



Ohio Legislative Service Commission

Bill Analysis

Julie A. Rishel

H.B. 176

129th General Assembly
(As Introduced)

Reps. Beck, J. Adams, Blair, Combs, Martin, Rosenberger, Schuring

BILL SUMMARY

- Establishes uniform cost requirements for change orders issued for competitively bid public improvements, capping the allowed costs at the lesser of \$50,000 or 2 ½% of the total contract price for the improvement, unless an exception applies.
- Eliminates the current law cost requirements for change orders issued for Department of Transportation contracts and subjects those contracts to the bill's requirements, thus reducing the amount that may be paid for change orders issued for those contracts.
- Requires a contracting authority that issues a change order, in the year following any year in which the contracting authority provided for the change order, to send to the Director of Administrative Services a report, by such time, in such form, and in such medium as the Director prescribes, on each change order.
- Requires the Director, upon receiving the reports, to summarize the information contained in the reports and send copies of the summary to the Governor, Speaker of the House of Representatives, and President of the Senate.

CONTENT AND OPERATION

Requirements for change orders

The bill establishes uniform requirements with respect to change orders for competitively bid public improvement projects and eliminates existing law requirements with respect to change orders for projects undertaken by the Department of Transportation (see "**Department of Transportation contracts**," below). A change order is an alteration to a construction contract that may or may not have costs associated with the modifications to the original contract and may or may not have

schedule implications.¹ Under the bill, the contracting authority for the construction, demolition, alteration, repair, or reconstruction of any public building, structure, highway, or other improvement of the state or any political subdivision, district, institution, or other agency of the state required to be competitively bid must provide for the preparation of full and accurate plans and specifications. For the state, this requirement is consistent with current law and applies generally to a public improvement with an aggregate cost of \$50,000 or more. With respect to local governments, the bill's requirements apply to improvements that generally have an aggregate cost of \$25,000 or more, although the exact amount depends upon the project and the local government entity involved.²

Under the bill, after bids on any contract for the improvement have been opened and the contract has been awarded, any provision by the contracting authority for increased quantities of any item specified or not specified in the contract or for extra work on the improvement is subject to the bill's requirements, regardless of any statute to the contrary.³

Change order costs

Except as provided below, the bill limits the cost of all change orders for embellishments or other changes in the improvement that are not essential to the purposes of the improvement to the lesser of \$50,000 or 2 ½% of the total contract price for the improvement. This limitation does not apply when the changes result from any of the following circumstances, which are similar to the current law exceptions applicable to the Department of Transportation contracts (see "**Department of Transportation contracts**," below):

(1) An increase in the plan quantity that is determined during the final measurement of an item of work;

(2) Federally mandated requirements that did not exist at the time of the original contract award;

(3) Circumstances that would create a life-, safety-, or health-threatening situation or would unduly delay the completion of a project and increase its costs, but

¹ Boot, Edward. "Change Order Management," School Planning Management, May 18, 2005.

² R.C. 9.28(A) and R.C. 153.01, not in the bill. See R.C. 307.86, 511.12, and 735.05 for examples of local competitive bidding thresholds.

³ R.C. 9.28.

only if the contracting authority makes a finding of the fact, declares an emergency, and issues the finding.

With respect to (3) above, extra work that the director (the bill does not specify which director) contracts for in these circumstances may include not only construction needed to complete a project, but also adjustments needed to meet changed conditions, alterations in original plans, unforeseen contingencies, or payments necessitated by contract terminations or suspensions.⁴

Change order reports

In the year following any year in which a contracting authority has provided for any change order with respect to an improvement covered by the bill, the bill requires the contracting authority to send to the Director of Administrative Services a report, by such time, in such form, and in such medium as the Director prescribes, on each change order. The report must identify all of the following:

- The contracting authority;
- The improvement;
- The quantity of each item increased or the extra work provided for by the change order, as well as the total dollar cost of the change order;
- The specific reason for the change;
- The category of change that best describes the change order, namely, a change in scope, a change identified in (1) to (3) under "**Change order costs**" above, or any other category of change specified by the Director for the report.

The bill requires the contracting authority also to send a copy of the report to the head of the state agency for which the improvement was or is being made or, in the case of a political subdivision, district, or institution, the legislative authority or trustees of the political subdivision, district, or institution, if different from the contracting authority. The first change orders that must be reported are those of the first full calendar year that begins after the bill's effective date.

Upon receiving the reports, the bill requires the Director to summarize the information contained in the reports in a useful summary of the change orders of the different categories and by the different kinds of contracting authorities and send copies

⁴ R.C. 9.28(B) and (C).

of the summary to the Governor, Speaker of the House of Representatives, and President of the Senate.⁵

Additional provisions

The bill states that a change order does not require competitive bidding but must be in writing, which is similar to the current law requirement for change orders issued by the Department of Transportation. Additionally, under the bill and similar to current law for Department of Transportation contracts, any contracting authority, by written instruction to the contractor, may decrease or cancel the quantity of any item or provision for work specified in a contract or portion of a contract and authorize payment to the contractor for reasonable costs incurred to date.⁶

Department of Transportation contracts

The bill eliminates current law restrictions for change orders applicable to contracts involving the Department of Transportation. Under current law the Director of Transportation, by written instruction to a contractor, may increase the quantities of any item specified or not specified in a competitively bid construction contract but, except as provided below, the additional cost incurred by the increase cannot exceed the lesser of \$100,000 or 5% of the total contract price (which the bill decreases as described under "**Change order costs**" above). Similar to the bill, under current law any such provision for increased quantities or extra work must be made in the form of a written change to the original contract and does not require competitive bidding.

The bill also eliminates the current law exceptions to the change order limitations for Department of Transportation contracts. These current law limitations do not apply to change orders or extra work contracts when the total dollar amount of the increase is \$25,000 or less or to change orders or extra work contracts resulting from any of the circumstances described under "**Change order costs**" above. Current law requires, for these contracts, all change orders or extra work contracts to be reported to the Controlling Board quarterly in writing.

Under continuing law the Director of Transportation, by written instruction to the contractor, may decrease or cancel the quantity of any item specified in a contract or portion of a contract and authorize payment to the contractor for reasonable costs incurred to date (see "**Additional provisions**" above).⁷

⁵ R.C. 9.28(D); Section 3.

⁶ R.C. 9.28(A) and (E).

⁷ R.C. 5525.14 (repealed), with a conforming change in R.C. 127.16.

Effect on current law change order requirements

Continuing law prescribes timelines for which a public authority (both state and local governments) must award a competitively bid contract for a public improvement and must direct a contractor to proceed with that contract. Under continuing law, if the time for awarding the contract is extended by mutual consent, or if the public authority fails to issue a timely notice to proceed, the public authority must issue a change order authorizing delay costs to the contractor, which does not invalidate the contract. Continuing law prescribes how the amount of the change order must be determined and dispute resolution procedures. It appears that, under the bill, these change orders are subject to the restrictions described under "**Change order costs**" above unless one of the exceptions applies to the circumstances resulting in the change order.⁸

Additionally, under continuing law, all contracts for the erection, construction, repair, or alteration of any building, highway, or other work or improvement of any nature by a public authority are subject to all applicable federal, state, and local statutes, ordinances, and regulations, including those dealing with the prevention of environmental pollution that affect or are affected by those contracts. If the bidder to whom the work is awarded must undertake additional work due to the enactment or amendment of statutes or rules occurring after the submission of the successful bid, the awarding body must issue a change order setting forth the additional work that must be undertaken and authorizing additional cost to the contractor, which does not invalidate the contract. Except for change orders that results from a change in federal law or regulations, similar to current law with respect to Department of Transportation contracts, it appears that these change orders are subject to the bill's requirements described under "**Change order costs**" above unless another one of the bill's exceptions applies.⁹

HISTORY

ACTION	DATE
Introduced	03-29-11

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⁸ R.C. 153.12(A), not in the bill.

⁹ R.C. 153.62 and 1501.011, not in the bill.