

SENATE BILL No. 335

By Senator Shallenburger

1-15

1 AN ACT concerning public construction contracts; amending the Kansas
2 fairness in public construction contract act; requiring such contracts to
3 include a mutual waiver of consequential damages; amending K.S.A.
4 16-1901 and 16-1907 and repealing the existing sections.
5

6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section 1. (a) On and after the effective date of this act, any
8 contract for public construction entered into by a public entity and a
9 contractor shall include a mutual waiver of consequential damages. Such
10 mutual waiver of consequential damages shall be substantially in the
11 following form:

12 Waiver of claims for consequential damages

13 The contractor and owner waive claims against each other for
14 consequential damages arising out of or relating to this contract. This
15 mutual waiver includes, but is not limited to:

16 (1) Damages incurred by the owner for rental expenses, for loss of
17 use, income, profit, financing, business and reputation and for loss of
18 management or employee productivity or of the services of such persons;
19 and

20 (2) damages incurred by the contractor for principal office expenses,
21 including, but not limited to, the compensation of personnel stationed in
22 such principal office, for losses of financing, business and reputation and
23 for loss of profit, except anticipated profit arising directly from the
24 construction.

25 (b) The public entity and contractor may identify in such contract
26 additional items of consequential damage that are waived as specifically
27 needed for the applicable construction project. Such mutual waiver is
28 applicable, without limitation, to all consequential damages due to either
29 party's termination rights in accordance with the contract. Nothing
30 contained in this section shall preclude:

31 (1) An owner's claims of liquidated damages or a contractor's claims
32 for extended general conditions, when applicable, in accordance with the
33 requirements of the contract; or

34 (2) either party's claims of direct damages arising from delay to the
35 extent not otherwise liquidated, limited or prohibited by the applicable
36 terms of the contract.

1 (c) On and after the effective date of this act, if a public entity and a
2 contractor enters into any contract containing language that conflicts with
3 the provisions of this section, the provisions of this section shall control.

4 (d) This section shall be a part of and supplemental to the Kansas
5 fairness in public construction contract act, K.S.A. 16-1901 et seq., and
6 amendments thereto.

7 Sec. 2. K.S.A. 16-1901 is hereby amended to read as follows: 16-
8 1901. (a) K.S.A. 16-1901 through ~~16-1908~~ 16-1909, and amendments
9 thereto, *and section 1, and amendments thereto*, shall be known and may
10 be cited as the Kansas fairness in public construction contract act.

11 (b) *Except as provided in section 1, and amendments thereto:*

12 (1) The rights and duties prescribed by this act shall not be waivable
13 or varied under the terms of a contract; *and*

14 (2) the terms of any contract waiving the rights and duties prescribed
15 by this act shall be unenforceable.

16 Sec. 3. K.S.A. 16-1907 is hereby amended to read as follows: 16-
17 1907. *Except as provided in section 1, and amendments thereto*, any
18 provision in a contract that purports to waive the rights of a party to the
19 contract to collect damages for delays caused by another party to the
20 contract shall be void, unenforceable and against public policy. This
21 provision is not intended to create a contract between parties where a
22 contract did not otherwise exist.

23 Sec. 4. K.S.A. 16-1901 and 16-1907 are hereby repealed.

24 Sec. 5. This act shall take effect and be in force from and after its
25 publication in the statute book.