

March 18, 2021

The Honorable Caryn Tyson, Chairperson
Senate Committee on Assessment and Taxation
Statehouse, Room 123-E
Topeka, Kansas 66612

Dear Senator Tyson:

SUBJECT: Fiscal Note for SB 286 by Senate Committee on Assessment and Taxation

In accordance with KSA 75-3715a, the following fiscal note concerning SB 286 is respectfully submitted to your committee.

SB 286 would enact the COVID-19 Governmental Use of Business Compensation Act. The bill defines “restriction” as any occupancy limitation, limitation on periods of operation, or the exertion by any governmental entity of other significant control on business resources or functionality. Any governmental entity mandating the use of face masks and any enforcement requirement by Kansas businesses after May 1, 2021, would be considered a “restriction” and businesses would be entitled to compensation. The bill would require the Director of the Budget to identify and certify \$100.0 million in unencumbered monies from the federal government for coronavirus relief aid to the state that can be expended at the discretion of the state. The certified funds would be transferred to the COVID-19 Governmental Use Claims Fund of the Attorney General’s Office to be used to pay out compromises, settlements, and final judgments from claims against the state under the Kansas Emergency Management Act, eminent domain laws of the State of Kansas, or any claim related to compensation for a governmental taking. All claims would be required to be filed with the Attorney General on or before December 31, 2022, or 365 days after the termination of any COVID-19 disaster declaration, whichever date is later in time. The bill includes guidelines that the Attorney General would use in evaluating claims. The State Finance Council would have the authority to approve or deny the proposed settlements with the Attorney General. The Attorney General would have the authority to write rules and regulations to implement the bill. On July 1, 2025, the remaining balance in the COVID-19 Governmental Use Claims Fund would be transferred to the State General Fund.

As an alternative to filing a claim with the Attorney General that is detailed above, the bill would allow business owners of commercial buildings that were shut down or restricted in operation due to COVID-19, the option to claim a refundable income tax credit for tax years 2021 and 2022. The amount of the tax credit would be as follows:

1. 1/12th of claimant's 2019 Kansas income tax liability for every 30 days operations were required to be ceased by an order of the Governor or any subdivision of the state;
2. 1/48th of claimant's 2019 Kansas income tax liability for every 30 days operations were restricted by an order of the Governor or any subdivision of the state; or
3. For a claimant not operating in 2019, 1/6 of claimant's 2020 Kansas income tax liability for every 30 days operations were ceased, and 1/12 of claimant's 2020 Kansas income tax liability for every 30 days operations were restricted.

The amount of any grants or loans issued that were forgiven by the State of Kansas with state funds would be subtracted from the tax credit amount. The Attorney General would be required to issue a certificate of government use to the taxpayer which would show the amount of tax credit. The Department of Revenue would have the authority to write rules and regulations to implement the tax credit portion of the bill.

The bill would allow owners of a commercial building that was shut down or restricted after December 31, 2019, the ability to apply to the governing body that issued the order for reimbursement of all property taxes levied. The application would include the certificate of government use issued by the Attorney General and an affidavit stating any tax credits or property tax abatement amounts previously received by the claimant. The refund claim would be paid out of that governing body's general funds. If a paid property tax amount is more than the unused amount stated on claimant's certificate of government use, the excess could be carried forward as a credit for property taxes paid over the next ten years.

The bill would create a business loan forgiveness program for state loans given to applicable businesses due to the COVID-19 pandemic. A business would be required to submit a claim to the Department of Commerce that assesses the amount of loss to the business due to a governmental restriction and deducting any state and federal grants received by the business and any other benefit provided by the COVID-19 Governmental Use of Business Compensation Act. Any loan given to the applicable businesses due to the COVID-19 pandemic could be forgiven.

The Attorney General's Office indicates SB 286 would require \$100.0 million in unencumbered monies from the federal government for coronavirus relief aid to be transferred to the COVID-19 Governmental Use Claims Fund of the Attorney General's Office. The \$100.0 million would be used to pay out compromises, settlements, and final judgments from claims against the state under the Kansas Emergency Management Act, eminent domain laws of the State of Kansas, or any claim related to compensation for a governmental taking. The Office indicates that the bill would require \$376,382 from the State General Fund in FY 2022 to implement the bill. The Office indicates that it has requested funding from the State General Fund for its administrative costs because it is unclear if the COVID-19 Governmental Use Claims Fund could be used for that purpose. The bill would require the Office to hire 3.50 new FTE positions to review and process claims and issue certificates of government use to taxpayers to claim the refundable income tax credit for tax years 2021 and 2022.

The Attorney General's Office indicates the bill has the potential to increase litigation costs starting in FY 2022. However, the Office did not provide an estimate of the additional litigation costs or how long the estimated litigation costs would continue from enactment from the bill, or if

the bill would require the hiring of outside counsel. The Office indicates that language is unclear if a business that was restricted or ordered to close as part of the COVID-19 emergency response would be entitled to compensation under the Kansas Emergency Management Act. However, it is likely that if a legislative solution is not found, numerous cases could be filed, and the state would be required to litigate those cases to determine in each case if a business qualifies for compensation. Defending the state in those cases could require substantial resources, but the Office cannot provide an accurate estimate of those costs at this time. The Office of Judicial Administration indicates the bill would not have a significant fiscal effect on the operations of the court system.

The Department of Revenue does not have any data to estimate the fiscal effect of allowing business owners of commercial buildings that were shut down or restricted in operation due to COVID-19 to claim a refundable income tax credit. It is unknown how many businesses would qualify for this tax credit, how many taxpayers would claim this tax credit, or how significant the amount of the tax credits that could be claimed.

A provision in the federal American Rescue Plan Act of 2021 (ARP) prohibits states or territories from using the federal funds appropriated from ARP “to either directly or indirectly offset a reduction in the net tax revenue of such State or territory resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase.” If the state fails to comply with this provision by implementing a reduction of net tax revenue through tax year 2024, the U.S. Treasury would be required to recoup ARP funds in the amount of the net tax revenue reduction. If ARP funds are not available, it is presumed that the State General Fund would be used to reimburse the U.S. Treasury. The Attorney General’s Office indicates that any attempt to use ARP funds as described in this bill has the potential to result in litigation with the federal government over the constitutionality of that provision in the federal law. Requiring the remaining balance in the COVID-19 Governmental Use Claims Fund to be transferred to the State General Fund on July 1, 2025, would likely violate federal law and be subject to recoupment by the federal government.

The Department of Revenue indicates the bill would decrease property tax revenues by creating a new property tax reimbursement program. The Department of Revenue does not have data on the assessed valuation of the specific property that would receive this reimbursement or credit or how often a governing body would provide this reimbursement or credit to make a precise estimate of the amount of reduced property tax revenue. The bill would reduce the amount of property tax revenues that would be collected for the two building funds, the Educational Building Fund and the State Institutions Building Fund. Less property tax revenue would also have an effect on state expenditures for aid to school districts. To the extent that less property tax revenue would be available from the state’s uniform mill levy to fund expenditures for school districts, the state would be required to provide more state aid from the State General Fund through the school finance formula. Local governments that levy a property tax would also receive less revenues; however, the amount of reduced property tax revenues cannot be estimated.

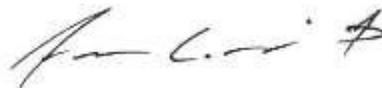
The Department of Revenue indicates that it would require a total \$195,505 from the State General Fund in FY 2022 to implement the bill and to modify the automated tax system. The bill would require 1.00 new FTE position to manage the new tax credit program and to answer

questions from taxpayers. The required programming for this bill by itself would be performed by existing staff of the Department of Revenue. In addition, if the combined effect of implementing this bill and other enacted legislation exceeds the Department's programming resources, or if the time for implementing the changes is too short, additional expenditures for outside contract programmer services beyond the Department's current budget may be required.

The League of Kansas Municipalities and the Kansas Association of Counties indicate that the bill has the potential to significantly reduce the amount of local property tax revenues that are used in part to finance local governments. However, they do not have a basis on which to estimate the amount of property taxes that would be reimbursed or credited to taxpayers to make a precise estimate of the fiscal effect on local governments.

The Department of Commerce indicates the bill would require it to create a new business loan forgiveness program for state loans given to applicable businesses due to the COVID-19 pandemic. The Department would be required create an application form that assesses the amount of loss to the business due to a governmental restriction, and the Department would be required to review forgivable loan applications. Meeting the requirements of the bill has the potential to increase operational costs and staff time for the Business Development Division. However, without knowing the amount appropriated for the forgivable loan program or how many businesses would qualify for forgivable loans, the Department does not have enough information to provide an estimate of the fiscal effect that the forgivable loan program would have on its operations or if additional staff would be needed. Any fiscal effect associated with SB 286 is not reflected in *The FY 2022 Governor's Budget Report*.

Sincerely,



Adam Proffitt
Director of the Budget

cc: Lynn Robinson, Department of Revenue
Willie Prescott, Office of the Attorney General
Jay Hall, Association of Counties
Wendi Stark, League of Municipalities
Craig Neuenswander, Education
Jody Allen, Tax Appeals
Sherry Rentfro, Department of Commerce
Debbie Thomas, Judiciary