

SESSION OF 2017

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 55**

As Amended by Senate Committee on  
Commerce

**Brief\***

SB 55, as amended, would revise the Kansas Fairness in Public Construction Contract Act by requiring a contractor involved in a public-private partnership (P3) agreement with a public entity to furnish the following bonds:

- A performance bond, which would be equal to the full contract amount; and
- A payment bond, which would be equal to the full contract amount for the protection of claimants supplying labor or materials to the contractor or subcontractors in the performance of work.

The bill would apply to P3 contracts valued at more than \$100,000. The bonds would include a provision allowing for the recovery of attorney fees and related expenses.

The bill would define the terms “public-private agreement,” “private contribution,” and “public benefit.”

**Background**

Representatives of the Kansas City Chapter of the American Subcontractors Association spoke in favor the bill during the Senate Committee hearing. Proponents explained P3s are an alternative method for public entities to finance projects using private funds. The bill would provide protection

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\*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>

for subcontractors to be paid. Proponents stated the bill could encourage competition and lower the overall costs for a project.

A representative of the League of Kansas Municipalities spoke in opposition to the bill, stating the legislation would infringe upon local control. The opponent suggested the contract threshold amount be increased.

The Senate Committee on Commerce amended the bill to increase the contract threshold amount from \$25,000 to \$100,000.

According to the fiscal note prepared by the Division of the Budget, in consultation with the Department of Administration and the Board of Regents (Board), the bill, as introduced, has the potential to impact construction projects on state university campuses. The Board indicated the federal Miller Act requires bonds to be issued on all federally funded projects exceeding \$100,000. Kansas law requires all other public building construction to have bonds on projects exceeding \$100,000, which includes construction management at-risk projects at the state universities. The Board observed bonding expense is passed along from the contractor to the public entity or the entity's agent in the cost of construction. This added cost could increase the construction costs of P3s paid by state universities. The Board notes the average costs of performance and payment bonds range from 1.0 percent to 3.0 percent each, depending on the size of the project. The bill would have no fiscal effect on the departments of Administration or Transportation. Any fiscal effect associated with the bill is not reflected in *The FY 2018 Governor's Budget Report*.