

Department of Planning and Budget 2018 Fiscal Impact Statement

1. Bill Number: HB1084

House of Origin	<input checked="" type="checkbox"/>	Introduced	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Engrossed
Second House	<input type="checkbox"/>	In Committee	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Enrolled

2. Patron: Yancey

3. Committee: General Laws

4. Title: Virginia Public Procurement Act; statute of limitations on actions on construction contracts.

5. Summary: Provides that unless otherwise specified in the contract, no action may be brought by a public body on any construction contract unless such action is brought within five years after completion of the contract, including the expiration of all warranties and guarantees. The bill also limits the time frame during which a public body, other than the Department of Transportation, may bring an action against a surety on a performance bond to within five years after completion of the contract, including the expiration of all warranties and guarantees. Current law allows a public body, other than the Department of Transportation, to bring such an action within one year after (i) completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action.

6. Budget Amendment Necessary: No.

7. Fiscal Impact Estimates: Preliminary – fiscal impact is indeterminate. See Item 8.

8. Fiscal Implications: The fiscal impact of this bill is indeterminate. The bill increases the length of time that a public body can take action on a performance bond from one to five years and otherwise eliminates the ability to do so upon the discovery of a defect or breach of warranty. The bill also adds a statute of limitations of five years for a public body to make a claim on a construction contract, unless otherwise specified in the contract. Currently, the Commonwealth of Virginia is considered a sovereign in the code and therefore not subject to a statute of limitations, unless expressly stated. The Commonwealth would be subject to the five-year statute of limitations established by the bill for construction contracts, unless it specified otherwise in the contract. Limitations on the ability to take action on a performance bond or bring legal action on construction contracts would increase the financial risk for the Commonwealth.

According to the Department of General Services, many defects are latent and take more than five years to be discovered, sometimes costing hundreds of thousands of dollars to correct. The bill would limit the Commonwealth's ability to hold the contractor responsible when a defect is the result of the contract's performance and discovered after five years, which would otherwise leave the Commonwealth with the financial responsibility to correct.

9. Specific Agency or Political Subdivisions Affected: This bill as written applies to all public bodies subject to the Virginia Public Procurement Act (VPPA).

10. Technical Amendment Necessary: No.

11. Other Comments: None.

Date: 2/6/2018