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Policy The Honorable Don Samuelson
 President of the Senate
 120 State Capitol
 For Citizens Saint Paul, Minnesota 55155

Press Office Dear President Samuelson:

The Administration I have vetoed and am returning Chapter Number 126, Senate File Number 2031, a bill relating to public works contracts.

Lt. Governor Senate File No. 2031 would void clauses in public works contracts that waive, release or extinguish the right of a contractor to seek recovery for costs or damages or seek an equitable adjustment, for delays, disruption, or acceleration in performing the contract if the delay is caused by acts of the public entity.

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The type of contract language principally intended to be addressed by this legislation is the so-called "no damages for delay" clauses. Costs and equitable adjustments for disruption or acceleration are commonly already allowed for in public contracts. Under current standard usage of a "no damages for delay" type of clause, if a delay is encountered in completing the construction, the contractor has the right to take additional time to complete the contract, but may not collect costs from the public entity arising from the delay. The risk of delays is thus divided between the public entity and the private contractor.

This legislation does not limit the damage claim to acts caused solely by the public entity. Nor does it require the delay to be significant or consequential. If a public entity caused a inconsequential delay and concurrently another delay occurred due to an act of God or something else beyond the control of the entity, this act could permit the contractor to potentially collect the cost of

the entire delay from the public entity. This is inappropriate.

Private contractors already have the legal right to seek redress for damages caused by a public entity hindrance, interference or disruption of a contract. It is also common practice to include language in a contract to permit the parties to deal with any modifications or changes to the project. This legislation will encourage contractors to deem a project change or modification a "delay" which will result in more litigation and cost to the public entity. Other standard clauses allow contractors to recover delay damages, including the "differing site condition clause," and the "suspension clause."

"No damage for delay" clauses are common in public works contracts in many states. Federal law does not prohibit their use. There is no indication that their widespread use has significantly harmed or impeded the work of contractors on public works contracts. I believe this legislation will encourage litigation and significantly increase the costs of public works contracts. Public policy supports the usage of "no damage for delay" clauses to control the costs of public works. I see no justification why these additional costs should be imposed on the citizens of the State of Minnesota.

Sincerely,

Jesse Ventura
Governor

Cc: Senator Roger Moe, Majority Leader
Senator Dick Day, Minority Leader
Representative Steve Sviggum, Speaker of the House
Representative Tom Pugh, Minority Leader
Chief Senate Author
Chief House Author
Mr. Patrick E. Flahaven, Secretary of the Senate
Mr. Edward A. Burdick, Chief Clerk of the House
Ms. Mary Kiffmeyer, Secretary of State



Office of Governor Jesse Ventura