

To: Senate Assessment and Taxation Committee  
From: Trey Cocking, Deputy Director  
Date: March 11, 2021  
RE: Neutral Testimony on SB 286

Good Morning Chairwoman and Committee Members and thank you for allowing the League of Kansas Municipalities to offer neutral testimony on Senate Bill 286.

The question in front of you today is whether the correct way to compensate businesses hit hardest by the effects of Covid-19 is through a refund of their county property taxes. Even though SB 286 is a comprehensive attempt to deal with possible takings created by the response to the COVID-19, we have concerns with additional causes of action that could be brought by the passage of SB 286.

The Constitution provides protections for the appropriation of private property under the Takings Clause. The Takings Clause's protections are rooted in basic fairness: the government cannot appropriate private property for its own use without compensating the owner. The idea being that when something is required for the good of all of us, that the burden should also be borne by all of us. Under a takings argument while an owner must be made whole, they are also not entitled to more. The damages owed to any particular business or person are fact specific. One would need to account for things such actual loss in income, other government aid already received to offset the loss, etc. This is a much more specific way to analyze if compensation is due.

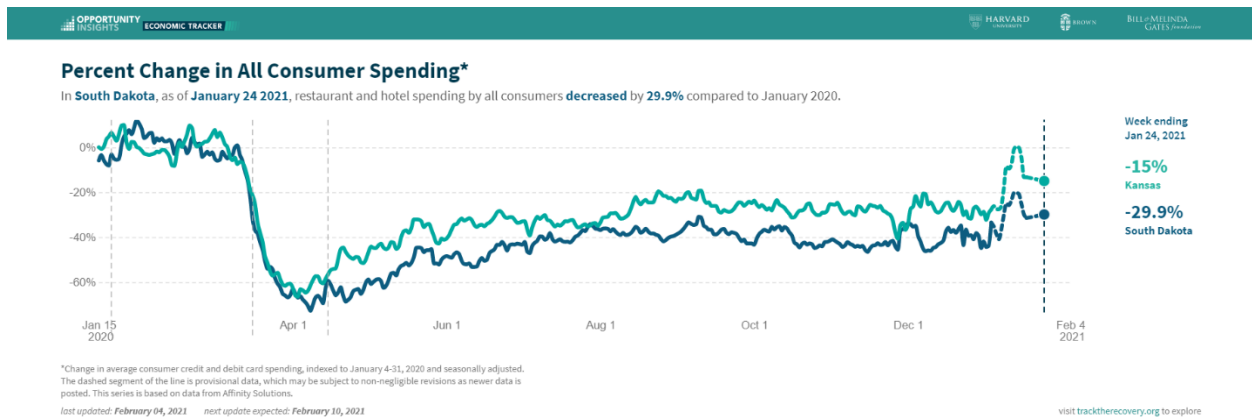
However, if you read SB 286, the definition for restriction in Section 1 (b) (1) line 17 lists, any governmental entity mandating the use of facemasks and any enforcement requirement by Kansas businesses shall be considered a "restriction" under this act and entitled to compensation. Then if you look at page 4 in Section 4 (b)" No tax credit claimed under this act shall be denied if the claimant's operations were restricted in any manner by a governmental order."

One of our questions about this legislation is; does a city simply having a facemask requirement in place in the city that affects all citizens the same and places no additional burden on a business trigger this provision? Or is the provision only triggered if a city face mask ordinance required a business to enforce the facemask requirement. These are two very different scenarios.

We are concerned that SB 286 will create a new cause of action against a city and will result in the city having to refund property taxes even if a business cannot demonstrate that it has suffered tangible damages.

Rather than performing fact specific analysis, the bill in front of you attempts a one size fits all solution by simply refunding property taxes. While the idea might seem good in concept, all other property taxpayers will absorb the effect in order to still have necessary public services without any verification that the money being paid out is in proportion to the amount due under a constitutional claim without unjust enrichment.

Finally, I have attached the following chart showing consumer spending in Kansas vs. South Dakota. Kansas in some areas has had government mandated limitations impacting businesses, while South Dakota government had few mandates. The purpose of these charts is to show that the analysis is not clear cut on whether the government mandates caused the decrease in business revenue in the restaurant industry or whether the drop was due to capitalism and consumer choice. The charts show that consumer spending dropped in both Kansas and South Dakota, but that South Dakota experienced a greater drop in spending than in Kansas in restaurant and hospitality spending even though South Dakota experienced no state mandated closures.



We encourage the committee as it looks at this legislation and this issue and review programs that have already been made available to those hit the hardest by Covid-19, and consider if this is the best way to compensate businesses for their role in helping slow the spread or if this bill will disproportionately hurt public safety and it is more appropriate for these claims to be evaluated on a case-by-case basis.