



COUNTY OF SAN BERNARDINO COUNTY ADMINISTRATIVE OFFICE

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GREGORY C. DEVEREAUX Chief Executive Officer

August 26, 2011

The Honorable Alex Padilla California State Senate State Capitol, Room 4038 Sacramento, CA 95814

RE: SB 293 - As amended on August 26, 2011 – OPPOSE UNLESS AMENDED

Dear Senator Padilla:

The County of San Bernardino has reviewed SB 293 and regrets it must oppose this bill unless amended to remove the provision that caps retention on a public works project at five percent.

SB 293, among other things, until January 1, 2016, would prohibit retention proceeds from exceeding five percent as specified, for contracts entered into on or after January 1, 2012, between a public entity and an original contractor, between an original contractor and a subcontractor, and between all subcontractors.

Current law requires retentions of at least five percent on public works projects, with the flexibility for public agencies to utilize the most appropriate retention, case-by-case, to protect taxpayers, ratepayers and Californians who depend upon core local services.

The private sector has established the retention rate on construction contracts at 10 percent because of the financial risks associated with ensuring that subcontractors perform and complete their part of the construction project. Government agencies must be able to protect public construction projects from unnecessary risks in a manner similar to the private sector. Public agencies should manage public works projects according to the same standards, criteria, and level of professionalism as is practiced in the private sector.

In addition, San Bernardino County shares the California State Association of Counties coalition’s concern regarding the “substantially complex” exemption language. By acknowledging upfront that a job is “substantially complex”, a public agency will publicly certify an elevated degree of difficulty to bidders, who will then be able to charge a new “higher substantially complex” premium. This will also increase the cost of bonds and insurance coverage, and impact the relationship between the agency and contractor with regard to change orders and other issues as the substantially complex designation could be used against the public agency.

For the above reasons, the County of San Bernardino opposes SB 293 as currently written. If you have any questions, please contact Josh Candelaria, Deputy Director of Legislative Affairs, at (909) 387-4280.

Sincerely,

JOSIE GONZALES, Chair Board of Supervisors

The mission of the government of the County of San Bernardino is to satisfy its customers by providing service that promotes the health, safety, well being, and quality of life of its residents according to the County Charter, general laws, and the will of the people it serves.