



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION

Stephen C. Brich, P.E.
Commissioner

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November 6, 2024

The Honorable David L. Bulova
Chair, House General Laws Committee
P.O. Box 106
Fairfax Station, VA 22039

The Honorable Betsy B. Carr
Vice Chair, House General Laws Committee
P.O. Box 406
Richmond, VA 23218

The Honorable Jennifer B. Boysko
Chair, Senate Transportation Committee
P.O. Box 247
Herndon, Virginia 20172

Dear Chairman Bulova, Vice Chairwoman Carr, and Chairwoman Boysko:

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As noted in the report submitted for 2023, Chapter 565 of the 2022 Acts of Assembly (Chapter 565) repealed subsection H of § 2.2-4337, effective July 1, 2022, rendering items i and ii of the third enactment of Chapter 783 a nullity.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 in the prequalification program agreed to by the Commissioner of Highways and the

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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 letters of the first and last names being capitalized and prominent.

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

cc: The Honorable W. Sheppard Miller III