

Assembly Bill No. 552

CHAPTER 434

An act to add Section 7203 to the Public Contract Code, relating to public contracts.

[Approved by Governor October 2, 2015. Filed with
Secretary of State October 2, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

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

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

This bill would, among other things, 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 delay damages, as defined, is not enforceable unless the delay damages have been liquidated to a set amount and identified in the public works contract. Under the bill, these provisions would not apply to specified state agencies. The bill would also make findings and declarations related to public contracts.

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

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

(b) The Legislature further finds and declares that contractually imposing undefined and unlimited risk associated with delays in completion of public works on to public works construction contractors increases public works construction costs.

(c) It is therefore in the best interest of California taxpayers and public works construction contractors for the Legislature to establish clear guidelines for imposing delay damages in a public works contract.

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

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

(b) "Delay damages" as used in this section, means damages incurred by the public agency for each day after the date on which the work was to be completed by the contractor pursuant to the public works contract. Delay

damages shall not include damages incurred by a public agency after the filing of a notice of completion or, in the absence of a notice of completion, the acceptance by the public agency of the public work as complete.

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

(d) This section shall not be construed to limit a right or remedy that the public agency has to enforce the express terms of the public works contract, except for a clause that expressly requires a contractor to be liable for delay damages.

(e) This section shall not be construed to preclude a public agency from including more than one clause for delay damages for specified portions of work when the delay damages have been liquidated to a set amount for each individual clause and identified in the public works contract.

(f) This section shall not apply to departments identified in Section 10106.