

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

Introduced by Assembly Member O'Donnell

February 23, 2015

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.*