

Commission on Local Government

Estimate of Local Fiscal Impact

2019 General Assembly Session

Bill: HB1667

Patron: Kilgore

Date: 1/24/2019

In accordance with the provisions of §30-19.03 of the Code of Virginia, the staff of the Commission on Local Government offers the following analysis of the above-referenced legislation:

Bill Summary:

Virginia Public Procurement Act; statute of limitations on actions on construction contracts; statute of limitations on actions on performance bonds. Provides that no action may be brought by a public body on any construction contract, including construction management and design-build contracts, unless such action is brought within five years after substantial completion of the work on the project and that no action may be brought by a public body on a warranty or guarantee in such construction contract more than one year from the breach of that warranty, but in no event more than one year after the expiration of such warranty or guarantee. 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 one year after substantial 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 guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action.

Please note that SB13669 is a companion of this bill.

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**Executive Summary:**

Localities have evaluated a negative fiscal impact ranging from \$0.00 - \$5,000,000.00. Although, this amount appears to be significant, the specific locality used an example with the costs of a project that could have been lost without the contractor's warranty obligations. Localities noted that the bill would limit their ability to recover the damages from construction defects, or failure to perform work. Localities expressed their concern over how the bill would create different warranty and contract provisions for public and private sectors, and the absence of a provision that allows a contract to supersede the bills provision if all parties agree. Other localities noted that the fiscal impact of the bill is indeterminate.

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**Local Analysis:**

**Locality:** City of Danville

**Estimated Fiscal Impact:** \$0.00

There is no way to determine fiscal impact of this proposal.

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Locality: City of Newport News

Estimated Fiscal Impact:
\$5,000,000.00

The City had a recent circumstance on a major project where the contractor went into bankruptcy during construction, and had to contract with a separate contractor to complete the work and another contractor to evaluate the work done by the initial vendor. The hiring of the two subsequent vendors were greatly delayed while the bankruptcy filings occurred. The project that should have taken 18 months took well over 4 years, and the faulty construction was found well after the one time period. Using this example, five years may be too short. The amount in the Fiscal Impact represents the dollar value of the project that could have been lost.

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**Locality:** City of Norfolk

**Estimated Fiscal Impact:** \$0.00

This bill brings up multiple concerns. Why would warranty and contract provisions not be the same for public and private sector? This bill will limit the City's ability to recover damages from construction defects or failure to perform work. The time limit provision also provides concerns as many latent defects do not present within a year of substantial completion. Due to the nature of the bill, we are unable to determine the fiscal impact at this time.

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Locality: City of Virginia Beach

Estimated Fiscal Impact: \$0.00

Departments within the City of Virginia Beach are already advised to file suit within five years if need be, and our current form contract specifies that contractor's warranty obligations case one year after the acceptance of work. Therefore, this bill will not create a material change in our ability to pursue construction claims.

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**Locality:** Town of Blacksburg

**Estimated Fiscal Impact:** \$0.00

No direct impact. Seems reasonable time limits and not cause any changes in our procurement process.

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Locality: Town of Luray

Estimated Fiscal Impact: \$0.00

The bill should include some provision that allows a contract to supersede the provision if all parties agree in the executed agreement. There should also be a provision that the warranty/guarantee time is extended if defects identified within the initial period are not effectively resolved.

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