

Department of Planning and Budget 2020 Fiscal Impact Statement

1. Bill Number: SB607

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: Norment

3. Committee: General Laws and Technology

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 public body on any construction contract, including construction management and design-build contracts, unless such action is brought within five years after completion of the work on the project, and provides that no action may be brought by a public body on a warranty or guaranty 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 guaranty. 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 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 defector breach of warranty that gave rise to the action. The bill also contains technical amendments.

6. Budget Amendment Necessary: No.

7. Fiscal Impact Estimates: Indeterminate, see Item 8.

8. Fiscal Implications: Item 80, Chapter 854, 2019 Acts of Assembly (the 2019 Appropriation Act) required 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.

In instances where construction problems are discovered after a statute of limitations period has expired, agencies may not have funding to perform required repairs. In these cases, agencies may need to request additional funds through the budget process.

Defects in construction can appear after five years and the costs to correct once identified can vary but could feasibly range from hundreds of thousands to millions of dollars. This bill would prevent public bodies from holding the contractor responsible to the requirements set forth in the solicitation and contract after the statute of limitations expires. Under this legislation, when a defect is the result of the non-compliance to contract requirements it will result in the public body having 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), except 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 legislation a companion bill to HB847 and SB195, and is similar to HB1300.

Date: January 14, 2020

File: SB607