

SESSION OF 2022

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

As Amended by Senate Committee of the Whole

Brief*

Senate Sub. for HB 2416, as amended, 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 and would enact the COVID-19 Retail Storefront Property Tax Relief Act.

The bill would become effective upon publication in the *Kansas Register*.

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

The bill would state compensation would be provided to property owners affected by governmental actions:

- Taken on and after the bill's effective date; and
- Only if property was commandeered, restricted for use, or otherwise used pursuant to a governmental action; and

*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>

- The destruction, use, or restriction on use of such property was ordered by a public official pursuant to such governmental action.

The bill would provide a claimant would not be eligible for compensation if the claimant knew or should have known of a dangerous condition and failed to respond in a reasonable manner to address the dangerous condition that resulted in the use, restriction on use, damage, loss, or destruction of property, including, but not limited to, sanitization or food safety.

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 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
- Not include loss of present or future profits, opportunity cost, or other extraordinary damages.

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 define “governmental action” to mean an order, resolution, or ordinance related to a contagious or infectious disease in humans 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.

An owner would not be eligible for reimbursement if the owner knew or should have known of a dangerous condition and failed to respond in a reasonable manner to address the dangerous condition that resulted in the shutdown or restriction, including, but not limited to, sanitization or food safety.

The bill would remove the effective date of the original enactment of this section.

COVID-19 Retail Storefront Property Tax Relief Act

The bill would enact the Retail Storefront Property Tax Relief Act (Act) to provide for claims for refunds to be paid for tax years 2020 and 2021 for certain claimants that were operationally shut down or restricted at their retail storefront by a COVID-19-related order or action imposed by the State, a local unit of government, or a local health officer.

Refund Amounts

The refund would be equal to 33.0 percent of the sum of the COVID-19 ordered shutdown days gross rebate amount and the COVID-19 ordered restricted operations days gross rebate amount, as those terms are defined by the bill. Refunds would be limited to \$7,500 per tax year.

The COVID-19 ordered shutdown days gross rebate amount would be the amount of property taxes accrued or 15.0 percent of gross rent actually paid in cash for the tax year, divided by 3 for businesses shut down for 91 or more days, divided by 4 for businesses shut down for 61 to 90 days, divided by 6 for businesses shut down for 31 to 60 days, and divided by 12 for businesses shut down for 1 to 30 days.

The COVID-19 ordered restricted operations days gross rebate amount would be the amount of property taxes accrued or 15.0 percent of gross rent actually paid in cash for the tax year, divided by an amount ranging from 2 to 16, depending on the number of ordered restricted operation days.

Eligible Claimants

Claimants would be required to be for-profit businesses in operation as of July 1, 2019, and March 1, 2020, and filing a 2019 tax return with annual revenues between \$10,000 and \$2,500,000 in 2019, with less gross revenue in 2020 or 2021 than in 2019. Businesses would not be permitted to be claimants if they received more than a total of \$150,000 in prior COVID-19-related local, state, or federal funding, or any combination thereof.

The bill would exclude as claimants grocery stores, pharmacies, hardware stores or home improvement businesses, retail liquor stores, manufacturers and food processors, schools from pre-kindergarten through post-secondary, hospitals and healthcare providers (not including dentists), property management and real estate services, professional services, agricultural and aquaculture producers, hosts or operators of vacation or short-term rental units, passive businesses, financial businesses primarily engaged in the business of lending, cable companies, telephone companies, utilities, and energy production, generation, and distribution companies.

Only one claimant per retail storefront would be permitted to receive a refund per tax year. "Retail storefront" would be defined to be real property where the claimant conducts retail sales through customers' physical, on-site presence and may consist as part of a multi-purpose or multi-retail storefront building.

Additional Provisions

The Act would require claims to be filed with the Department of Revenue on or before April 15, 2023, in order to be paid or allowed. The Act would direct the Director of Taxation to make available suitable forms for filing claims and would authorize the Secretary of Revenue to adopt rules and regulations necessary for the administration of the Act.

The Act would require claimants to provide reasonable proof of eligibility for a refund to the Director of Taxation, including information concerning taxes levied and rent paid. The Act would permit the amount of any claim to be applied to outstanding tax liability owed by the claimant and would require a refund amount to be paid to a county treasurer to be applied to property taxes owed in the event a claimant has delinquent property taxes for tax year 2020 or 2021. Delinquent property taxes for any tax year prior to 2020 would disallow a claimant from being eligible for a refund.

The Act would provide for the disallowance of any claims filed with fraudulent intent or upon a finding that the claimant received title to the retail storefront for the purpose of applying for a refund. Filing a claim with fraudulent intent would be a class B misdemeanor and any claim paid upon a fraudulent filing would bear interest at a rate of 1 percent per month until the claim was repaid or recovered.

The provisions of the Act would be subject to informal conference and appeals to the State Board of Tax Appeals.

Each county would be required to pay the State an amount equal to 33 percent of the amount of refund claims paid pursuant to the Act for property located in such county.

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*.

On March 23, 2022, the Senate Committee of the Whole adopted amendments to:

- Remove a provision concerning the obligation of persons in the state to manage their affairs in ways related to the prevention and response to contagious or infectious disease;
- Clarify the provisions concerning compensation for governmental actions affecting property be must be related to infectious or contagious diseases in humans;
- Further clarify when claimants and property owners may not be awarded compensation or property tax relief pursuant to the bill; and
- Add provisions from Senate Substitute for HB 2313, as amended by the Senate Committee of the Whole, enacting the COVID-19 Retail Storefront Property Tax Relief Act.

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.

Senate Sub. for HB 2313 (COVID-19 Retail Storefront Property Tax Relief Act)

On May 3, 2021, the Senate Committee on Assessment and Taxation recommended a substitute bill containing the COVID-19 Retail Storefront Property Tax Relief Act and various other tax provisions. The provisions contained in the COVID-19 Retail Storefront Property Tax Relief Act were based on SB 149.

SB 149

The bill was introduced by the Senate Committee on Assessment and Taxation at the request of Representative Corbet.

Senate Committee on Assessment and Taxation

At the Senate Committee hearing on the bill, **proponent** testimony was provided by representatives of the Kansas Chamber of Commerce and the Kansas Restaurant and Hospitality Association. Written-only proponent testimony was provided by Representative Corbet and a private citizen. Proponents stated the bill would reimburse business owners for property taxes attributable to times when the businesses were shut down due to governmental orders.

Opponent testimony was provided by a representative of the Kansas Association of Counties. Written-only opponent testimony was provided by a representative of the Kansas Legislative Policy Group. Opponents stated the bill would place an undue burden on county budgets.

Written-only neutral testimony was provided by a representative of the League of Kansas Municipalities.

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.

Senate Sub. for SB 2313 (COVID-19 Retail Storefront Property Tax Relief Act)

According to information provided by the Department of Revenue on April 27, 2021, claims associated with the Act are anticipated to total \$44.3 million for tax year 2020, with the State General Fund (SGF) being responsible for \$29.7 million and county governments being responsible for \$14.6 million. For tax year 2021, claims are anticipated to total \$24.8 million, with the SGF being responsible for \$16.6 million and county governments being responsible for \$8.2 million.

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