued, the bill establishes a target goal of 50 percent subcontracting to certified small businesses.

Under the Women-owned and Minority-owned Business Procurement Enhancement Program, DSBSD is to implement monitoring and guidance actions to bring about a goal of 23.1 percent of women-owned and minority-owned business utilization in the same broad category of discretionary spending. DSBSD is to develop the framework for these new programs in consultation with the Department of General Services (DGS), the Department of Transportation (VDOT) and Information Technologies (VITA), as well as other state agencies and covered institutions. Impacted agencies and institutions are required to submit their procurement plans to DSBSD. DSBSD is required to produce a progress report annually by November 30.

The bill also amends the Virginia Procurement Act to add references to the new procurement enhancement programs, and to modify allowances for public bodies to establish purchase procedures not requiring competitive sealed bids or competitive negotiation for single or term contracts.

Department of Small Business and Supplier Diversity (DSBSD)

DSBSD anticipates incurring an expenditure impact as a result of this bill, as it requires the creation of a new division within the agency. The new division is to work with state agencies and covered institutions to achieve a statewide goal of 23.1 percent discretionary spending with SWaM businesses and at least 42 percent discretionary spending with certified small businesses. To establish the new division and implement the requirements of the bill, DSBSD estimates that five SWaM Contract Compliance Officer positions will be needed.

These compliance officers would be responsible for assisting state agencies in meeting or surpassing the established thresholds. These positions also would be responsible for reviewing subcontract plans from prime contractors as outlined in their contracts (monthly, quarterly, or annually) to ensure compliance with stated goals, and supporting SWaM subcontractors that have a grievance with a prime contractor and serve on a panel that would determine if a prime contractor should be enjoined from future contract participation for failure to perform against their subcontractor plans.

Officers are to use data collected in the Department of General Services (DGS)'s eVA system to track and monitor performance. In FY2020, there were 626,912 purchase order transactions in eVA and over \$7 billion in expenditures. The agency anticipates that significant coordination with DGS will be required to ensure accurate reporting and statewide

goal achievement. HB1800/SB1100, as introduced, includes funding for a state-wide strategic data sourcing unit, which is to collect and process data in order to streamline the distribution of assistance to small businesses. This funding does not overlap with the expenditure impact outlined in this statement.

Department of General Services (DGS)

DGS anticipates experiencing an expenditure impact to agency business units (Division of Purchases and Supply, Division of Engineering and Buildings) related to the implementation of the SWaM business plans. The bill directs: collaboration with DSBSD; policy development and promulgation; training, consultation, and assistance with guidelines; and monitoring, processing, and reporting of subcontracting plans in the statewide electronic procurement system related to those plans. Additionally, the bill requires DGS to collaborate with implementation initiatives to enhance the development of small businesses, microbusinesses, women-owned businesses, and minority-owned businesses in the Commonwealth. DGS estimates that three positions are needed to facilitate and fully support its responsibilities directed in the bill including two positions in the Division of Purchases and Supply and one position in the Office of Policy and Legislative Affairs to support the Division of Engineering and Buildings.

Department of Accounts (DOA)

According to DOA, changes to the definition of small business are expected to require minor reconfigurations in the Cardinal Financial System. However, such changes are expected to be absorbed within existing funding and appropriation levels.

State agencies and institutions of higher education, generally

This bill will have an indeterminate fiscal impact on state agencies, institutions of higher education, and covered institutions that contract for services and have capital outlay construction projects. Preliminary information from the institutions indicates there likely will be administrative costs ranging from \$100,000 to \$400,000 per institution. While the actual impact is indeterminate at this time, the institutions also have indicated that vendor costs may increase significantly. The cost impact likely will be lower for smaller institutions and higher for larger institutions. Since the actual impact is indeterminate at this time, it has not been determined whether each individual institution can absorb such costs.

The Virginia Department of Transportation (VDOT)

VDOT does not anticipate any fiscal implications from this proposed legislation.

- 9. Specific Agency or Political Subdivisions Affected:** Department of Small Business and Supplier Diversity; Department of General Services; Department of Accounts; Department of Transportation; Virginia Information Technologies Agency; state agencies; institutions of higher education, including covered institutions.

- 10. Technical Amendment Necessary:** No.

- 11. Other Comments:** None.