

March 4, 2021

The Honorable Mike Petersen, Chairperson
Senate Committee on Transportation
Statehouse, Room 345-S
Topeka, Kansas 66612

Dear Senator Petersen:

SUBJECT: Fiscal Note for SB 224 by Senate Committee on Ways and Means

In accordance with KSA 75-3715a, the following fiscal note concerning SB 224 is respectfully submitted to your committee.

SB 224 would limit the length of a train operating on a railroad in Kansas to 8,500 feet. Upon finding a violation of the maximum train length established by the bill, the Secretary of Transportation would be required to impose a civil penalty against the railroad, or the person operating the train when the violation occurred. The penalty would have a minimum fine of \$500 per foot and a maximum fine of \$1,000 per foot for a train that exceeds the limitation. The bill would also allow the Secretary of Transportation to reduce the amount of a civil penalty and lists certain conditions that could be considered by the Secretary in reducing the penalty.

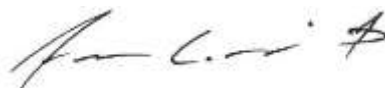
When a violation occurs, if the Secretary of Transportation determines that the railroad, or the person operating the train when the violation occurred, committed a grossly negligent violation or a pattern of repeated violations that caused an imminent threat of death or injury to individuals or has caused such death or injury, then the Secretary could issue a one-time fine not to exceed \$250,000. At the request of the Secretary of Transportation, the Attorney General could initiate civil action to collect any fine or civil penalty imposed under the bill. Any civil action would be required to commence within three years after the violation. Any fines or civil penalties collected from violations would be deposited into the State Highway Fund. The bill would be effective upon publication in the statute book.

Estimated State Fiscal Effect				
	FY 2021 SGF	FY 2021 All Funds	FY 2022 SGF	FY 2022 All Funds
Revenue	--	--	--	--
Expenditure	--	--	--	\$230,540
FTE Pos.	--	--	--	2.00

The Department of Transportation indicates that enactment of the bill would result in additional expenditures of \$230,540 from the State Highway Fund in FY 2022. Of this amount, \$204,140 would be for salaries and wages and \$26,400 would be for other ongoing operating expenditures. Additional salaries and wages expenditures include hiring 2.00 FTE positions to monitor train lengths and calculate and assess civil penalties at a base salary of \$72,000 for each position along with associated employer contributions, including family health insurance. Ongoing other operating expenditures includes \$12,000 in travel per new position and \$1,200 per new position for laptop lease payments, including Office 365 licensing and communication device charges from the Office of Information Technology Services. The agency is unable to estimate additional revenues associated with the passage of SB 224, because it does not know the number of violations that may occur.

The Office of the Attorney General indicates that enactment of the bill would likely result in a constitutional challenge in court. Under a 2018 Kansas Court of Appeals decision, the court determined that a state law limiting the amount of time a train could block a railroad crossing was federally pre-empted and thus violated the Supremacy Clause of the U.S. Constitution. If passed, the Office indicates that the bill would likely be challenged on similar grounds. The costs to defend such a challenge would depend on what court the law was challenged in and the caseloads of in-house attorneys to handle such a case. The Office notes that if the bill survived a constitutional challenge and fines and penalties needed to be collected, as outlined in the bill, the Office could need additional staff to perform the collection function. However, a precise fiscal effect cannot be estimated. Any fiscal effect associated with SB 224 is not reflected in *The FY 2022 Governor's Budget Report*.

Sincerely,



Adam Proffitt
Director of the Budget

cc: Ben Cleaves, Transportation
Willie Prescott, Office of the Attorney General