

Department of Planning and Budget 2020 Fiscal Impact Statement

1. Bill Number: HB1300

House of Origin ☐ Introduced ☒ Substitute ☐ Engrossed
 Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Hurst

3. Committee: Appropriations

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

5. Summary: Provides that no action may be brought by a state public body on any construction, architectural, or engineering contract, including construction management and design-build contracts, unless such action is brought within fifteen (15) years after completion of the contract, and provides that no action may be brought by a state public body more than five years after written notice of a defect or breach is delivered to the contractor. The bill also modifies the time frame during which a public body may bring an action against a surety on a performance bond to within five years after completion of the work on the project. 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 guaranties, 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: See Item 8.

8. Fiscal Implications: Item 80, Chapter 854, 2019 Acts of Assembly (the 2019 Appropriation Act) required the Department of General Services (DGS) to conduct a review of current Virginia law and best practices as they relate to the statute of limitations on state contracts for construction services and its fiscal implications. As part of that review, state agencies indicated that if a statute of limitations is implemented, there will be a need for more inspections, which will increase agency costs. Agencies may need to hire additional full-time staff or third-party inspectors. To mitigate risks, agencies may elect to expand the extended warranty requirements in contracts, which will likely have a fiscal implication, as prices offered by contractors will likely be higher if agencies request longer warranty periods.

Based on data gathered as part of that review, DGS indicates that it is less likely for claims to be filed by state agencies after the 15 year period identified in this legislation.

The 15-year statute of limitation will provide sufficient time for a defect or breach to present itself. The risk of a defect after 15-years resulting in a cost impact to a public body is extremely unlikely.

9. Specific Agency or Political Subdivisions Affected: This bill as written applies to all state public bodies subject to the Virginia Public Procurement Act (VPPA), including the Virginia Department of Transportation. This bill will also apply to institutions of higher education that are operating under the Restructured Higher Education Financial and Administrative Operations Act.

10. Technical Amendment Necessary: No.

11. Other Comments: This bill is identical to the substitute version of SB607.

Date: February 7, 2020

File: HB1300H1