

Date of Hearing: March 22, 2023

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1649 (Kalra) – As Amended March 9, 2023

SUBJECT: Local Agency Public Construction Act: change orders: County of Santa Clara.

SUMMARY: Temporarily increases the limits that apply to change orders that can be approved pursuant to a delegated authority for specified contracts entered into by the County of Santa Clara (Santa Clara County). Specifically, **this bill:**

- 1) Provides, until January 1, 2027, the Santa Clara County Board of Supervisors (board) the following delegated authority for change orders for construction contracts generally and for construction contracts on county highways:
 - a) For contracts whose original cost exceeds \$25 million, the extra cost for any change or addition to the work so ordered shall not exceed \$400,000, adjusted annually to reflect the percentage change in the California Consumer Price Index (CPI).
 - b) For contracts whose original cost exceeds \$50 million, the extra cost for any change or addition to the work so ordered shall not exceed \$750,000, adjusted annually to reflect the percentage change in the CPI.
- 2) Provides that, if the board delegates authority in the manner specified in 1), above, the decision by the county engineer or other county officer whom authority was delegated to shall be binding on Santa Clara County, and all existing protest and grievance procedures regarding that decision remain valid.
- 3) Requires the board, when it delegates authority in the manner specified in 1), above, to implement appropriate measures to prevent fraud and ensure accountability for that delegated authority.
- 4) Limits the provisions of this bill to a total of seven contracts.
- 5) Requires Santa Clara County to provide a review report to the Assembly Committee on Local Government and the Senate Committee on Governance and Finance no later than July 1, 2026, if it elects to utilize the provisions of this bill.
- 6) Finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique need for flexibility given the contract costs of public contracts within the County of Santa Clara.

FISCAL EFFECT: None.

COMMENTS:

- 1) **Author's Statement.** According to the author, "Limits on change orders have not been updated since 2011 and do not reflect inflation, changes in construction market pricing, or changes in the scale of projects. The County of Santa Clara has a series of relatively large projects in the construction pipeline, including a new behavioral health services center and seismic retrofits for hospital buildings. Adjusting the change order thresholds until 2027 will allow the County to avoid possible delays on these large, time-sensitive projects."
- 2) **Delegating Authority for Change Orders.** Change orders are amendments to a construction contract that change the contractor's scope of work, such as moving the location of a wall to accommodate some other design element, or making adjustments for unforeseen conditions. This, in turn, changes the contract cost – typically increasing it.

The Local Agency Public Construction Act allows a county board of supervisors or a local governing board to approve change orders in construction contracts by a 4/5 vote. This applies to construction contracts generally and to construction contracts for specified projects, such as county highways, county bridges and subways, and other works.

However, a board may delegate authority to a county engineer or other officer to order and approve change orders, thereby avoiding the necessity of board approval. This delegated authority is generally limited as follows:

- a) For contracts up to \$50,000, a change order may not exceed \$5,000.
 - b) For contracts exceeding \$50,000, but not exceeding \$250,000, the change order is limited to 10% of the contract.
 - c) For contracts over \$250,000, the change order cannot exceed \$25,000, plus 5% of the amount of the original contract cost above \$250,000, with a total cap of \$210,000.
- 3) **Delegated Authority Limits for Los Angeles County.** The Legislature two years ago approved AB 712 (Calderon), Chapter 95, Statutes of 2021, to increase the delegated authority limits noted above for specified contracts entered into by Los Angeles County (LA County). The bill increased these caps for contracts generally, and for construction contracts on county highways, bridges, subways, and those entered into by the county's waterworks district and flood control district.

For contracts exceeding \$25 million, the delegated change order cap was increased to \$400,000, with an annual CPI adjustment. For contracts exceeding \$50 million, the delegated change order cap was increased to \$750,000, with an annual CPI adjustment. The bill provided that, if the board of supervisors delegates authority for these change orders, the decision by the county engineer or other county officer is binding on LA County, and all existing protest and grievance procedures regarding that decision remain valid. The board must implement appropriate measures to prevent fraud and ensure accountability for this delegated authority.

AB 712 was limited to a total of seven contracts, and required LA County to provide a report to the Assembly Local Government Committee and the Senate Governance and Finance Committee no later than July 1, 2026, if it elects to utilize the provisions of the bill. AB 712 contained a sunset date of January 1, 2027. This bill is substantially similar to AB 712, but applies only to construction contracts generally and construction contracts on county highways entered into by Santa Clara County.

- 4) **Bill Summary.** This bill increases the delegated change order limits for Santa Clara County until January 1, 2027, for contracts generally and for construction contracts on county highways. For contracts exceeding \$25 million, the delegated change order is limited to \$400,000, with an annual CPI adjustment. For contracts exceeding \$50 million, the delegated change order is limited to \$750,000, with an annual CPI adjustment.

If the board of supervisors delegates authority for these change orders, the decision by the county engineer or other county officer is binding on Santa Clara County, and all existing protest and grievance procedures regarding that decision remain valid. The board must implement appropriate measures to prevent fraud and ensure accountability for this delegated authority.

This bill is limited to a total of seven contracts, and requires Santa Clara County to provide a review report to the Assembly Local Government Committee and the Senate Governance and Finance Committee no later than July 1, 2026, if it elects to utilize the provisions of this bill.

This bill is sponsored by the County of Santa Clara.

- 5) **Previous Legislation.** AB 712 (Calderon), Chapter 95, Statutes of 2021, temporarily increased the limits that apply to change orders that can be approved pursuant to a delegated authority for specified contracts entered into by LA County.

AB 2284 (Calderon) of 2020 would have increased delegated change order limits for all counties and required annual CPI adjustments. AB 2284 was held in this Committee.

- 6) **Arguments in Support.** The County of Santa Clara, sponsor of this bill, writes, “Change orders are amendments to a construction contract that changes the contractor’s scope of work, such as moving the location of a wall to accommodate some other design element, and usually increases the contract price. The Local Agency Public Construction Act allows a county Board of Supervisors to approve change orders in construction contracts by a 4/5 vote. This applies to construction contracts generally and construction contracts for specific projects such as county highways, county bridges and subways, county waterworks districts, and county flood control districts, among others. However, a board may delegate authority to a county engineer or other officer to order and approve change orders, thereby avoiding the necessity of board approval, up to certain limits.

“Existing law limits the maximum amount a delegated officer or engineer can approve without requiring a vote by the Board of Supervisors. However, these limits, with the exception of the County of Los Angeles, have not been updated since 2011 and do not reflect inflation, changes in construction market pricing, or changes in the scale of projects. The result is that the maximum threshold requiring a Board of Supervisors vote is frequently reached, often leading to project delays as the number of necessary change orders increases.

“The County of Santa Clara has a number of relatively large projects in the construction pipeline, including a new behavioral health services center and seismic retrofits for hospital buildings. Adjusting the change order thresholds to the same cap that the County of Los Angeles received in AB 712 (Chapter 95, Statutes of 2021) will allow the County to avoid possible delays on these large, time-sensitive projects.”

7) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

County of Santa Clara

Opposition

None on file

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