

Rural Housing; Home Loans; Historic Structures; Appraisals of Property in Rural Counties; Urban Development; Child Day Care Services; HB 2237

HB 2237 creates several acts and amends law pertaining to economic development to address rural housing, home loans, historic structures, appraisals of property in rural counties, urban development, and child day care services.

Kansas Housing Investor Tax Credit Act

The bill enacts the Kansas Housing Investor Tax Credit Act (HITCA).

Purpose

The bill states the purpose of HITCA is to bring housing investment dollars to communities lacking adequate housing and that development of housing will complement economic development of rural and urban areas.

The bill further states that the purpose of tax credits issued under HITCA is to facilitate investment in suitable housing that will support the growth of communities lacking housing by attracting new employees, residents, and families, and will support the development and expansion of businesses that are job- and wealth-creating enterprises.

Definitions

The bill defines the following terms:

- “Director” means the Director of Housing of the Kansas Development Finance Authority;
- “Cash investment” means money or money equivalent in consideration for qualified securities as approved by the Director;
- “Corporation” means the Kansas Housing Resources Corporation (KHRC);
- “Qualified housing project” means a project for the construction of single-family residential dwellings, including manufactured housing, modular housing, multi-family residential dwellings, or buildings that are eligible as a project under HITCA;
- “Qualified housing project” does not mean a project eligible for low-income housing tax credits under state or federal law; and
- “Qualified securities” means a cash investment through any form of financial assistance, including equity, debt, or bank loans that have been approved by the Director.

The bill also defines the terms “act,” “city,” “county,” “Kansas investor,” “manufactured home,” “modular home,” and “qualified investor.”

Program Established

The bill establishes the HITCA within the KHRC, to be administered by the Director. The Director is authorized to issue tax credits to qualified investors who make cash investments in qualified housing projects, and to project builders and developers. The Director determines and issues tax credits to the projects that are most likely to provide the greatest economic benefit to and best meet the needs of the community lacking adequate housing where the project is located. The Director is required to give priority to Kansas investors when issuing tax credits.

Application

To be designated a qualified housing project, the bill requires the project builder or developer to apply to the Director on a form approved by the Director that includes:

- The name and address of the project builder or developer, and the names of all principals or management;
- Information required by the Director if the project builder or developer is seeking tax credits for such builder’s or developer’s cash investment in the project;
- A project plan, including a description of the project, timeline, housing to be constructed, intended market, costs, anticipated pricing, and any other relevant information the Director may require;
- An economic impact statement for the project;
- A description of all project financing, the amount of any tax credits requested, and earliest year the tax credits may be claimed;
- The amount, timing, and projected use of the proceeds to be raised from qualified investors;
- The names, addresses, and taxpayer identification numbers (TINs) of all investors who may qualify for the tax credit, with the requirement that such list be updated when necessary; and
- Any additional information the Director may require.

Considerations

The Director will be required to consider whether a project:

- Has community support and governing body support of the city or county where the project is located;
- Will enhance the community's ability to attract new businesses or expand existing businesses by providing housing directly for employees or make housing significantly more available, or meet other significant housing needs to make the community attractive to new or expanding businesses or their employees;
- Has the financial support, management, planning, and market to be successful;
- Has had a housing needs analysis or survey provided either by the project builder or developer or by the project's county or city governing body that supports proceeding with the proposed project;
- Has met all other requirements of the HITCA; and
- Has met such other requirements of the Director as adopted in rules and regulations.

Project Agreement

The Director, upon approval of an application, will enter into an agreement with the project builder or developer prior to issuing any tax credits. The agreement sets forth the amount of tax credits to be issued, the requirements for a cash investment, and the requirements for issuance of tax credits.

If the project builder or developer is approved for tax credits, the agreement is required to set forth the amount of approved credits and the amount of credits remaining for issuance to other qualified investors.

The agreement requires binding commitments by the project builder or developer to the KHRC for:

- Reporting progress and financial data, including investor information;
 - The project builder or developer is obligated to notify the Director in a timely manner of any changes in project qualifications or investor eligibility to claim a tax credit;
- The right of access to the project and financial records of the project builder or developer;
- The provision of information to be included in the economic development incentive program information database, pursuant to continuing law;
- Repayment requirements upon loss of designation as described in HITCA; and

- Any additional terms and conditions required by the Director.

Investment Reporting Requirements

To be eligible to receive tax credits, a qualified investor must make a cash investment in the project in accordance with the project agreement. The project builder or developer will be required to promptly report to KHRC the following information:

- The name, address, and TIN of each qualified investor who has made a cash investment in qualified securities in the project and has received tax credits for this investment during any and all preceding years;
- The amounts of the cash investments by each qualified investor and a description of the qualified securities issued in consideration of such cash investments;
- The name, address, and TIN of each person the original qualified investor transferred tax credits to; and
- Any additional information as required by the Director.

Any violation of reporting requirements will be grounds for loss of the designation as a qualified housing project.

Reimbursement of Costs, Liability, Rules and Regulations

The bill allows for reimbursement of costs related to HITCA administration, application review, and the issuance of tax credits. The reimbursement will be through fees paid by the qualified project, qualified investors, or transferees of investors, according to a reasonable fee schedule adopted by the Director.

The bill will preclude the State of Kansas from being held liable for any damages to any qualified investor who makes an investment in a qualified housing project.

The bill will require the Director to provide information regarding the qualified housing projects and qualified investors to the Secretary of Revenue.

The bill requires the Director to adopt rules and regulations as necessary to implement HITCA, and authorizes the Secretary of Revenue to adopt rules and regulations as necessary to implement and administer HITCA.

Income Tax Credit

For tax year 2022 and all tax years thereafter, the bill authorizes a tax credit to be claimed against:

- Kansas income tax liability;
- The privilege tax liability imposed upon any national banking association, state bank, trust company, or savings and loan company pursuant to continuing law; or
- The premium tax liability imposed upon an insurance company imposed by continuing law.

The tax credit may be claimed by:

- A qualified investor for a cash investment in a qualified housing project that has been approved and issued a tax credit by the Director;
 - The tax credit could be claimed in its entirety in the taxable year the cash investment is made; and
- A project builder or developer of a qualified housing project that has been approved and issued a tax credit by the Director.

To claim such tax credit, the qualified investor, or builder or developer, will be required to provide all information or documentation as required by the Secretary of Revenue. If the credit amount exceeds the taxpayer's tax liability in a taxable year, the remaining credit may be carried forward in the succeeding taxable years until the total credit amount is used, except that no credit may be claimed four taxable years after issuance, and any remaining credit will be forfeited.

Tax Credit Maximums

The Director will be allowed to issue tax credits as follows:

- Up to \$35,000 per residential unit for qualified housing projects located in a county with a population of not more than 8,000;
- Up to \$32,000 per residential unit for qualified housing projects located in a county with a population of more than 8,000, but not more than 25,000; and
- Up to \$30,000 per residential unit for qualified housing projects located in a county with a population of more than 25,000, but not more than 75,000.

The bill limits a qualified housing project to a total of 40 such residential units per year for both single-family and multi-family dwellings.

The bill allows tax credits to be issued to a qualified investor in the amount of a cash investment of up to the total amounts previously specified. Project builders or developers will be able to apply each year for tax credits for additional units or phases of a project, and qualified investors may be issued tax credits for cash investments in multiple qualified housing projects.

Project builders or developers may also apply and be approved for multiple qualified housing projects in the same year.

The aggregate of tax credits that may be issued under HITCA could not exceed \$13.0 million each tax year. However, if the Director issues less than \$13.0 million in a tax year, the unissued balance may be carried forward one tax year and be issued in addition to the annual \$13.0 million. The Director will be required to allocate the following for qualified housing projects:

- Not less than \$2.5 million in tax credits in counties with a population of not more than 8,000;
- Not less than \$2.5 million in tax credits in counties with a population of more than 8,000, but not more than 25,000; and
- Up to \$8.0 million in tax credits in counties with a population of more than 25,000, but no more than 75,000.

Date of Cash Investment Acquisition

The bill specifies that a cash investment in a qualified housing project is considered made on the date the qualified security is acquired, as determined by the Director.

Transferable Tax Credit

The bill allows a qualified investor who receives a tax credit under HITCA but does not reasonably anticipate owing any such tax for the current taxable year to acquire a transferable tax credit, limited to the amount of the credit issued to the qualified investor. This tax credit may be transferred to any person and claimed as a credit against the recipient's Kansas tax liability in the same manner as the transferor, including carrying the tax credit forward. The tax credit may only be transferred one time and will have to be for the full amount of the tax credit, but may not include any interest.

The taxpayer claiming such credit will be responsible for providing documentation verifying the acquisition to the Secretary of Revenue. The transferor of the credit will be required to provide the Director and the Secretary of Revenue with the name, address, TIN, and other information as required of each transfer recipient.

Loss of Designation

If the Director determines a project is not in substantial compliance with HITCA or the project agreement, the Director must inform the project builder or developer in writing that the project will lose designation as a qualified housing project in 120 days from the date of mailing, unless the project is brought into compliance.

If the project is still non-compliant after the 120-day period, the Director must send a notice of loss of designation to the project builder or developer, the Secretary of Revenue, and

all known qualified investors. Loss of designation will preclude the issuance of any additional tax credits for the project, and the Director is prohibited from approving any subsequent application for the project to be a qualified housing project.

Upon loss of the designation as a qualified housing project, the project builder or developer will be required to repay any tax credits they have claimed. Qualified investors will not have their tax credits disallowed solely due to the project losing its designation as a qualified housing project.

Annual Report

The bill requires the Director to transmit a report annually to the Governor, the Senate Committee on Commerce, and the House Committee on Commerce, Labor and Economic Development. The bill requires the report to be based upon information received from each qualified housing project issued tax credits during the preceding tax year and to describe the following:

- How the purpose of the HITCA has been carried out;
- The total cash investments made for qualified securities in qualified housing projects during the preceding tax year and cumulatively;
- An estimate of jobs facilitated by housing developed under HITCA;
- An estimate of the multiplier effect on the Kansas economy of the investments;
- The amount of tax credits claimed in the previous fiscal year;
- A general description of the investors that benefited from the tax credits; and
- Any aggregate job creation or capital investment in Kansas resulting from the tax credits for the preceding five years.

The bill requires the report to be transmitted on or before January 31, 2023, and on or before January 31 of each year thereafter.

Director Review

The bill requires the Director to annually review activities under HITCA to ensure tax credits issued pursuant to HITCA are done in compliance with HITCA and adopted rules and regulations.

Kansas Affordable Housing Tax Credit Act

The bill establishes the Kansas Affordable Housing Tax Credit Act (AHTCA).

Definitions

The bill defines the following terms:

- “Credit” means the affordable housing tax credit allowed pursuant to AHTCA;
- “Pass-through” entity” means any limited liability company, limited partnership, or limited liability partnership;
- “Qualified allocation plan” means the qualified allocation plan adopted by KHRC pursuant to Section 42(m) of the federal Internal Revenue Code (IRC);
- “Qualified development” means a qualified low-income housing project as defined in Section 42 of the federal IRC that is located in Kansas and determined by KHRC to be eligible for a federal tax credit; and
- “Qualified taxpayer” means an individual, person, firm, corporation, or other entity owning an interest in a qualified development and subject to applicable Kansas taxes.

The bill also defines the terms “act,” “allocation certificate,” “credit period,” “director,” “federal tax credit,” “KHRC,” and “pass-through certification.”

Tax Credit Authorized

For tax year 2023 and all tax years thereafter, the bill authorizes a tax credit to be claimed against:

- Kansas income tax liability;
- The privilege tax liability imposed upon any national banking association, state bank, trust company, or savings and loan company pursuant to continuing law; or
- The premium tax liability imposed upon an insurance company pursuant to continuing law.

The tax credit will be for each qualified development for each year of the credit period in an amount equal to the federal tax credit allocated or allowed by the KHRC to such qualified development. The bill does not allow a reduction in the credit allowable in the first year of the credit period due to the calculation in Section 42(f)(2) of the IRC.

The KHRC will be required to issue an allocation certificate to an owner of a qualified development receiving a credit under the AHTCA, to be issued simultaneously with issuance of federal form 8609, related to federal tax credits.

The bill requires all allocations to be made pursuant to the qualified allocation plan.

Pass-through Entities

The bill allows pass-through entities that are owners of a qualified development and receiving a tax credit under AHTCA to allocate the credit among its partners or members in any manner agreed upon, regardless of whether:

- Any such person is allocated or allowed any portion of any federal tax credit with respect to the qualified project;
- Allocation of the credit under the terms of the agreement has substantial economic effect within the meaning of Section 704(b) of the federal Income Tax Code; or
- Any such person is deemed a partner for federal income tax purposes, if the partner or member would be considered a partner or member under applicable state law governing such entity and has been admitted as a partner or member on or prior to the date for filing the qualified taxpayer's tax return, including any amendments to such tax return, with respect to the year of the credit.

The bill allows the tax credit to be allocated through any number of pass-through tiers and entities, none of which would be considered a transfer.

The bill requires any pass-through entity allocating a credit to its partners or members to attach a pass-through certification to its annual tax return. Each partner or member is allowed to claim or further allocate such amount pursuant to any restrictions in the AHTCA.

Each qualified development owner and taxpayer receiving a tax credit or portion of such credit will be required to file with their state income, privilege, or premium tax return a copy of the allocation certificate issued by KHRC and a copy of any pass-through certification as prescribed by the Director of Taxation.

Restrictive Covenants

To receive a tax credit under AHTCA, the bill requires the qualified development to be the subject of a restrictive covenant requiring the development to:

- Be maintained and operated as a qualified development; and
- Be in accordance with accessibility and adaptability requirements of the federal tax credits and Title VIII of the federal Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.

The covenant is required for a period of 15 years, or such longer period as may be agreed upon by KHRC and the qualified development owners.

Credits Carried Forward

The bill allows any credit amount in excess of the taxpayer's tax liability to be carried forward as a credit against their subsequent year tax liability for up to 11 tax years. The tax credit is applied first to the earliest years possible. Any unused tax credit amount will not be refunded to the taxpayer.

Eligibility Determination

The bill requires the KHRC to determine eligibility for a tax credit, and to allocate credits in accordance with Section 42 of the federal IRC. The bill requires any combination of federal tax credits and AHTCA tax credits to be the least amount necessary to ensure the qualified development's financial feasibility.

Credits Subject to Recapture

The bill requires the recapture of a portion of any credits authorized under AHTCA if a portion of any federal tax credits taken on a qualified development is recaptured or otherwise disallowed. The percentage of AHTCA credits to be recaptured will be equal to the percentage of federal credits subject to recapture or otherwise disallowed.

The recapture or disallowance of credits will increase the tax liability of the qualified taxpayer claiming the credits for the taxable year the recapture or disallowance event is identified.

Rules and Regulations

The bill authorizes the KHRC and the Director of Taxation, in consultation with each other, to promulgate rules and regulations necessary to administer AHTCA.

Annual Report

The bill requires the KHRC, in consultation with the Director of Taxation, to monitor and oversee compliance with AHTCA and to report any noncompliance to the Director of Taxation.

KHRC is required to submit a written report to the Legislature on or before December 31 of each year including:

- The number of qualified developments allocated credits during the allocation year and the total number of units supported by each development;
- A description of each qualified development, including the geographic location, household type, any specific demographic and income information about residents served, and the rents or set-asides authorized for each development; and

- Housing market and demographic information that demonstrates how the qualified developments are addressing the need for affordable housing in the communities, including any remaining disparities in the community's affordable housing.

Historic Kansas Act

The bill creates the Historic Kansas Act, which modifies and establishes certain tax credits for older commercial structures in the state.

Older Structures Tax Credit

The bill establishes, for all taxable years starting after December 31, 2021, a tax credit against a tax liability imposed upon a taxpayer by the Kansas Income Tax Act, the financial institutions privilege tax, or the premium tax, of 10 percent of costs and expenses incurred for the restoration and preservation of a commercial structure at least 50 years old that does not receive the continuing Historic Structures Tax Credit (KSA 79-32,211). This tax credit for costs and expenses will be limited to \$10.0 million annually. An additional 10 percent tax credit of costs and expenses will be allowed for the installation of fire suppression materials or equipment by a taxpayer.

Required costs and expenses. The bill requires the total amount of costs and expenses to equal at least \$25,000, but not exceed \$500,000.

Allowable carry over. The bill provides that if the tax credit exceeds the taxpayer's income, privilege, or premium tax liability for the year in which the rehabilitation was completed, the excess amount may be carried over for deduction in the next year or years until the total amount of the credit has been deducted from tax liability, except no credit may be carried forward after the tenth taxable year succeeding the taxable year in which the rehabilitation plan was placed in service.

Financial institutions. The bill requires financial institutions subject to the privilege tax (e.g., banks, savings and loan associations, and savings banks) to pay taxes on 50 percent of the interest earned on loans to taxpayers used for costs and expenses for the restoration and preservation of a commercial structure at least 50 years old or for the installation of fire suppression materials or equipment.

Corporations. The bill details, for purposes of a corporation having an election in effect under subchapter S of the federal IRC, the entities that may claim the tax credits.

Transfer of tax credits. The bill allows for the transfer of tax credits. The taxpayer acquiring credits (assignee) will be able to use the amount of the acquired credits to offset up to 100 percent of the assignee's income, privilege, or premium tax liability for either the taxable year in which the costs and expenses were made. The bill allows unused credit amounts claimed by the assignee to be carried forward for up to five years, with all credits being claimed within ten years following the tax year in which the costs and expenses were made. The bill requires the assignee and assignor to enter into a written agreement, including terms and conditions of the agreement.

One type of credit for one structure. The bill prohibits a person claiming a tax credit under the provisions of the bill from claiming a tax credit for the same structure under the continuing Historic Structures Tax Credit.

Rules and regulations – Department of Revenue. The bill authorizes the Director of Taxation to adopt rules and regulations necessary for the efficient and effective administration of the provisions of this section of the bill.

Historic Structures Tax Credit – Amendments

The bill amends the Historic Preservation Tax Credit by adding two tax credits, pursuant to a qualified rehabilitation plan by a qualified taxpayer if the total amount of expenditures equals \$5,000 or more. The credits will equal:

- 30 percent of qualified expenditures incurred in the restoration and preservation of a qualified historic structure located in a city with a population between 9,500 and 50,000; and
- 40 percent of qualified expenditures incurred in the restoration and preservation of a qualified historic structure located in a city with a population of less than 9,500.

Under continuing law, a historic structures tax credit is permitted for 25 percent of qualified expenditures for restoration and preservation if the total amount of expenditures equals \$5,000 or more.

Cap on tax credits. The bill eliminates the cap on allowable tax credits of \$3.75 million.

Financial institutions. The bill requires the financial institutions specified in the bill to pay taxes on 50 percent of the interest earned on loans to qualified taxpayers used for qualified expenditures for the restoration and preservation of a qualified historic structure.

Rules and regulations – State Historical Society. The bill authorizes the Executive Director of the Kansas State Historical Society to adopt rules and regulations necessary for the efficient and effective administration of the provisions of this section of the bill.

Kansas Rural Home Loan Guarantee Act

The bill enacts the Kansas Rural Home Loan Guarantee Act (Act). The provisions of the Act will be administered by the KHRC, and loan transactions eligible for a guarantee will include the construction or renovation of a single-family home in a rural county. The total amount of loans guaranteed under the Act will be limited to \$2.0 million. The loan amount to be guaranteed cannot exceed \$100,000 per unit.

Definitions

The bill establishes definitions for the following terms under the Act:

- “Financial institution” means any bank, trust company, savings bank, credit union, savings and loan association, or any other lending institution that is approved by the KHRC;
- “Loan” means a transaction with a financial institution to provide financing for the construction or renovation of a single-family home in a rural county; and
- “Rural county” means any county in Kansas with a population of less than 10,000, as certified to the Secretary of State on July 1 of the preceding year.

Loan Guarantees Against Risk of Default for Rural Housing Loans; State Housing Trust Fund; Administration of the Act

The bill authorizes the KHRC to enter into agreements with financial institutions to provide loan guarantees against risk of default for rural housing loans, as provided in this act. The bill includes a provision specific to the filing of a claim related to a payment for loan guarantee under the State Housing Trust Fund (Fund).

In addition, the bill requires eligible financial institutions to apply all usual lending standards to determine the creditworthiness of eligible borrowers. The financial institution originating the loan will be responsible for monitoring the loan and, in the case of default, working with the borrower to obtain collateral. The bill specifies the financial institution will be in the first position, and the State in the second position, to recover on the loan.

The KHRC will be required to administer provisions and the Act and to adopt rules and regulations for the Act’s implementation, including the development of an application process. The loan guarantee agreement for this program will be required to include reporting requirements and financial standards that are appropriate for the type of loan for the borrower. The KHRC will be permitted to impose fees and charges, as necessary, to recover administrative costs.

Loan Agreements, Backing by the Fund; Appraised Value

The bill provides that each agreement entered into by the KHRC to guarantee against default on a loan transaction must be backed by the Fund and must receive prior approval by the KHRC or its designee.

The bill specifies eligible costs for the loan transactions subject to the Act, including:

- Land and building purchases;
- Renovation and new construction costs;
- Equipment and installation costs;
- Pre-development costs that may be capitalized;
- Financing;
- Capitalized interest during construction; and
- Consultant fees that do not include staff costs.

The bill provides that the portion of the loan guaranteed by the KHRC must be for the amount of the loan that exceeds 80 percent of the appraised value of the home. The bill further provides that no loan amount above 125 percent of the appraised value of the home may be guaranteed by the KHRC.

The bill specifies that the total amount of loans guaranteed by the KHRC may not exceed \$2.0 million and limits the loan amount guaranteed per unit to \$100,000. The bill includes provisions relating to the fees and charges received by the KHRC under the Act. Each receipt will be deposited to the credit of the Fund.

Reporting to the Legislature

The bill also requires the KHRC, beginning with the 2023 Legislative Session, to annually prepare a report of activity related to the Act that will include new loans, loan repayment status, and other relevant information regarding these activities. The bill requires the report to be submitted at the beginning of each regular session to the House Committee on Appropriations or the appropriate budget committee and the Senate Committee on Ways and Means or the appropriate subcommittee.

Residential Real Estate Appraisals in Rural Counties

The bill authorizes appraisers to exclude the sales comparison approach in rural county mortgage financing appraisals if the property is unique in style or square footage, or both, and if there exists a lack of available comparable sales within 30 miles of the property.

The bill requires the appraiser, in the appraisal report, to provide an explanation of the reasons for exclusion of the sales comparison approach and requires the appraiser to document the appraiser's efforts to obtain comparable sales or market data.

The bill prohibits a financial institution from declining to proceed with a mortgage finance transaction due to exclusion of the sales comparison approach, unless the approach is required for such mortgage finance transaction loan to be guaranteed or sold in the secondary market.

The bill defines the following terms:

- “Financial institution” means a bank, national banking association, savings and loan association, savings bank, trust company, credit union, finance company, or other lending institution; and
- “Rural county” means any county in Kansas with a population of less than 10,000, using census data certified to the Secretary of State pursuant to KSA 11-201.

Kansas Rural Housing Incentive District Act Amendments

The bill amends the Kansas Rural Housing Incentive District Act (RHID Act) to expand the use of bond proceeds and other funds under the Act to include residential renovation of the

second or higher floors of buildings more than 25 years old within economically distressed urban areas, regardless of the population of the city or county containing the economically distressed urban area.

“Economically distressed urban areas” under the RHID Act will be as defined and designated by the U.S. Department of Housing and Urban Development.

Under continuing law, the RHID Act authorizes cities and counties under certain population thresholds to issue special obligation bonds to finance infrastructure and renovation costs for housing projects. The bill adds the City of Topeka, regardless of population, to the definition of “city” in the RHID Act.

Child Day Care Services Tax Credit

The bill allows any income or privilege taxpayer to claim the child day care services tax credit and permits taxpayers to claim 50 percent of expenditures paid to an organization providing child care to the taxpayer’s employees beginning in tax year 2021. Current law limits the credit to corporation income taxpayers and does not permit the credit for payments made to organizations.