

**House Taxation Committee
Proponent Testimony HB 2142
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Mr. Chair and Members of the Committee, I am Scott Schneider and I represent the Kansas Restaurant and Hospitality Association. This legislation is a recommendation of the Joint Economic Recovery Committee where the KRHA gave several updates to highlight the disparities being suffered by the smallest businesses in Kansas.

We are here today asking for relief because the Governments' police powers in Kansas have become unbalanced. The government sphere in Kansas has never been larger than in 2020. This measure would require elected officials to balance using their Government police powers against their own interest in generating property tax revenue.

HB 2142 is a simple, yet complicated concept. Modern Kansas leaders have not had to contemplate the scope of a government taking against the basic morality of taxing a Kansas business while at the same time significantly restricting their business. No one sought out this pandemic, but our industry, being the most directly affected and often vilified, maintains the boundaries and limitations our Constitutions provided to our government leaders as guardrails were largely ignored.

Last year, we represented half of every licensed restaurant in the State. Since then, we have suspended association dues, given restaurants free memberships so they have access to our resources, suspended insurance premiums for our workers compensation fund participants, and at the same time worked harder than imaginable chasing units of governments around educating them as best as possible on their many novel new ideas. The COVID pandemic has caused chaos in our industry.

House Bill 2142 would adjust the amount of property taxes paid if a unit of government 1) shut the business down, or 2) would proportionately adjust the obligation if the capacity was limited. The bill would be applicable to all taxable years commencing after December 31, 2019.

This legislation is based on the idea that government shouldn't tax a business that it also shuts down through an emergency order. The United States Constitution enshrines this principle in the Fifth Amendment that states: "No person shall be...deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." The Fifth Amendment is meant to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.¹

¹ Lingle v. Chevron U.S.A. Inc., 544 U.S. 528 (2005)

I'm not asking you to be the court, others will pursue a more narrowly focused legal remedy. I am pursuing a legislative remedy and am asking you to decide "how much is too much." The revered Supreme Court justice, Oliver Wendell Holmes, is often cited when describing a regulatory taking:

"Property must not be taken without compensation, but with the help of a phrase, (the police power) some property may be taken or destroyed for public use without paying for it, if you do not take too much."²

We are not arguing whether government has the power to restrict businesses during a pandemic. Governments have well-established broad police powers to initiate the various emergency orders to restrict mass gatherings. Keep in mind, these police powers are also often seen to be unconstitutional legislative acts, but which are believed to be necessary.³ However, if they choose to exercise these powers, fairness dictates they should also adjust their taxing obligations at the same time.

Please know, HB 2142 is not a complete remedy. A Yale Law Review more fully describes a remedy this way, "Moreover, owners whose property had been taken temporarily for example, owners whose land or buildings had been taken over by the federal government to be used in the war effort during World War I could recover just compensation for the period when they had been dispossessed, even after the government returned possession to them."⁴ In fact, a full remedy is our interest in the market value our individual stores lost. In March alone, Kansas Restaurants lost over \$325 million in sales. In this bill, we are only asking for a proportionate reduction of our property taxes when compared to the amount of time government has restricted our right to conduct business and generate income.

The Kansas Legislature has the ability to pass laws righting an injustice. I am simply leaning on your understanding of fairness. Passing HB 2142 would make clear to Governments, they too, have a financial stake in their decisions and the obligations placed upon some should be borne by the public as a whole. What Governments did to Kansas restaurants was simply, "too much."

² Springer v. Government of the Philippine Islands, 277 U.S. 189, 209-10 (1928) (Holmes, J., dissenting).

³ Holmes, Cooley, A Treatise on the Constitutional Limitations, supra note 24, at 268, 269.

⁴ 350. See, e.g., Kimball Laundry Co. v. United States, 338 U.S. 1 (1949); United States v. General Motors Corp., 323 U.S. 373 (1945).