

SESSION OF 2004

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2154

As Amended by Senate Committee of the Whole

Brief*

HB 2154 declares an indemnification provision void and unenforceable and against public policy in a construction contract including, but not limited to, a right of entry entered into in connection with a construction contract, which requires the indemnitor to indemnify the indemnitee for the indemnities's negligence.

The bill also raises the fines for misdemeanors committed by railroads for trains blocking streets or highways.

The indication provision shall not be construed to affect or impair the contractual obligation of a contractor or owner to provide railroad protective insurance or general liability insurance and applies only to indemnification provisions entered into after the act takes effect.

"Construction contract" is defined to mean an agreement for the design, construction, alteration, renovation, repair, or maintenance of a building, structure, highway, road, bridge, water line, sewer line, oil line, gas line, appurtenance, or other improvement to real property, including any moving, demolition, or excavation; provided, however, that no deed, lease, easement, license, or other instrument granting an interest in or the right to possess property shall be deemed to be a construction contract even if the instrument includes the right to design, construct, alter, renovate, repair, or maintain improvements on such real property. The terms "damages" and "indemnification provision" are also defined in the bill.

The fine schedule for railroads blocking streets or highways is raised to \$100 (currently \$50) for blocking for from 10 to less than 20 minutes; \$300 (\$150) for between 20 and less than 30 minutes; \$600 (\$300) for 30 minutes, and \$600 for each added 30 minutes.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Background

Those appearing in support of HB 2154 included representatives from the Kansas Contractor's Association, Sherwood Construction of Wichita, Kansas Contractors Association and Associated General Contractors, Kansas Association of Insurance Agents, the IMA Financial Group, Inc., Associated General Contractors of Kansas, Kansas Consulting Engineers, American Institute of Architects, and the Kansas Department of Transportation.

Opposition was expressed on behalf of the Burlington Northern and Santa Fe Railway and the Boeing Company.

The Senate Committee amendment was a compromise reached by most parties involved in the issue.

The fiscal note indicates no fiscal effect on the state.