



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION

Stephen C. Brich, P.E.
Commissioner

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December 5, 2022

The Honorable James A. Leftwich
Chairman, House General Laws Committee
308 Cedar Lakes Drive, 2nd Floor
Chesapeake, Virginia 23322

The Honorable Thomas C. Wright, Jr.
Vice Chair, House General Laws Committee
P.O. Box 1323
Victoria, Virginia 23974

The Honorable David W. Marsden
Chairman, Senate Transportation Committee
P.O. Box 10889
Burke, Virginia 22009

Dear Chairman Leftwich, Vice Chairman Wright and Chairman Marsden:

Chapter 783 of the 2012 Acts of Assembly (Chapter 783) directs the Virginia Department of Transportation (VDOT) to report annually by December 1 on certain information relating to performance and payment bonds. The Act, pursuant to a third enactment clause, specifically directs VDOT to report the following information to the Chairmen of the House Committee on General Laws and the Senate Transportation Committee:

- The number of companies that were unable to procure a performance or payment bond pursuant to subsection H of Va. Code § 2.2-4337;
- The number of waivers granted by the Department pursuant to subsection H of Va. Code § 2.2-4337; and
 - The number of companies that were enrolled in any Department of Treasury, Division of Risk Management self-bonding program for Department projects.

In FY2022, there were no companies conducting business with VDOT that were unable to procure a performance or payment bond pursuant to subsection H of Virginia Code § 2.2-4337. Consequently, in 2022, there were no projects requiring a bond waiver by VDOT, and there were no companies referred by VDOT to the Virginia Department of Treasury's self-bonding program.

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It is noted that Chapter 565 of the 2022 Acts of Assembly (Chapter 565) repealed subsection H of § 2.2-4337, effective July 1, 2022. However, that legislation did not address the *third enactment clause* of Chapter 783 (2012) that requires submission of this report, which is dependent and based on data generating from subsection H of § 2.2-4337. Further, the *second enactment clause* of Chapter 783 (2012) provided, in part, that prospective bidders for transportation-related construction projects who have submitted evidence of denial of a performance or payment bond pursuant to subsection H of § 2.2-4337 shall be required to participate in the prequalification program agreed to by the Commissioner of Highways and the Department of the Treasury (self-bonding program). Chapter 565 (2022), however, did not address the second enactment clause of Chapter 783.

In closing, VDOT would note that repeal of subsection H of § 2.2-4337 pursuant to Chapter 565 (2022) appears to nullify the basis for this report in the future and would suggest that the second and third enactment clauses of Chapter 783 may need to be revisited/repealed. If you have any questions, I would ask that you contact Jo Anne Maxwell, Director of Governance and Legislative Affairs, at (804) 786-1830.

Sincerely,

A handwritten signature in blue ink, appearing to read "Stephen C. Brich".

Stephen C. Brich, P.E.
Commissioner of Highways

cc: The Honorable W. Sheppard Miller III