

AMENDED IN SENATE JULY 16, 2015  
AMENDED IN ASSEMBLY APRIL 27, 2015  
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 add Section 7203 to the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 552, as amended, O'Donnell. Public works contracts: damages.

Existing law prescribes requirements for contracts between private parties and public entities, as defined.

This bill would provide that a public works contract entered into on or after January 1, 2016, that contains a clause *expressly* requiring a contractor to be responsible for ~~consequential damages~~ *delay damages, as defined*, is not enforceable unless the ~~consequential~~ *delay* damages have been liquidated to a set amount and identified in the public works contract. The bill would also make findings and declarations related to public contracts.

Vote: majority. Appropriation: no. Fiscal committee: 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 a
- 2 matter of public policy, it is in the best interest of California

1 taxpayers to ensure uniformity in the bidding and contracting  
 2 process for public works construction projects within the State of  
 3 California.

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

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

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

17 7203. (a) A public works contract entered into on or after  
 18 January 1, 2016, that contains a clause ~~requiring that expressly~~  
 19 ~~requires~~ a contractor to be responsible for ~~consequential delay~~  
 20 damages is not enforceable unless the ~~consequential delay~~ damages  
 21 have been liquidated to a set amount and identified in the public  
 22 works contract.

23 (b) *“Delay damages” as used in this section, means damages*  
 24 *incurred by the public agency for each day after the date on which*  
 25 *the work was to be completed by the contractor pursuant to the*  
 26 *public works contract. Delay damages shall not include damages*  
 27 *incurred by a public agency after the filing of a notice of*  
 28 *completion or, in the absence of a notice of completion, the*  
 29 *acceptance by the public agency of the public work as complete.*

30 ~~(b)~~

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

35 (d) *This section shall not be construed to limit a right or remedy*  
 36 *that the public agency has to enforce the express terms of the public*  
 37 *works contract, except for delay damages.*

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