

Department of Planning and Budget 2022 Fiscal Impact Statement

1. Bill Number: SB550

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

2. Patron: Bell

3. Committee: Floor

4. Title: Virginia Public Procurement Act; payment clauses to be included in contracts; right to payment of

5. Summary: Requires construction contracts awarded by state or local government agencies 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 noncompliance with the terms of the 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.

The bill also amends general contract law that would require an owner, defined as a person or entity other than a public body responsible for contracting with a general contractor for the procurement of construction services, to pay a general contractor within 45 days of the receipt of an invoice following satisfactory completion of the portion of the work for which the general contractor has invoiced. Owners may withhold portions of the payment due to noncompliance with the contract and are required to notify the general contractor in writing of the reason for the nonpayment. Failure of an owner to make a timely payment shall result in interest penalties consistent with the interest penalties described under the Prompt Payment provisions of the Virginia Public Procurement Act.

The bill also includes a provision holding higher-tier contractors individually liable to any lower-tier subcontractor with whom the higher-tier contractor contracts for satisfactory performance of the subcontractor's duties under the contract, except in case of breach of contract by the subcontractor. The bill provides that contractors must pay subcontractors within the earlier of (i) 45 days to pay subcontractors after the completion of the subcontractor's duties or (ii) seven days after receipt of amounts paid by the owner for work performed by the subcontractor pursuant to the terms of the contract. Contractors may withhold portions of the payment due to noncompliance with the contract and are required to notify the subcontractor in writing of the reason for the nonpayment. Failure of a contractor to make a timely payment shall result in interest penalties consistent with the interest penalties described under the Prompt Payment provisions of the Virginia Public Procurement Act.

The Department of General Services is directed to convene the Public Body Procurement Workgroup to review whether the issue of nonpayment between general contractors and subcontractors necessitates legislative corrective action. The Workgroup is to report its findings and legislative recommendations by December 1, 2022.

6. Budget Amendment Necessary: No.

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

8. Fiscal Implications: This legislation would require state agencies to include a payment clause in every construction 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.

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.”

If construction 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.

The provision directing a study by the Public Body Procurement Workgroup is not expected to generate a fiscal impact.

The provisions governing contractual payments between owners and general contractors, and general contractors and subcontractors, assess penalties for failure to make timely payment consistent with §2.2-4355, *Code of Virginia*, which outlines interest penalties assessed on state agencies in instances where agencies do not follow the requirements of the Prompt Payment provisions of the Virginia Public Procurement Act. This portion of the bill describe requirements between non-public bodies and as such are not expected to have a state fiscal impact.

9. Specific Agency or Political Subdivisions Affected: This bill as written applies to all public bodies subject to the Virginia Public Procurement Act (VPPA). This bill does not apply to higher education institutions operating under Management Agreements and Memoranda of Understanding in the operational area of procurement (currently twelve 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.