

SESSION OF 2021

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2045**

As Amended by House Committee on  
Commerce, Labor and Economic Development

**Brief\***

HB 2045 would revise the Kansas Angel Investor Tax Credit Act (Act) by extending the sunset on the program from tax year 2021 to tax year 2026, amending applicable definitions, removing certain program restrictions, and increasing program tax credit amounts and annual program limits.

***Program Sunset***

The bill would extend the sunset on the angel investor tax credit from tax year 2021 through tax year 2026.

***Definitions***

The bill would amend the definition of “qualified securities” with respect to the use of debt instruments as qualifying forms of investment. Debt instruments permitted to be used as a form of investment would include any debt that:

- Is subordinate to the creditors of the business receiving the investment,
- Requires no payment by such business, and
- Will convert to some form of equity before the business receives any additional funds.

---

\*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>

### ***Tax Credit Limits***

The bill would make the following changes to limits on tax credit dollar amounts:

- Increase single-year tax credit amounts
  - From \$50,000 to \$100,000 for a single Kansas business, and
  - From \$250,000 to \$350,000 for a single qualified investor;
- Change the maximum value of the tax credit from equal to 50 percent, to up to 50 percent of the qualifying investment; and
- Set annual tax credit limits at \$6.0 million in tax years 2021 and 2022, with a \$0.5 million increase each tax year after that through 2026.
  - Any unused tax credits for a given year would be carried over for use in future tax years through 2026.

### ***Restrictions on Investments and Investors***

The bill would remove or modify certain restrictions on investments and investors:

- Venture capital companies would be permitted to receive tax credits;
- Investments in Kansas Venture Capital, Inc., would be permitted;
- In order to receive a transferable credit, the bill would require an investor to have no current tax liability at the time of investment, rather than no tax liability for the preceding three years;

- The recipient of a transferable credit would not need to be an accredited investor as defined by federal regulation (17 CFR 230.501(a)); and
- Provided that an investment was made lawfully, investors would not lose any tax credits if the business in which the investment was made were to lose its designation as a qualified business.

### ***Clawback Provision***

The bill would modify the clawback provision in the Act. Currently, any business receiving financial assistance under the Act is required to make repayment to the Kansas Department of Commerce if the business ceases to be a qualified business or moves its operations outside of Kansas within ten years. The bill would require businesses to meet these qualifications for a minimum of:

- Ten years for bioscience businesses, and
- Five years for any other business

### **Background**

The bill was introduced by Representative Owens.

### ***House Committee on Commerce, Labor and Economic Development***

In the House Committee hearing on January 13, 2020, Representative Owens provided **proponent** testimony, as did representatives of Artio Medical, Inc.; BioNexus KC; Enterprise Center in Johnson County; the Greater Kansas City Chamber of Commerce; the Kansas Department of Commerce; KC Tech Council; the Overland Park Chamber of Commerce; and the Wichita Regional Chamber of Commerce. Written-only **proponent** testimony was provided

by representatives of Fennik Life Sciences and Women's Capital Connection. Proponents of the bill stated the bill's clarifications and removal of restrictions would increase the effectiveness of the program.

A representative of the Kansas Policy Institute testified as an **opponent** to the bill, voicing concerns over the impossibility of determining whether the program has been successful, as discussed in a 2020 Legislative Post Audit report on the Angel Investor Tax Credit Program.

No neutral testimony was provided.

A representative of BioKansas who did not testify at the hearing appeared as a **proponent** of the bill prior to the discussion and action on the bill on January 28, 2020.

The House Committee adopted amendments that would make technical changes and clarify that investors would not lose tax credits if the investment was made lawfully, even if the business invested in were to lose its designation as a qualified business.

### **Fiscal Information**

According to the fiscal note prepared by the Division of the Budget, the Kansas Department of Revenue (KDOR) estimated that, if the bill is enacted, State General Fund (SGF) revenue would decrease by \$1.9 million in FY 2022, by \$6.0 million in FY 2023, and by increasing increments of \$0.5 million each year through FY 2026, to \$8.0 million. KDOR noted program utilization has not reached its cap in previous tax years, but the removal of restrictions by the bill would lead to full utilization of the credits in future years. In order to implement the bill and modify the automated tax system, \$6,445 would be required from the SGF in FY 2022, although additional expenditures might be necessary should KDOR require contracting of outside programming resources. The fiscal note states no additional staff would be necessary for

either KDOR or the Department of Commerce to implement and administer the changes to the program. Any fiscal effect associated with the enactment of the bill is not reflected in *The FY 2022 Governor's Budget Report*.

Angel investors; tax credits; economic development