

## Department of Planning and Budget

### 2023 Fiscal Impact Statement

**1. Bill Number:** HB2385-EH2

**House of Origin**    ☐ Introduced    ☐ Substitute    ☒ Engrossed

**Second House**    ☐ In Committee    ☐ Substitute    ☐ Enrolled

**2. Patron:** Brewer

**3. Committee:** Communications, Innovation, and Technology

**4. Title:** Administration of state government; prohibited actions; civil penalty.

**5. Summary:** Prohibits state agencies from entering into a contract for goods or services with a scrutinized company under a foreign adversary, defined in the bill as any foreign government or nongovernment person determined by the U.S. Secretary of Commerce to have engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or security and safety of United States persons. The bill also requires any company that submits a bid or proposal to a state agency with respect to a contract for goods or services to certify in writing that it is not a scrutinized company and outlines the penalties for falsifying information in submitting such certification, including a civil penalty in an amount equal to the greater of \$250,000 or twice the amount of the contract for which the bid or proposal was submitted. Finally, the bill prohibits any employee or agent of any executive branch agency or person or entity contracting with any such agency from downloading or using any application, including TikTok or WeChat, or accessing any website developed by ByteDance Ltd. Or Tencent Holdings Ltd. (i) on any state-issued device or state-owned or state-leased equipment, including mobile phones, desktop computers, laptop computers, tablets, or other devices capable of connecting to the Internet, or (ii) while connected to any wired or wireless Internet network owned, operated, or maintained by the Commonwealth.

**6. Budget Amendment Necessary:** Indeterminate – see item 8

**7. Fiscal Impact Estimates:** Preliminary – indeterminate, see item 8

**8. Fiscal Implications:**

The Department of General Services (DGS) will have minimal fiscal impact associated with development of policies and procedures in handling the civil penalty requirement in this bill. The agency believes this minimal fiscal impact can be absorbed within existing resources.

The Virginia Information Technologies Agency (VITA) indicates that the procurement and contracting provisions will have an indeterminate impact that can be absorbed by existing resources. Those provisions will require DGS, VITA, and possibly other affected agencies to

(i) create a new procurement form/requirement to implement the new Code section; (ii) receive and perhaps examine the certifications from contractors and prospective contractors; and (iii) take action if the agency acquires information that a certification is false.

VITA indicates that the substitute version of this bill does not change the fiscal impact from the introduced version. Impact estimates on the amendments added to the substitute bill are not currently available from DGS.

There are no significant changes to the fiscal impact in the engrossed version of this bill.

**9. Specific Agency or Political Subdivisions Affected:** This bill as written applies to all public bodies subject to the Virginia Public Procurement Act procuring technology using the competitive negotiation procurement method. This bill does not apply to higher education institutions operating under Management Agreements and Memoranda of Understanding in the operational area of technology (currently fourteen Level III and Level II institutions). Additionally, the bill will not apply to local governments that have exempted themselves from the VPPA as authorized by V. Code §2.2-4343 (9, 10, 11).

**10. Technical Amendment Necessary:** No

**11. Other Comments:** None