

SESSION OF 2026

SUPPLEMENTAL NOTE ON SENATE BILL NO. 335

As Recommended by Senate Committee on
Commerce

Brief*

SB 335 would amend the Kansas Fairness in Public Construction Contract Act to require public construction contracts entered into by a public entity and a contractor to include a mutual waiver of consequential damages.

The bill would provide the form that such waivers should substantially take, specifying certain types of damages to be waived by the owner and contractor, including:

- Damages incurred by the owner for:
 - Rental expenses;
 - Loss of use, income, profit, financing, and business and reputation; and
 - Loss of management or employee productivity or services of such persons; and
- Damages incurred by the contractor for:
 - Principal office expenses, including personnel compensation; and
 - Losses of financing, business and reputation, and profit, except anticipated profit arising directly from the construction.

The bill would also allow the public entity and contractor to agree to waive additional items of consequential damage as needed for the applicable construction project.

*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 <https://klrd.gov/>

The bill would not preclude an owner's claims of liquidated damages, a contractor's claims for extended general conditions, or either party's claims of direct damages arising from delay in accordance with the requirements and terms of the contract.

Background

The bill was introduced by Senator Shallenburger.

Senate Committee on Commerce

In the Senate Committee hearing, **proponent** testimony was provided by Senator Shallenburger and representatives of Associated General Contractors of Kansas; Crossland Construction Company; IMA, Inc.; and Kansas Department of Commerce. The proponents generally stated construction contracts involving the State often have damage waivers that unfairly disadvantage developers and the bill would eliminate this inequity.

Opponent testimony was provided by a representative of the League of Kansas Municipalities, who stated the bill would restrict the freedom to contract by prohibiting the negotiation of consequential damages provisions in unique construction contracts.

Written-only opponent testimony was provided by representatives of the cities of Olathe, Overland Park, and Wichita.

No other testimony was provided.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, the Kansas Department of

Transportation indicates enactment of the bill may increase costs, but a precise fiscal effect cannot be estimated.

The State Board of Regents and Department of Administration indicate enactment of the bill would have a minimal fiscal effect that could be absorbed within existing resources.

The Kansas Department for Aging and Disability Services indicates enactment of the bill would have no fiscal effect on the agency.

The League of Kansas Municipalities and Kansas Association of Counties indicate enactment of the bill could have fiscal impacts for cities and counties but could not estimate a precise fiscal effect.

Any fiscal effect associated with the bill is not reflected in *The FY 2027 Governor's Budget Report*.

Commerce; Kansas Fairness in Public Construction Contract Act; waiver of consequential damages