

Department of Planning and Budget 2022 Fiscal Impact Statement

1. Bill Number: HB881

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

2. Patron: Fowler

3. Committee: General Laws

4. Title: Contracts; payment clauses to be included; right to payment of subcontractors.

5. Summary: Requires contracts awarded by state or local government agencies or private entities to include a payment clause that obligates the contractor to be individually liable for the entire amount owed to any subcontractor with which it contracts minus any amount that may otherwise be withheld due to the subcontractor's breach of contract. The bill provides that payment by the party contracting with the contractor shall not be a condition precedent to payment to any lower-tier subcontractor.

6. Budget Amendment Necessary: No.

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

8. Fiscal Implications: This legislation would require state agencies to include a payment clause in every contract that would obligate the contractor (defined as the entity that has a direct contract with any state agency or any agency of local government as discussed in § 2.2-4352) to be individually liable for the entire amount owed to any subcontractor with which it contracts, regardless if the contractor has received payment from the party contracting with the contractor, except in the case of a breach of contract by the subcontractor.

As defined in Article 4, Chapter 43, Title 2.2, Code of Virginia, a subcontractor means "any entity that has a contract to supply labor or materials to the contractor to whom the contract was awarded or to any subcontractor in the performance of the work provided for in such contract."

Per similar prior analyses by the Department of General Services, this provision would apply to all vendors that the Commonwealth completes a purchase order with. If contractors do not desire to assume this liability as part of a contract with the Commonwealth, then these provisions may affect the pool of vendors competing for the Commonwealth's business, which would in turn affect the prices of goods and services. Any such impact is indeterminate as this time.

9. Specific Agency or Political Subdivisions Affected: All public bodies subject to the Virginia Public Procurement Act.

10. Technical Amendment Necessary: No.

11. Other Comments: None.

Date: January 31, 2022

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