COUNTY ADVISORY BULLETIN

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SENATE BILL 262
REQUIRE CONSTRUCTION CONTRACTS NOTE VARIATION FROM STANDARD FORM

APPLICABLE LEGISLATION: Amended Senate Bill 262 (136th General Assembly)

REVISED CODE SECTIONS AMENDED: 9.334, 153.12, 153.501, 153.503, and 153.693

LEAD SPONSORS: Senator Bill Blessing

HOUSE COSPONSORS: Abrams; Bird; Brennan; Claggett; Click; Cockley; Deeter; Grim; Holmes; Klopfenstein; Mathews, A.; Richardson; Rogers; Russo; Sigrist; Sims; Somani; Swearingen; Tims; Troy; White, E.; Williams; Young

SENATE COSPONSORS: Antonio; Blackshear; Cirino; DeMora; Gavarone; Hicks-Hudson; Huffman; Ingram; Reineke; Reynolds; Roegner; Schaffer; Timken; Weinstein

EFFECTIVE DATE: September 17, 2026

BACKGROUND

The Ohio Administrative Code requires counties and other public authorities using certain project delivery methods to use specified standard contract forms. Ohio Administrative Code 153:1-2-01 establishes this requirement for construction manager at risk contracts, while Ohio Administrative Code 153:1-2-02 establishes a similar requirement for design-build contracts.

These industry-standard forms are often supplemented or modified by public owners to address requirements of Ohio law or the particular needs of a project. Senate Bill 262 establishes new requirements for how those modifications must be identified, with the goal of ensuring contractors can readily identify where a public authority has departed from the language contained in the published standard form.

ANALYSIS

Under the bill, when a public authority enters into a construction contract using an industry standard published form, the public authority must indicate any alterations made to the form language by striking and underlining any changes to the original language, by adding cross-references to any supplemental conditions, or by including conditions that are supplemental to the standard form that cross-reference the section or sections of the form being altered. If the alterations are not indicated, the alterations are void and the terms found on the standard form apply to the agreement.

The legislation applies to a contract between a public authority and a construction manager at risk, a design-build firm, or a general contracting firm, as well as subcontracts awarded by the manager or firm and accepted by the public authority. It broadly covers the construction and alteration of public works by state and local government entities.

These changes apply to a contract entered into on or after September 17, 2026, the effective date of the legislation.

The act also directs the Ohio Facilities Construction Commission to adopt rules under Ohio's Administrative Procedure Act requiring public authorities, construction managers at risk, design-build firms, and general contractors to comply with these requirements whenever they use an industry-standard published contract or subcontract form. These rules ensure that the standard also applies when the contractor provides the form instead of the public authority.

IMPLICATIONS FOR COUNTIES

Counties frequently modify industry-standard construction contract forms for a variety of reasons. Some modifications are necessary to comply with Ohio law, while others are intended to address the specific needs, risks, or requirements of an individual public construction project. These changes may include provisions addressing indemnification, prevailing wage requirements, certificates of available funds under R.C. 5705.41, retainage, venue or jurisdiction, insurance requirements, or other project-specific terms.

Since Senate Bill 262 provides that unmarked modifications to an industry-standard published form are void, counties should review their contract templates and supplemental conditions with legal counsel to ensure all modifications are clearly identified in the manner required by the statute before contracts are executed.

During the legislative process, CCAO expressed concerns with Senate Bill 262 and opposed the legislation as drafted. While CCAO supports transparency in public contracting, the Association was concerned that the bill places the burden of compliance almost exclusively on public entities and imposes a significant consequence for technical drafting errors. Under the law, a single modification that is not properly identified may be deemed void, potentially allowing disputes over individual contract provisions even when the parties clearly intended those provisions to apply.

As a result, counties should carefully review all standard construction contract templates and supplemental conditions with their prosecutor's office or legal counsel before entering into contracts subject to the new law. Doing so can help reduce the risk of unintended legal challenges and ensure modifications are properly identified as required by Senate Bill 262.

Examples of how changes must be marked can be found on the next page.

EXAMPLES OF VALID AND INVALID CHANGES TO INDUSTRY STANDARD CONTRACTS

Industry Standard Form	Contract with Invalid Change	Contract with Valid Change
Example 1: "The owner of the property has 60 days to inform the contractor of any faulty work."	"The owner of the property has 90 days to inform the contractor of any faulty work." Result: The change to the standard form is not indicated. As a result, the contract must be read to say 60 days, not 90 days.	"The owner of the property has ~~60~~ <u>90</u> days to inform the contractor of any faulty work." Result: The change to the standard form is indicated as required by the bill and can be enforced.
Example 2: Section 7: "The owner of the property has 60 days to inform the contractor of any faulty work."	"Section 7: The owner of the property has 60 days to inform the contractor of any faulty work." "Section 8: The owner of the property may inform the contractor of faulty work within a year of completion if the faulty work is not discovered, and could not reasonably have been discovered, after 60 days have passed." Result: Section 8 is not industry standard and makes no cross-reference to Section 7 (or vice versa), and is therefore not enforceable.	"Section 7: Except as provided in Section 8, the owner of the property has 60 days to inform the contractor of any faulty work." "Section 8: Notwithstanding Sec. 7, the owner of the property may inform the contractor of faulty work within a year of completion if the faulty work is not discovered, and could not reasonably have been discovered, after 60 days have passed." Result: Section 7 contains a cross reference to Section 8, and Section 8 contains a cross reference to Section 7 – either change is sufficient to render Section 8 enforceable.