

SESSION OF 2022

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR
HOUSE BILL NO. 2416**

As Recommended by Senate Committee on
Judiciary

Brief*

Senate Sub. for HB 2416 would create law regarding compensation for the use, restriction of use, loss, or destruction of property as a result of governmental actions related to the prevention of or response to contagious or infectious disease. The bill also would amend law related to property tax relief for businesses affected by governmental shutdowns or restrictions related to certain emergencies.

***Compensation for Property Affected by Governmental
Actions***

The bill would require each person within the state to act and manage his or her affairs and property in any way that reasonably will assist and not detract from the ability of the state and the public successfully to prevent and respond to contagious or infectious disease, including appropriate personal service and use of property in response to a governmental action, as defined by the bill. The bill would state any obligations pursuant to this section would neither increase nor decrease these obligations but recognizes their existence under the *Kansas Constitution*, statutes, and the common law of the state.

The bill would provide that compensation for services or for the taking, use, or restriction on use of property would be only to the extent that the aforementioned obligations have

*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>

been exceeded in a particular case and only to the extent that the claimant could not be deemed to have volunteered services or property without compensation. Such compensation would be provided only if property was commandeered, restricted for use, or otherwise used pursuant to a governmental action, and the destruction, use, or restriction on use of such property was ordered by a public official pursuant to such governmental action.

Any person claiming compensation under this section as a result of a governmental action would be required to file a civil action in district court, and the court would determine the validity of the claim in the same manner and under the same procedures as a condemnation action pursuant to the Eminent Domain Procedure Act.

The bill would provide personal services could not be compensated by the State or political subdivision except pursuant to statute or ordinance.

The bill would provide any award of compensation would be paid by the governmental entity ordering the contested action, be limited to the actual cost of such use or restriction on use as determined by the board of appraisers, and would not include loss of present or future profits, opportunity cost, or other extraordinary damages.

The bill would define “governmental action” to mean an order, resolution, or ordinance related to a contagious or infectious disease issued or adopted by the state, county, city, or other political subdivision of the state, including, but not limited to, an order, resolution, or ordinance issued or adopted pursuant to a declared state of disaster emergency or state of local disaster emergency under the Kansas Emergency Management Act (KEMA), that limits the size of gatherings of individuals, restricts the operation of business, controls the movement of persons, or limits religious gatherings. The bill would define “restriction on use” or “restricted for use” to mean:

- Any taking as defined in the Private Property Protection Act;
- Any restriction, limitation on access to, or operation of private property, as defined by the bill;
- Exertion of control over any private property for any amount of time pursuant to a governmental action; or
- Substantially burdening the operation of any religious, civic, business, or commercial entity, whether for-profit or not-for-profit.

***Property Tax Relief For Business Affected By
Governmental Shutdown or Restriction Related to
Contagious or Infectious Disease***

The bill would amend law governing reimbursement of property taxes levied upon property on which the owner maintains a business that was shut down or restricted by the state, county, city, or other political subdivision related to an executive order, state of disaster emergency, or state of local disaster emergency under KEMA, to allow such reimbursement for businesses that were shut down or restricted because of any action taken by:

- The state, county, city, or other political subdivision of the state related to an executive order, state of disaster emergency, or state of local disaster emergency under KEMA; or
- A county, city, or other political subdivision of the state related to contagious or infectious disease pursuant to statutes governing public health.

Applicability and Effective Date

The bill's provisions would apply only to actions taken on and after the effective date of the bill, and the bill would become effective upon publication in the *Kansas Register*.

Background

As referred to the Senate Committee on Judiciary on March 10, 2021, HB 2416 contained provisions regarding the governmental response to certain emergencies. These provisions were enacted in 2021 SB 40.

On March 9, 2022, the Senate Committee on Judiciary, removed the contents of HB 2416 enacted in SB 40, inserted two sections of SB 541 regarding compensation for governmental use of property and property tax relief for certain businesses affected by governmental shutdowns or restrictions related to contagious or infectious disease, and recommended a substitute bill to be effective upon publication in the *Kansas Register*.

SB 541 – Compensation and Property Tax Relief Related to Governmental Actions Taken in Response to Contagious or Infectious Disease

Senate Committee on Judiciary

On March 3, 2022, the Senate Committee on Judiciary held an informational hearing on potential legislation regarding orders and actions by public officials relating to vaccine passports, face mask mandates, gathering limitations, business restrictions, and religious gathering limitations. In the hearing, 19 private citizens provided testimony in support of such potential legislation; 36 private citizens provided written-only support. One private citizen provided neutral testimony.

In the Senate Committee hearing on March 7, 2022, an attorney, a representative of the Kansas Chamber of Commerce, and two private citizens provided **proponent** testimony on the bill, stating various concerns over governmental actions taken during the COVID-19 pandemic. Written-only proponent testimony was provided by three private citizens.

Representative Jacobs provided neutral testimony on the bill, expressing concern that the bill does not adequately protect the free exercise of religion guaranteed by the *U.S. Constitution*.

Representatives of the Kansas Association of Counties, Immunize Kansas Coalition, and the League of Kansas Municipalities, and one private citizen testified as **opponents** to the bill, stating concerns the bill will hinder the ability of governmental actors to effectively respond to future emergencies. Written-only opponent testimony was provided by representatives of the Harvey County Health Department, Kansas Academy of Family Physicians, Kansas Association of Local Health Departments, Kansas Association of School Boards, Kansas National Education Association, Kansas State Board of Education, and Nurture KC; a representative of the cities of Merriam, Mission, Prairie Village, and Westwood Hills; and three private citizens.

Fiscal Information

SB 541

[Note: The fiscal note prepared by the Division of the Budget references additional provisions of SB 541 not included in the substitute bill.]

According to the fiscal note prepared by the Division of the Budget on SB 541 as introduced, the Kansas Department of Health and Environment states that enactment of the bill

would result in increased expenditures for the agency, if found by a district court in a civil action to be responsible for and directed to provide awards of compensation pertaining to and resulting from restrictions on use of property due to a governmental action related to a contagious or infectious disease, and issued or adopted by the state, county, or other political subdivision. A total fiscal effect could not be estimated.

The Kansas State Department of Education and the Office of the Governor state enactment of the bill would not have any fiscal effect on the operations of either agency. The Kansas Board of Regents reported enactment of the bill would not have a fiscal effect on higher education.

The Office of the Attorney General reports that while enactment of SB 541 could reduce some of the state's potential legal liability in future cases, certain provisions could be subject to legal challenge. The Office of the Attorney General states some litigation defense could be handled by the Office, but it is possible that specialized outside counsel would need to be hired by the state. The total fiscal effect could not be estimated.

The Kansas Department of Revenue states the effects of any future shutdowns or restrictions that would result in the state paying back a portion of a property owner's property taxes cannot be estimated.

The Office of Judicial Administration (OJA) states enactment of SB 541 could increase the number of cases filed in district court, requiring more time spent by court personnel. The OJA estimates enactment of the bill could result in the collection of docket fees and fines assessed in those cases filed under the bill's provisions. According to OJA, a fiscal effect cannot be estimated.

Any fiscal effect associated with enactment of SB 541 is not reflected in *The FY 2023 Governor's Budget Report*.

The Kansas Association of Counties and the League of Kansas Municipalities both state that enactment of SB 541 would increase costs for local governments related to the defense of potential litigation and would subject local governments to claims for compensation under the bill. A total fiscal effect could not be estimated by either organization.

Compensation for use of property; governmental actions; contagious or infectious disease; reimbursement of property taxes; business restrictions