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## SENATE BILL NO. 550

Offered January 12, 2022

Prefiled January 12, 2022

A *BILL to amend and reenact § 2.2-4354 of the Code of Virginia, relating to Virginia Public Procurement Act; payment clauses to be included in contracts; right to payment of subcontractors.*

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Patron—Bell

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Referred to Committee on General Laws and Technology

**Be it enacted by the General Assembly of Virginia:****1. That § 2.2-4354 of the Code of Virginia is amended and reenacted as follows:****§ 2.2-4354. Payment clauses to be included in contracts.**

Any contract awarded by any state agency, or any contract awarded by any agency of local government in accordance with § 2.2-4352, shall include:

1. A payment clause that obligates the contractor to be individually liable for the entire amount owed to any subcontractor with which it contracts. Payment by the party contracting with the contractor shall not be a condition precedent to payment to any lower-tier subcontractor, regardless of that contractor receiving payment for amounts owed to that contractor. Any provision in a contract contrary to this section shall be unenforceable.

2. A payment clause that obligates the contractor to take one of the two following actions within seven days after receipt of amounts paid to the contractor by the state agency or local government for work performed by the subcontractor under that contract:

a. Pay the subcontractor for the proportionate share of the total payment received from the agency attributable to the work performed by the subcontractor under that contract; or

b. Notify the agency and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

3. A payment clause that requires (i) individual contractors to provide their social security numbers and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.

4. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor of payment from the state agency or agency of local government for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 4 2.

5. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month."

Any such contract awarded shall further require the contractor to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the state agency or agency of local government. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

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