

SENATE BILL No. 335

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

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

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

Waiver of claims for consequential damages

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I hereby certify that the above BILL originated in the
SENATE, and passed that body

President of the Senate.

Secretary of the Senate.

Passed the HOUSE _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.