



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION

Stephen C. Brich, P.E.
Commissioner

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January 4, 2024

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

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

As noted in this report last year, Chapter 565 of the 2022 Acts of Assembly (Chapter 565) repealed subsection H of § 2.2-4337, effective July 1, 2022, rendering items i and ii of the third enactment of Chapter 783 a nullity. 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

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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.

For purposes of item iii of the third enactment clause of Chapter 783, due to the repeal of subsection H of § 2.2-4337, there would be no companies that could be required to participate, and there were no companies that actually enrolled, in any Department of Treasury, Division of Risk Management self-bonding program for Department projects.

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 ask that you contact Jo Anne Maxwell, Director of Governance and Legislative Affairs, at (804) 786-1830.

Sincerely,

A handwritten signature in blue ink that reads "Stephen C. Brich". The signature is fluid and cursive, with the first name being the most prominent.

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

cc: The Honorable W. Sheppard Miller III