

**Proposed Substitute
Bill No. 1032**

LCO No. 6035

**AN ACT CONCERNING THE APPLICABILITY OF THE STATUTE OF
LIMITATIONS TO CONSTRUCTION AND DESIGN ACTIONS
BROUGHT BY THE STATE OR A POLITICAL SUBDIVISION OF THE
STATE.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2017*) (a) As used in this
2 section: (1) "Construction-related work" means the design,
3 construction, construction management, planning, construction
4 administration, surveying, supervision, inspection or observation of
5 construction of improvements to real property; and (2) "tolling
6 agreement" means a written agreement between the state or a political
7 subdivision of the state and a (A) person performing or furnishing
8 construction-related work, (B) surety, or (C) insurer, by which the
9 person, surety or insurer agrees to extend the limitation period within
10 which the state or a political subdivision may bring an action or claim
11 against such person, surety or insurer.

12 (b) For any improvement to real property substantially completed
13 on or after October 1, 2017, and subject to any statutory or common
14 law rules tolling limitations periods, no action or claim, whether in
15 contract, in tort, or otherwise, to recover damages for any deficiency
16 arising out of construction-related work, or for any injury to property,
17 real or personal, or for any injury to the person, or bodily injury or

18 wrongful death, arising out of any such deficiency, shall be brought by
19 the state or any political subdivision of the state more than ten years
20 after the date of substantial completion of such improvement.

21 (c) No action or claim described in subsection (b) of this section for
22 an improvement to real property substantially completed prior to
23 October 1, 2017, shall be brought by the state or any political
24 subdivision of the state after October 1, 2027.

25 (d) For any improvement to real property substantially completed
26 on or after October 1, 2017, and subject to any statutory or common
27 law rules tolling limitations periods, an action or claim for indemnity
28 or contribution arising out of construction-related work shall be
29 brought by the state or any political subdivision of the state not more
30 than ten years after the date of substantial completion of such
31 improvement or not later than three years after the date of the
32 determination of the action or claim against the state or political
33 subdivision of the state that is seeking indemnification by either
34 judgment or settlement, whichever occurs later. For any improvement
35 to real property substantially completed prior to October 1, 2017, and
36 subject to any statutory or common law rules tolling limitations
37 periods, an action or claim for indemnity or contribution arising out of
38 construction-related work shall be brought by the state or any political
39 subdivision of the state not later than October 1, 2027, or not later than
40 three years after the date of the determination of the action or claim
41 against the state or political subdivision of the state that is seeking
42 indemnification by either judgment or settlement, whichever occurs
43 later.

44 (e) The limitations prescribed in subsections (b) to (d), inclusive, of
45 this subsection shall not bar an action or claim (1) on a written
46 warranty, guarantee or other agreement, including a tolling
47 agreement, that expressly provides for a longer effective period; (2)
48 based on wilful misconduct in connection with the performance or
49 furnishing of construction-related work; (3) under any environmental
50 remediation law or pursuant to any contract entered into by the state

51 or any political subdivision of the state in carrying out its
52 responsibilities under any environmental remediation law; or (4)
53 pursuant to any contract for enclosure, removal or encapsulation of
54 asbestos.

55 (f) For the purposes of subsections (b) to (d), inclusive, of this
56 section, an improvement to real property shall be considered
57 substantially complete when such real property is first (1) used by the
58 state or any political subdivision of the state, or a tenant thereof, or (2)
59 available for use after having been completed in accordance with the
60 contract or agreement covering the improvement, including any
61 agreed changes to the contract or agreement, whichever occurs first,
62 except that any public highway, bridge improvement or improvement
63 to railroad right-of-way, ferry, port or airport infrastructure shall be
64 considered substantially complete upon the issuance of a certificate of
65 acceptance of the work relieving the contractor of maintenance
66 responsibility.

67 (g) Except as provided in this section, there shall be no limitation to
68 actions brought in the name or for the benefit of the state, and no claim
69 of right predicated upon the lapse of time shall be asserted against the
70 state.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2017</i>	New section