

March 16, 2022

The Honorable Mike Petersen, Chairperson
Senate Committee on Transportation
Statehouse, Room 546-S
Topeka, Kansas 66612

Dear Senator Petersen:

SUBJECT: Fiscal Note for SB 530 by Senate Committee on Ways and Means

In accordance with KSA 75-3715a, the following fiscal note concerning SB 530 is respectfully submitted to your committee.

SB 530 would enact the Kansas Rail Safety Improvement Act. The bill would prohibit a railroad operating in Kansas from running any train that exceeds 8,500 feet in length on any main line or branch line. The bill would require the Secretary of Transportation to impose a civil penalty against the railroad or the person operating the train for any violations of the length requirement. The civil penalty would be not less than \$500 but not more than \$1,000 per foot for a train that exceeds the length limitation. If the Secretary 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 death or injury, the Secretary may issue a one-time fine that could not exceed \$250,000. The Secretary may reduce the amount of the civil penalty under the following considerations:

1. The nature, circumstances, extent, and gravity of the violation;
2. With respect to the violator, the degree of culpability, any history of violations, the ability to pay, and any effect on the violator's ability to continue to do business, and;
3. Any other matters that justice requires.

At the request of the Secretary, the Attorney General may initiate a civil action to collect any fine or civil penalty imposed. The bill would require the minimum distance for storage of a railroad rolling stock to be 300 feet. The Secretary would be required to impose a civil penalty of not less than \$500 for a violation against the railroad. SB 530 would require a crew of at least two individuals to operate a train, locomotive, or light engine used in connection with the movement

of freight. Violations of this provision would be punishable by a fine of not less than \$250 and not more than \$1,000; not less than \$1,000 and not more than \$5,000 for a second conviction within three years immediately preceding the violation; or not less than \$5,000 and not more than \$10,000 for a third or subsequent conviction within three years immediately preceding the violation.

A device warning of an impending train, locomotive, or light engine would be required in a safe space that the railroad controls and where any scrap iron, lumber, debris, or vegetation exceed a height of four inches; there exists a marked unevenness of the terrain; or any material or condition exists that endangers any employee. The bill would require rail carriers to provide walkways adjacent to portions of yard tracks where employees regularly work performing switching services. The bill would authorize the Kansas Department of Transportation (KDOT) to order a rail carrier to construct, when feasible, a walkway adjacent to a portion of track or modifying an existing walkway if the agency finds that rail carrier employees who regularly work near a portion of track are exposed to safety hazards because of the lack of a walkway or due to the condition of a walkway. The Secretary would be authorized to adopt rules and regulations necessary to implement the Act's provisions. All revenues from fines or civil penalties collected under this Act would be credited to the State Highway Fund.

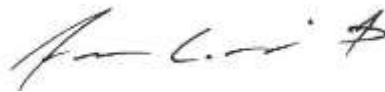
KDOT indicates it is unclear what authority the agency would have to implement certain provisions of the bill. In some cases, the bill assigns responsibilities to KDOT that the agency states it does not have the authority to carry out. The bill could require KDOT to conduct investigations of violations of the Act, impose and set fines, and engage in potential court proceedings if a railroad that is in violation of the Act seeks legal resource. The agency states it is difficult to estimate the fiscal effect of the bill because KDOT does not currently have staff that perform railroad investigatory functions. Additional positions could be needed to investigate violations and additional staff time would be needed for any court actions that may be taken and to develop rules and regulations. The agency states it cannot provide an estimate on the number of positions and amount of additional staff time that may be needed to implement the bill's provisions.

The Office of Judicial Administration states enactment of SB 530 could increase the number of cases filed in district court because it would allow the Attorney General to file a civil action to collect fines or penalties for violations, which could increase time spent by court employees and judges processing and deciding these cases. The Office states the bill's enactment could result in the collection of docket fees in those cases filed under the bill's provisions. According to the Office, a fiscal effect cannot be estimated until the Judicial Branch has had an opportunity to operate under the bill's provisions.

The Office of the Attorney General states in 2018 *State v. BNSF Railway Company*, 56 Kan.App.2d 503, the Kansas Court of Appeals found that state regulation of rail transportation is preempted by federal law. The Office estimates that the bill would be challenged in a similar manner as the law at issue in the above-mentioned case. According to the Office, because this issue has been litigated, the Office may determine that it is not in the state's interest to engage in

ligation to defend this similar legislation and legal expenses to resolve a case would be minimal. Under the current case law cited above, the Office states the bill's provisions regarding civil penalties may be unenforceable and expenses may not be incurred, or revenue generated from the collection of the civil penalties. Any fiscal effect associated with SB 530 is not reflected in *The FY 2023 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Proffitt".

Adam Proffitt
Director of the Budget

cc: Brendan Yorkey, Department of Transportation
Vicki Jacobsen, Judiciary
Willie Prescott, Office of the Attorney General
Lynn Robinson, Department of Revenue