

## **Public Body Procurement Workgroup**

### **Draft of Final Recommendation for SB 575**

The Workgroup finds that it is not appropriate at this time to require DGS and all other state agencies to use a TCO calculator for medium-duty and heavy-duty vehicles, but the Workgroup recommends that the General Assembly consider directing VDOT, DRPT, and other state agencies to (i) investigate and determine the appropriate factors that need to be included in a TCO calculator for medium-duty and heavy-duty vehicles and (ii) determine when it may be appropriate to implement a requirement that state agencies use a TCO calculator for medium-duty and heavy-duty vehicles.

# **Public Body Procurement Workgroup**

## **Draft of Final Recommendations for SB 550**

### **I. AMENDMENTS PERTAINING TO ALL OF SB 550**

#### Recommendation #1:

The Workgroup recommends that the General Assembly consider making the definitions of “construction/construction contract,” “contractor/general contractor,” and “subcontractor” that are applicable to SB 550’s payment liability and timing provisions pertaining to public contacts in § 2.2-4354 and to SB 550’s payment liability and timing provisions pertaining to private contracts in § 11-4.6 uniform.

#### Recommendation #2:

The Workgroup recommends that the General Assembly consider clarifying whether contracts for professional services, including architectural or professional engineering services, should be included within the scope of SB 550’s payment liability and timing provisions.

#### Recommendation #3:

The Workgroup recommends that the General Assembly consider making the following language in SB 550 uniform in order to enhance the clarity and consistency of the bill:

Lines 12-13: Such contractor shall not be liable for amounts otherwise reducible due to the subcontractor's noncompliance with the terms of the contract.

Lines 57-58: An owner shall not be required to pay amounts invoiced that are subject to withholding pursuant to the contract for the general contractor's noncompliance with the terms of the contract.

Lines 72-73: Such contractors shall not be liable for amounts otherwise reducible pursuant to a breach of contract by the subcontractor.

#### Recommendation #4:

The Workgroup recommends that the General Assembly consider making the following language in SB 550 uniform where appropriate and intended in order to enhance the clarity and consistency of the bill:

Lines 14-16: However, in the event that the contractor withholds all or a part of the amount promised to the subcontractor under the contract, the contractor shall

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

Lines 59-62: However, in the event that an owner withholds all or a part of the amount invoiced by the general contractor under the terms of the contract, the owner shall notify the general contractor, in writing and with reasonable specificity, of his intention to withhold all or part of the general contractor's payment with the reason for nonpayment.

Lines 74-78: However, in the event that a contractor withholds all or a part of the amount invoiced by any lower-tier subcontractor under the contract, the contractor shall notify the subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment, specifically identifying the contractual noncompliance, the dollar amount being withheld, and the lower-tier subcontractor responsible for the contractual noncompliance.

Recommendation #5:

The Workgroup recommends that the General Assembly consider establishing a timeline for when the notice of withholding payment must be given.

**II. AMENDMENTS PERTAINING TO § 2.2-4354 – PUBLIC CONTRACTS**

Recommendation #6:

The Workgroup recommends that the General Assembly consider reconciling the provisions added by SB 550 in subdivision 1 of § 2.2-4354 with the existing provisions of the Prompt Payment Act that were moved to subsection 2 of § 2.2-4354 and, in doing so, consider clarifying (i) the type of contracts to which each subdivision applies, (ii) how the “entire amount owed” language in subdivision 1 is intended to interact with the “proportionate share” language in subdivision 2, (iii) that the “entire amount owed” language in subdivision 1 is not intended to affect the VPPA’s retainage provisions, and (iv) when a general contractor must pay a subcontractor when the general contractor has not been paid by the public body.

**III. AMENDMENTS PERTAINING TO § 11-4.6 – PRIVATE CONTRACTS**

Recommendation #7:

The Workgroup recommends that the General Assembly consider updating the catchline of § 11-4.6 to reflect both the provisions of § 11-4.6 that existed prior to the amendments made by SB 550 and that are still in effect (dealing with the liability of a contractor for the wages of a subcontractor’s employees) and the new provisions added by SB 550 (dealing with payment liability and timing between private owners, general contractors, and subcontractors).

Recommendation #8:

The Workgroup recommends that the General Assembly consider amending the subsection and subdivision lettering in § 11-4.6 to separate out the provisions of § 11-4.6 dealing with the liability of a contractor for the wages of a subcontractor's employees from the new provisions added by SB 550 dealing with owners' and general contractors' payment liability and timing in order to make § 11-4.6 easier to interpret.

Recommendation #9:

The Workgroup recommends that the General Assembly consider clarifying that the provisions of subsection C of § 11-4.6 applies only to construction contracts.

Recommendation #10:

The Workgroup recommends that the General Assembly consider (i) reconciling the inconsistency between the timelines for payment that are set out on lines 55-57 in subsection B of § 11-4.6 for owners and on lines 69-70 in subsection C of § 11-4.6 for general contractors and (ii) reconciling such inconsistency by using the "receipt of invoice" language used on lines 55-57 in subsection B as the trigger for payment in both subsections.

Recommendation #11:

The Workgroup recommends that the General Assembly consider clarifying the inconsistent and confusing terminology used in subsection C of § 11-4.6 by amending it (i) to use only the terms "general contractor" and "subcontractor" (similar to § 2.2-4354 in the VPPA dealing with public contracts) and (ii) by inserting the following language from § 2.2-4354 in the VPPA that would make the provisions of subsection C apply throughout all of the tiers: 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.

July 12, 2022

Mr. Joe Damico  
Director, Dept. of General Services  
1100 Bank Street  
Richmond, VA 23219

Dear Mr. Damico,

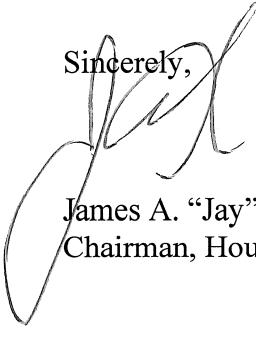
During the 2022 General Assembly Session, Senator Ghazala Hashmi carried Senate Bill 272; *Concrete; DGS shall convene a work group to review climate impact.* On March 3<sup>rd</sup>, 2022, this was left in Agriculture, Chesapeake and Natural Resources Committee.

In advance of the 2023 General Assembly Session, I request that you convene a group of interested parties to study SB 272 and review ways to continue to reduce carbon emissions in concrete and cement, without sacrificing the integrity of the product and cost competitiveness.

I ask that you include as part of this group representatives from the VRMCA to work through concerns and find a possible solution which is necessary to accomplish this work by December 1, 2023.

Thank you for your advocacy work on behalf of the Department of General Services and your willingness to work collaboratively with other stakeholders to find a solution. I have enclosed a copy of this legislation, and I stand by to assist in any way.

Sincerely,

  
James A. "Jay" Leftwich, Jr.  
Chairman, House General Laws Committee

**2022 SESSION****SB 272 Concrete; DGS shall convene a work group to review climate impact.**

Introduced by: Ghazala F. Hashmi | all patrons ... notes | add to my profiles

**SUMMARY AS PASSED SENATE:** (all summaries)

**Climate impact of concrete; work group; report.** Directs the Department of General Services to convene a stakeholder work group to review the climate impact of concrete and recommend policies and practices to incentivize the reduction of the air emission impact of the production of concrete procured by agencies of the Commonwealth for Commonwealth-funded projects. The work group shall report its findings, including any public comments received, and recommendations no later than November 1, 2023.

**FULL TEXT**[01/11/22 Senate: Prefiled and ordered printed; offered 01/12/22 22101529D](#) pdf[01/25/22 Senate: Committee substitute printed 22105171D-S1](#) pdf | impact statement**AMENDMENTS**[Senate committee, floor amendments and substitutes offered](#)**HISTORY**[01/11/22 Senate: Prefiled and ordered printed; offered 01/12/22 22101529D](#)[01/11/22 Senate: Referred to Committee on Agriculture, Conservation and Natural Resources](#)[01/25/22 Senate: Reported from Agriculture, Conservation and Natural Resources with substitite \(9-Y 6-N\)](#)[01/25/22 Senate: Committee substitute printed 22105171D-S1](#)[01/27/22 Senate: Constitutional reading dispensed \(39-Y 0-N\)](#)[01/28/22 Senate: Read second time](#)[01/28/22 Senate: Reading of substitute waived](#)[01/28/22 Senate: Committee substitute agreed to 22105171D-S1](#)[01/28/22 Senate: Engrossed by Senate - committee substitute SB272S1](#)[01/31/22 Senate: Read third time and passed Senate \(22-Y 18-N\)](#)[02/22/22 House: Placed on Calendar](#)[02/22/22 House: Read first time](#)[02/22/22 House: Referred to Committee on Agriculture, Chesapeake and Natural Resources](#)[02/25/22 House: Assigned ACNR sub: Chesapeake](#)[02/28/22 House: Subcommittee recommends laying on the table \(6-Y 4-N\)](#)[03/08/22 House: Left in Agriculture, Chesapeake and Natural Resources](#)

2022 SESSION  
22101529D

**SENATE BILL NO. 272**

Offered January 12, 2022

Prefiled January 11, 2022

*A BILL to amend and reenact § 10.1-1186 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 2.2-1135.1 and 33.2-276.1 and by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:13, relating to lower carbon concrete; report.*

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Patron-- Hashmi  
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Referred to Committee on Agriculture, Conservation and Natural Resources  
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Be it enacted by the General Assembly of Virginia:

1. That § 10.1-1186 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 2.2-1135.1 and 33.2-276.1 and by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:13 as follows:

*§ 2.2-1135.1. Use of lower carbon concrete.*

*A. As used in this section:*

*"Concrete" means structural and nonstructural masonry, precast, and ready-mix concrete building products.*

*"Concrete global warming potential baseline" or "baseline" means the average global warming potential values for concrete specifications approved for use by the Department and the Department of Transportation in buildings, infrastructure, and roadways owned by the Commonwealth. The baseline shall be determined by the Department of Environmental Quality, in consultation with the Department and the Department of Transportation, pursuant to § 10.1-1186.*

*"Environmental product declaration" means product specific Type III environmental product declarations that conform to ISO Standard 14025 and enable the numeric GWP and environmental impact comparisons between concrete mixes fulfilling the same functions.*

*"Global warming potential" or "GWP" means a numeric value included in an environmental product declaration that measures the total contribution to global warming from the emission of greenhouse gases, or the elimination of greenhouse gas sinks, that results from the production or utilization of a specific product or service.*

*"Lower carbon concrete" means concrete mixes and products that have been verified to result in a global warming potential value that is at least 20 percent lower than the concrete global warming potential baseline.*

*B. By January 1, 2023, the Department, the Department of Transportation, and the Department of Environmental Quality shall develop and implement performance-based specifications for concrete use in buildings, infrastructure, and roadways owned by the Commonwealth.*

*C. 1. For any building project initiated by the Department after January 1, 2023, that involves the placement of 50 cubic yards or more of concrete, a concrete material provider shall be eligible for a performance bonus if such provider utilizes a lower carbon concrete.*

*2. The provisions of this subsection shall not apply to a project if the Director, in his sole discretion, determines that (i) it would not be in the public interest, (ii) it would result in unreasonable costs, (iii) such lower carbon concrete cannot be produced or made in sufficient and reasonably available quantities of satisfactory quality, or (iv) it would conflict with compliance with state or federal law. Such determination shall be included in the request for proposal, invitation to bid, or other solicitation for any project for which such determination is made.*

*D. The Department shall report annually to the Governor and the General Assembly, beginning December 1, 2023, of the lower carbon concrete performance bonus, including a cost-benefit analysis of the use of lower carbon concrete.*

**§ 10.1-1186. General powers of the Department.**

The Department shall have the following general powers, any of which the Director may delegate as appropriate:

1. Employ such personnel as may be required to carry out the duties of the Department;
2. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter, including, but not limited to, contracts with the United States, other states, other state agencies and governmental subdivisions of the Commonwealth;
3. Accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends, the Department shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient, or desirable;
4. Accept and administer services, property, gifts and other funds donated to the Department;
5. Implement all regulations as may be adopted by the State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board;
6. Administer, under the direction of the Boards, funds appropriated to it for environmental programs and make contracts related thereto;
7. Advise and coordinate the responses of state agencies to notices of proceedings by the State Water Control Board to consider certifications of hydropower projects under 33 U.S.C. § 1341;
8. Advise interested agencies of the Commonwealth of pending proceedings when the Department of Environmental Quality intervenes directly on behalf of the Commonwealth in a Federal Energy Regulatory Commission proceeding or when the Department of Wildlife Resources intervenes in a Federal Energy Regulatory Commission proceeding to coordinate the provision of information and testimony for use in the proceedings;
9. Establish, in cooperation with the Department of General Services and the Department of Transportation, the concrete global warming potential baseline, as that term is defined in § 33.2-276.1. Such baseline shall be established by January 1, 2023, and reestablished every five years thereafter.
10. Notwithstanding any other provision of law and to the extent consistent with federal requirements, following a proceeding as provided in § 2.2-4019, issue special orders to any person to comply with: (i) the provisions of any law administered by the Boards, the Director or the Department, (ii) any condition of a permit or a certification, (iii) any regulations of the Boards, or (iv) any case decision, as defined in § 2.2-4001, of the Boards or Director. The issuance of a special order shall be considered a case decision as defined in § 2.2-4001. The Director shall not delegate his authority to impose civil penalties in conjunction with issuance of special orders. For purposes of this subdivision, "Boards" means the State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board; and
- 10-11. Perform all acts necessary or convenient to carry out the purposes of this chapter.

**§ 33.2-276.1. Use of lower carbon concrete.**

*A. As used in this section:*

*"Concrete" means structural and nonstructural masonry, precast, and ready-mix concrete building products.*

*"Concrete global warming potential baseline" or "baseline" means the average global warming potential values for concrete specifications approved for use by the Department of General Services and the Department in buildings, infrastructure, and roadways owned by the Commonwealth. The baseline shall be determined by the Department of Environmental Quality, in consultation with the Department and the Department of General Services, pursuant to § 10.1-1186.*

*"Environmental product declaration" means product specific Type III environmental product declarations that conform to ISO Standard 14025 and enable the numeric GWP and environmental impact comparisons between concrete mixes fulfilling the same functions.*

*"Global warming potential" or "GWP" means a numeric value included in an environmental product declaration that measures the total contribution to global warming from the emission of greenhouse gases, or the elimination of greenhouse gas sinks, that results from the production or utilization of a specific product or service.*

*"Lower carbon concrete" means concrete mixes and products that have been verified to result in a global warming potential value that is at least 20 percent lower than the concrete global warming potential baseline.*

*B. By January 1, 2023, the Department, the Department of General Services, and the Department of Environmental Quality shall develop and implement performance-based specifications for concrete use in buildings, infrastructure, and roadways owned by the Commonwealth.*

*C. 1. For any highway, bridge, or infrastructure project initiated by the Department after January 1, 2023, that involves the placement of 50 cubic yards or more of concrete, a concrete material provider shall be eligible for a performance bonus if such provider utilizes a lower carbon concrete that is included on the Department's approved materials list.*

*2. The provisions of this subsection shall not apply to a project if the Commissioner, in his sole discretion, determines that (i) it would not be in the public interest, (ii) it would result in unreasonable costs, (iii) such lower carbon concrete cannot be produced or made in sufficient and reasonably available quantities of satisfactory quality, (iv) it would result in the loss or reduction of federal funding, (v) it would limit or jeopardize the ability to obtain federal funding, or (vi) it would conflict with compliance with state or federal law. Such determination shall be included in the request for proposal, invitation to bid, or other solicitation for any project for which such determination is made.*

*D. The Department shall implement an expedited evaluation process for lower carbon concrete, materials, and methods submitted by application from a private entity for inclusion on the Department's approved materials list. Applicants shall be notified of evaluation results no later than six months after the submission of an application, unless technical constraints make completing of the evaluation in such time frame impractical.*

*E. The Department shall report annually to the Governor and the General Assembly, beginning December 1, 2023, of the lower carbon concrete performance bonus, including a cost-benefit analysis of the use of lower carbon concrete.*

**§ 58.1-439.12:13. Environmental product declaration tax credit.**

*A. For purposes of this section, "environmental product declaration (EPD) technology implementation cost" means the total initial cost incurred by concrete and concrete component producers to analyze, adopt, and implement technologies that enable the subsequent completion of Type III EPDs that conform to ISO Standard 14025 at concrete production facilities and enable the numeric global warming potential and environmental impact comparisons between concrete mixes fulfilling the same functions.*

*B. 1. For taxable years beginning on or after January 1, 2022, but before January 1, 2025, a taxpayer that is a producer of concrete, including producers of major concrete components, cement, and aggregate, shall be allowed a nonrefundable credit against the tax imposed pursuant to § 58.1-320 or 58.1-400 for amounts paid in the taxable year for EPD technology implementation costs incurred for an EPD analysis at up to eight concrete, cement, supplementary cementitious materials, or aggregate production facilities owned and operated by the taxpayer in Virginia.*

*2. For taxable years beginning on or after January 1, 2025, but before January 1, 2026, a taxpayer that is a producer of concrete, including producers of major concrete components, cement, and aggregate, shall be allowed a nonrefundable credit against the tax imposed pursuant to § 58.1-320 or 58.1-400 for amounts paid in the taxable year for EPD technology implementation costs incurred for an EPD analysis at a single concrete, cement, supplementary cementitious materials, or aggregate production facility owned and operated by the taxpayer in Virginia.*

*C. The credit shall equal the lesser of the amount actually paid in the taxable year for such EPD technology implementation costs or \$5,000.*

*D. The amount of the credit that may be claimed in any single taxable year shall not exceed the total amount of tax imposed by this chapter for that taxable year. If the amount of the credit allowed under this section exceeds the taxpayer's tax liability for the taxable year during which the EPD technology implementation costs were incurred, the amount that exceeds the tax liability may be carried over for credit against the income taxes of the taxpayer in the next five taxable years or until the total amount of the tax credit has been taken, whichever is sooner.*

*E. The Tax Commissioner shall develop guidelines implementing the provisions of this section. Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).*

2. That the Materials Division of the Department of Transportation shall, by January 1, 2023, complete an evaluation of the durability, strength, and structural performance of portland limestone cement, and such cement shall be included on the list of approved materials if the evaluation finds that inclusion is consistent with the goals of public safety and cost efficiency. For purposes of this enactment, "portland limestone cement" means Type IL or Type IT blended hydraulic cement (ASTM C595) that includes up to 15 percent pulverized limestone as a substitute for clinkers.

22105171D

## SENATE BILL NO. 272

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources  
on January 25, 2022)

(Patron Prior to Substitute—Senator Hashmi)

A BILL to review and recommend policies related to the climate impact of concrete.

## Be it enacted by the General Assembly of Virginia:

1. § 1. A. The Department of General Services (DGS) shall convene a stakeholder work group (Work Group) to review the climate impact of concrete and recommend policies and practices to incentivize the reduction of air emission impact of the production of concrete procured by agencies of the Commonwealth for Commonwealth-funded projects.

B. The Work Group shall be selected by the Director of DGS and shall consist of at the following: two licensed professional engineers, two licensed registered architects, one representative of the construction industry, one representative of the concrete producer industry, one representative of the concrete testing and validation industry, one representative of an accredited school of civil engineering, two representatives of environmental non-governmental organizations, one representative of the Department of Transportation, one representative of DGS, and one representative of DEQ.

C. The Work Group shall consult with any relevant associations that set industry standards for the procurement of low carbon concrete and shall consult with affected contractors and subcontractors to consider the air emissions and related impacts, as well as the health and safety impacts, of concrete.

D. The Work Group shall consider:

1. The use of environmental product declarations to measure the climate impact of concrete procured by agencies of the Commonwealth;

2. The use of performance incentives to encourage the adoption of low carbon materials and methods by concrete manufacturers that provide concrete for Commonwealth-funded projects;

3. The establishment of an expedited product evaluation, testing, and approval protocol for low carbon concrete projects; and

4. The implementation of performance-based specification standards for concrete, including requirements that a structural material achieve specified performance based outcomes from the use of the structural material, such as outcomes related to material, strength, durability, permeability, and other attributes related to the function of the building material for the applied uses, as opposed to requiring that a structural material be produced using a specified manufacturing process, design feature, technology, or proportion of materials. The Advisory Group shall examine the use of methods of compliance, including maximum cement content specifications and specifications based on maximum potential for global warming.

E. The Work Group and DGS shall allow for the submission of public comments to the Work Group, and shall report its findings, including any public comments received, and recommendations to the Governor and the Chairmen of the House Committee on Agriculture, Chesapeake and Natural Resources and the Senate Committee on Agriculture, Conservation and Natural Resources no later than November 1, 2023.

SENATE SUBSTITUTE

SB272S1

## 2022 SESSION

### SB 272 Concrete; DGS shall convene a work group to review climate impact.

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#### SUMMARY AS PASSED SENATE: [\(all summaries\)](#)

**Climate impact of concrete; work group; report.** Directs the Department of General Services to convene a stakeholder work group to review the climate impact of concrete and recommend policies and practices to incentivize the reduction of the air emission impact of the production of concrete procured by agencies of the Commonwealth for Commonwealth-funded projects. The work group shall report its findings, including any public comments received, and recommendations no later than November 1, 2023.

#### FULL TEXT

[01/11/22 Senate: Prefiled and ordered printed; offered 01/12/22 22101529D](#) [pdf](#)

[01/25/22 Senate: Committee substitute printed 22105171D-S1](#) [pdf](#) | [impact statement](#)

#### AMENDMENTS

[Senate committee, floor amendments and substitutes offered](#)

#### HISTORY

01/11/22 Senate: Prefiled and ordered printed; offered 01/12/22 22101529D

[01/11/22 Senate: Referred to Committee on Agriculture, Conservation and Natural Resources](#)

[01/25/22 Senate: Reported from Agriculture, Conservation and Natural Resources with substitite \(9-Y 6-N\)](#)

01/25/22 Senate: Committee substitute printed 22105171D-S1

[01/27/22 Senate: Constitutional reading dispensed \(39-Y 0-N\)](#)

01/28/22 Senate: Read second time

01/28/22 Senate: Reading of substitute waived

01/28/22 Senate: Committee substitute agreed to 22105171D-S1

01/28/22 Senate: Engrossed by Senate - committee substitute SB272S1

[01/31/22 Senate: Read third time and passed Senate \(22-Y 18-N\)](#)

02/22/22 House: Placed on Calendar

02/22/22 House: Read first time

[02/22/22 House: Referred to Committee on Agriculture, Chesapeake and Natural Resources](#)

[02/25/22 House: Assigned ACNR sub: Chesapeake](#)

[02/28/22 House: Subcommittee recommends laying on the table \(6-Y 4-N\)](#)

03/08/22 House: Left in Agriculture, Chesapeake and Natural Resources