

## **Department of Planning and Budget 2024 Session Fiscal Impact Statement**

**1. Bill Number:** HB1108ER

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

**2. Patron:** Carr

**3. Committee:** Passed both houses

**4. Title:** Virginia Public Procurement Act; construction management and design-build contracting.

**5. Summary:** The bill, as enrolled, amends Chapter 43.1 of Title 2.2 (§§ 2.2-4378 through 2.2-4383) Construction Management and Design-Build Contracting. The enrolled bill adds certain requirements for covered institutions, including posting all documents that are open to public inspection exchanged between the Department of General Services (DGS) and the covered institution on the central electronic procurement website eVA. If the Division of Engineering and Buildings (DEB) denies a covered institution's use of construction management/design-build for a nongeneral fund project or a general fund project exceeding \$65 million, the covered institution may appeal the decision by two-thirds vote of the governing board. DEB must present their reasoning for the denial if the covered institutions proceed with construction management/design-build (CM/DB) against DEB's decision. The bill also requires inclusion of a DGS representative in the process for the selection of a contractor for construction management/design-build projects that are generally funded following governing board approval. General fund projects under \$65 million shall be approved by the Chairmen of the House Committee on Appropriations, the Senate Committee on Finance and Appropriations, and a representative of the Department. The bill also requires state public bodies, covered institutions, and local public bodies to provide documentation of the processes used for the final selection of a contract to all the unsuccessful applicants upon request. In summation, this bill further sets out the requirements to use construction management or design-build contracts by state public bodies, local public bodies, and covered institutions.

The bill provides that the Department shall report annually, for any construction management or design-build project, on the qualifications that made such project complex. Finally, the bill requires the Department of General Services, with the assistance of staff of the House Committee on Appropriations and the Senate Committee on Finance and Appropriations, assess implementation of the bill's provisions and report its findings and recommendations to the General Assembly by November 1, 2029.

**6. Budget Amendment Necessary:** No

**7. Fiscal Impact Estimates:** Indeterminate, see item 8

- 8. Fiscal Implications:** The fiscal impact of this bill is indeterminate. If nongeneral fund or general fund projects exceeding \$65 million are denied the construction management/design-build (CM/DB) delivery method by the Division of Engineering and Buildings (DEB), covered institutions may appeal to their governing board to override the decision by majority vote of the board. If the project is general fund, following approval from the governing board, the Department of General Services (DGS) is required to provide a representative to be included in the process of contractor selection. If the covered institution proceeds with a CM/DB project contrary to DEB's denial of CM/DB, DEB must present their reasoning for the denial. Any costs incurred by the proceedings will be charged to the capital project. DGS indicates that the provisions to advertise certain documents on eVA will not incur a fiscal impact.

For general fund projects less than \$65 million, the bill provides that covered institutions can appeal the CM/DB decision with approval from the House Appropriations Committee (HAC) chair, the Senate Finance and Appropriation Committee (SFAC) chair, and a DGS representative if the DEB decision is contrary to the covered institution's intended procurement method. As this is a reporting requirement, any fiscal impact from these proceedings is minimal and absorbable to the House and Senate. If DGS experiences any costs from this provision, they will be charged to the capital project.

This bill has an indeterminate fiscal impact to public institutions of higher education. They indicate the bill's provisions to appeal construction management/design-build denials may prolong construction schedules of capital projects and lead to higher total project costs. If a covered institution wanted to proceed with a CM/DB project and DEB denied the use of CM/DB, the covered institution and DEB would enter into the appeals process with the covered institution's governing board. The schedule of the project would be delayed and costs would increase due to escalation.

- 9. Specific Agency or Political Subdivisions Affected:** The bill impacts public bodies, covered institutions, and local public bodies.

**10. Technical Amendment Necessary:** No

**11. Other Comments:** As enrolled, this bill is identical to SB18.