

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 552**

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**Introduced by Assembly Member O'Donnell**

February 23, 2015

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An act to ~~amend Section 10500.5 of~~ *add Section 7203* to the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 552, as amended, O'Donnell. ~~Preferences in contracting.~~ *Public works contracts: damages.*

~~Existing law sets forth various goals and timetables for participation of minorities and women with respect to state employment and certain state contracts, including contracts entered into by the University of California.~~ *prescribes requirements for contracts between private parties and public entities, as defined.*

~~This bill would make nonsubstantive changes to this provision.~~ *require public works contracts entered into by a public agency, as defined, on or after January 1, 2016, to provide that damages recoverable from a nonperforming party be liquidated and specified in the contract, to provide that liquidated damages not be disproportionate to potential actual consequential and provable damages, and to not require that a contractor be responsible for consequential damages unless those damages have been liquidated to a set amount, as provided. The bill would also make findings and declarations related to public contracts.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ *yes*. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. (a) The Legislature finds and declares that, as*  
 2     *a matter of public policy, it is in the best interest of California*  
 3     *taxpayers to ensure uniformity in the bidding and contracting*  
 4     *process for public works construction projects within the State of*  
 5     *California.*

6     *(b) The Legislature further finds and declares that contractually*  
 7     *imposing undefined and unlimited risk on to public works*  
 8     *construction contractors increases public works construction costs*  
 9     *because construction contractors must account for the undefined*  
 10    *and unlimited risk, which is generally uninsurable, in their bids.*

11    *(c) It is therefore in the best interest of California taxpayers*  
 12    *and public works construction contractors for the Legislature to*  
 13    *establish clear guidelines for how liquidated damages and*  
 14    *consequential damages are expressed in a public works contract.*

15    *SEC. 2. Section 7203 is added to the Public Contract Code, to*  
 16    *read:*

17    7203. (a) *Public works contracts entered into by a public*  
 18    *agency on or after January 1, 2016, shall provide that damages*  
 19    *recoverable from a nonperforming party shall be liquidated and*  
 20    *specified in the contract in order to be enforceable against the*  
 21    *nonperforming party. Liquidated damages shall not be*  
 22    *disproportionate to potential actual consequential and provable*  
 23    *damages, otherwise all damages shall not be recoverable against*  
 24    *the nonperforming party.*

25    *(b) A public agency shall not require a contractor to be*  
 26    *responsible for consequential damages of any sort unless the*  
 27    *consequential damages have been liquidated to a set amount and*  
 28    *identified in a public works contract entered into on or after*  
 29    *January 1, 2016.*

30    *(c) "Public agency" shall include the state, the Regents of the*  
 31    *University of California, a city, charter city, county, charter county,*  
 32    *district, public authority, public agency, municipal utility, and any*  
 33    *other political subdivision or public corporation of the state.*

34    ~~SECTION 1. Section 10500.5 of the Public Contract Code is~~  
 35    ~~amended to read:~~

36    ~~10500.5. It is the intent of the Legislature to facilitate the~~  
 37    ~~participation of small businesses, particularly small disadvantaged~~  
 38    ~~or minority business enterprises, women business enterprises, and~~

1 disabled veteran business enterprises, in business contracting with  
2 the University of California. The Legislature intends that the  
3 Regents of the University of California adopt policies and  
4 procedures to ensure that a fair proportion of university contracts  
5 be placed with small business enterprises, particularly small  
6 disadvantaged, women, and disabled veteran business enterprises,  
7 in areas of commodity purchases, services, and construction  
8 contracts. It is the further intent of the Legislature that the regents  
9 adopt, by January 1, 1985, with respect to small business  
10 enterprises, particularly small disadvantaged and women business  
11 enterprises, and by January 1, 1992, with respect to disabled  
12 veteran business enterprises, policies and procedures that include,  
13 but are not limited to, all of the following:

14 (a) Annual targets for utilization of small businesses, particularly  
15 disadvantaged business enterprises, women business enterprises,  
16 and disabled veteran business enterprises, including subcontracts  
17 for construction.

18 (b) Annual statistical reports on the participation of small  
19 businesses, particularly disadvantaged business enterprises, women  
20 business enterprises, and disabled veteran business enterprises, as  
21 general contractors and subcontractors in each project.

22 (c) Outreach programs.

23 (d) Directories of disadvantaged business enterprises, women  
24 business enterprises, and disabled veteran business enterprises.

25 (e) Monitoring by the regents of progress with respect to  
26 utilizing disadvantaged business enterprises, women business  
27 enterprises, and disabled veteran business enterprises.

28 It is also the intent of the Legislature that the Regents of the  
29 University of California report annually to the Legislature, on or  
30 before each July 1, on the participation of small disadvantaged  
31 business enterprises, women business enterprises, and disabled  
32 veteran business enterprises in university business contracting.