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**SUBSTITUTE SENATE BILL 5333**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senate Labor, Commerce & Tribal Affairs (originally sponsored by Senators Holy and Wilson, L.)

READ FIRST TIME 02/12/21.

1 AN ACT Relating to void and unenforceable clauses in public works  
2 contracts related to delays caused by the COVID-19 pandemic emergency  
3 proclamations; amending RCW 4.24.360; and declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 4.24.360 and 1979 ex.s. c 264 s 1 are each amended  
6 to read as follows:

7 (1)(a) Any clause in a construction contract, as defined in RCW  
8 4.24.370, which purports to waive, release, or extinguish the rights  
9 of a contractor, subcontractor, or supplier to damages or an  
10 equitable adjustment arising out of unreasonable delay in performance  
11 which delay is caused by the acts or omissions of the contractee or  
12 persons acting for the contractee is against public policy and is  
13 void and unenforceable.

14 (b)(i) Any clause in a public works contract which purports to  
15 waive, release, or extinguish the rights of a contractor,  
16 subcontractor, or supplier to damages or an equitable adjustment  
17 arising out of a delay in performance which delay is caused by the  
18 COVID-19 pandemic emergency proclamations is against public policy  
19 and is void and unenforceable.

20 (ii) (b)(i) of this subsection does not void any provision of any  
21 contract where the parties have already agreed to modifications of a

1 contract or contract provision due to the COVID-19 emergency  
2 proclamations, or have otherwise agreed to the terms in which the  
3 COVID-19 pandemic emergency proclamations impact existing contract  
4 language prior to the effective date of this section. Any change  
5 order, memorandum of understanding, or other form of agreement by the  
6 parties over the impacts of the COVID-19 emergency proclamations  
7 agreed to prior to the effective date of this section may not be  
8 invalidated, nullified, or voided by this subsection (1)(b).

9 (iii) For the purposes of this subsection (1)(b), "public works"  
10 and "contract" have the meaning defined for "public work" and  
11 "contract" in RCW 39.04.010.

12 (2) This section shall not be construed to void any provision in  
13 a construction contract, as defined in RCW 4.24.370, or a public  
14 works contract, as defined in subsection (1)(b)(iii) of this section,  
15 which ~~((1))~~ (a) requires notice of delays, ~~((2))~~ (b) provides for  
16 arbitration or other procedure for settlement, or ~~((3))~~ (c)  
17 provides for reasonable liquidated damages.

18 NEW SECTION. Sec. 2. This act is necessary for the immediate  
19 preservation of the public peace, health, or safety, or support of  
20 the state government and its existing public institutions, and takes  
21 effect immediately.

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