

**CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE BILL NO. 2237**

As Agreed to April 1, 2022

**Brief\***

HB 2237 would create several acts and amend 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 would enact the Kansas Housing Investor Tax Credit Act (HITCA).

***Purpose***

The bill would state 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 would further state 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 would define:

- “Director” to mean the Director of Housing of the Kansas Development Finance Authority;
- “Cash investment” to mean money or money equivalent in consideration for qualified securities as approved by the Director ;
- “Corporation” to mean the Kansas Housing Resources Corporation (KHRC);

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- “Qualified housing project” to mean 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” would not mean a project eligible for low-income housing tax credits under state or federal law; and
- “Qualified securities” to mean a cash investment through any form of financial assistance, including equity, debt, or bank loans that have been approved by the Director.

The bill would also define “act,” “city,” “county,” “Kansas investor,” “manufactured home,” “modular home,” and “qualified investor.”

### *Program Established*

The bill would establish the HITCA within the KHRC, to be administered by the Director. The Director would be authorized to issue tax credits to qualified investors who make cash investments in qualified housing projects, and to project builders and developers. The Director would determine and issue 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 would be required to give priority to Kansas investors when issuing tax credits.

### *Application*

To be designated a qualified housing project, the bill would require 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 would 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 by either 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, would enter into an agreement with the project builder or developer prior to issuing any tax credits. The agreement would set 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 would be required to set forth the amount of approved credits and the amount of credits remaining for issuance to other qualified investors.

The agreement would require 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 would be 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 current 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 would be required to make a cash investment in the project in accordance with the project agreement. The project builder or developer would be required to promptly report to KHRC the following information:

- The name, address, and taxpayer identification number (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 would be grounds for loss of the designation as a qualified housing project.

#### *Reimbursement of Costs, Liability, Rules and Regulations*

The bill would allow for reimbursement of costs related to HITCA administration, application review, and the issuance of tax credits. The reimbursement would 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 would 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 would require the Director to provide information regarding the qualified housing projects and qualified investors to the Secretary of Revenue.

The bill would also require the Director to adopt rules and regulations as necessary to implement HITCA, and authorize 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 would authorize 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 could 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, would 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 could be carried forward in the succeeding taxable years until the total credit amount is used, except that no credit could be claimed four taxable years after issuance, and any remaining credit would be forfeited.

#### *Tax Credit Maximums*

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

The bill would allow 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 would be able to apply each year for tax credits for additional units or phases of a project, and qualified investors could be issued tax credits for cash investments in multiple qualified housing projects. Project builders or developers could also apply and be approved for multiple qualified housing projects in the same year.

The aggregate of tax credits that could be issued under HITCA could not exceed \$13.0 million each tax year, unless the Director issues less than \$13.0 million in a tax year. Under such circumstances, the unissued balance could be carried forward one tax year and be issued

in addition to the annual \$13.0 million. The Director would 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
- \$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 would specify 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 would allow 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 could 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 could only be transferred one time, and would have to be for the full amount of the tax credit, but could not include any interest.

The taxpayer claiming such credit would be responsible for providing documentation verifying the acquisition to the Secretary of Revenue. The transferor of the credit would 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 would determine 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 would preclude the issuance of any additional tax credits for the project, and the Director could not approve 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 would be required to repay any tax credits they have claimed. Qualified investors would not

have their tax credits disallowed solely due to the project losing its designation as a qualified housing project.

### *Annual Report*

The bill would require 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 would require the report to be based upon information received from each qualified housing project issued tax credits during the preceding tax year and would be required 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 would require 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 would require 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 would establish the Kansas Affordable Housing Tax Credit Act (AHTCA).

### *Definitions*

The bill would define:

- “Credit” to mean the affordable housing tax credit allowed pursuant to AHTCA;
- “Pass-through” entity” to mean any limited liability company, limited partnership, or limited liability partnership;

- “Qualified allocation plan” to mean the qualified allocation plan adopted by KHRC pursuant to Section 42(m) of the federal Internal Revenue Code (IRC);
- “Qualified development” to mean 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” to mean an individual, person, firm, corporation, or other entity owning an interest in a qualified development and subject to applicable Kansas taxes.

The bill would also define “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 would authorize 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 would 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 would 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 would be required to issue an allocation certificate to an owner of a qualified development receiving a credit under AHTCA, to be issued simultaneously with issuance of federal form 8609, related to federal tax credits.

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

### *Pass-through Entities*

The bill would allow 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 would allow 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 would require 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 would be 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 would 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 would require the qualified development to be the subject of a restrictive covenant requiring the development:

- 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 would be 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 would allow 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 would be applied first to the earliest years possible. Any unused tax credit amount would not be refunded to the taxpayer.

### *Eligibility Determination*

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

### *Credits Subject to Recapture*

The bill would require 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 would be equal to the percentage of federal credits subject to recapture or otherwise disallowed. The recapture or disallowance of credits would 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 would authorize 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 would require 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 would be 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 would create the Historic Kansas Act, which would modify and establish certain tax credits for older commercial structures in the state.

### *Older Structures Tax Credit*

The bill would establish for all taxable years 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 would be limited to \$10.0 million annually. An additional 10 percent tax credit of costs and expenses would be allowed for the installation of fire suppression materials or equipment by a taxpayer.

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

**Allowable carry over.** The bill would provide 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 could 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 could be carried forward after the 10th taxable year succeeding the taxable year in which the rehabilitation plan was placed in service.

**Financial institutions.** The bill would require 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 would detail, for purposes of a corporation having an election in effect under subchapter S of the federal IRC, the entities that could claim the tax credits.

**Transfer of tax credits.** The bill would allow for the transfer of tax credits. The taxpayer acquiring credits (assignee) would 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 would allow 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 would require the assignee and assignor to enter into a written agreement, including terms and conditions of the agreement.

**Prohibition.** The bill would prohibit 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 would authorize 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 would amend 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 would 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 would eliminate the cap on allowable tax credits of \$3.75 million.

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

### *Definitions*

The bill would establish definitions for these terms under the Act:

- “Financial institution” would mean any bank, trust company, savings bank, credit union, savings and loan association, or any other lending institution that is approved by the KHRC;
- “Loan” would mean 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” would mean 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 would authorize 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 would include 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 would require eligible financial institutions to apply all usual lending standards to determine the creditworthiness of eligible borrowers. The financial institution originating the loan would be responsible for monitoring the loan, and in the case of default, working with the borrower to obtain collateral. The bill would specify the financial institution would be in the first position, and the State in the second position, to recover on the loan.

The KHRC would 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 would be required to include reporting requirements and financial standards that are appropriate for the type of loan for the borrower. The KHRC would be permitted to impose fees and charges, as necessary, to recover administrative costs.

*Loan Agreements, Backing by the Fund; Appraised Value*

The bill would provide 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 would specify 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 would provide 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 would further provide that no loan amount above 125 percent of the appraised value of the home could be guaranteed by the KHRC.

The bill would specify that the total amount of loans guaranteed by the KHRC could not exceed \$2.0 million and limit the loan amount guaranteed per unit. The bill would include

provisions relating to the fees and charges received by the KHRC under the Act. Each receipt would be deposited to the credit of the Fund.

### *Reporting to the Legislature*

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

The bill would prohibit 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 would define the following terms:

- “Financial institution” to mean a bank, national banking association, savings and loan association, savings bank, trust company, credit union, finance company, or other lending institution; and
- “Rural county” to mean 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 would amend 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 would be as defined and designated by the U.S. Department of Housing and Urban Development.

Under current 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 would add the City of Topeka, regardless of population, to the definition of “city” in the RHID Act.

### ***Child Day Care Services Tax Credit***

The bill would allow any income or privilege taxpayer to claim the child day care services tax credit and would permit 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.

### **Conference Committee Action**

The Conference Committee agreed to the Senate amendments to HB 2237 and further agreed to:

- Remove the portion of HB 2237 regarding Rural Opportunity Zones (ROZ) and retain only the portion of the bill regarding child day care services tax credit;
- Add the contents of Senate Sub. for HB 2212 regarding the Kansas Housing Investor Tax Credit Act and the Kansas Affordable Housing Tax Credit Act, with changes to the HITCA, which include a decrease in the cap from \$18.0 million to \$13.0 million on the aggregate of tax credits that could be issued under the HITCA, and an addition of a tax credit, 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 Conference Committee authorized up to \$8.0 million of the \$13.0 million aggregate for this credit);
- Add the contents of HB 2569 regarding the Historic Kansas Act, with a \$10.0 million cap annually on the 10.0 tax credit for older structures’ costs and expenses;
- Add the contents of HB 2268 regarding the Kansas Rural Home Loan Guarantee Act, with a cap on the amount to be guaranteed of \$100,000 per unit;
- Add the contents of HB 2236 regarding residential real estate appraisals in rural counties; and
- Add the contents of HB 2701 regarding the Kansas Rural Housing Incentive District Act amendments, with a provision of SB 376 including the “City of Topeka” in the definition of a “city.”

### **Background**

HB 2237, as amended by the Senate Committee of the Whole, contained provisions regarding the Rural Opportunity Zone Loan Repayment Program and the Child Day Care Services Assistance Tax Credit. The Conference Committee removed those provisions and

added the provisions of Senate Sub. for HB 2212, HB 2268, HB 2236, HB 2569, HB 2701, and SB 376. The background for these bills follows, along with an estimate of the fiscal impact this version of the bill could have on state revenues.

### ***Senate Sub. for HB 2212 (Housing Tax Credits)***

The Senate Committee on Federal and State Affairs amended SB 375 (pertaining to HITCA) and SB 369 (pertaining to AHTCA). The Senate Committee then removed the contents of HB 2212; inserted the contents of SB 375, as amended, and SB 369, as amended; and recommended a substitute bill be passed.

HB 2212, as introduced in the 2021 Session, concerned amendments to the Liquor Control Act that would eliminate residency requirements for various liquor licenses. These provisions were enacted in 2021 HB 2137.

Background information for HB 2212 is contained in the supplemental note for that version of the bill.

### ***SB 375 (Kansas Housing Investor Credit Act)***

SB 375 was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Olson.

**Senate Committee on Federal and State Affairs.** In the Senate Committee hearing, **proponent** testimony was provided by Senator Olson and representatives of Building Kansas, LLC; Heartland Housing Partners; Kansas Association of Realtors; Kansas Bankers Association; Kansas Corn Growers Association; Kansas Farm Bureau; Kansas Manufactured Housing Association; the League of Kansas Municipalities; Northwest Kansas Economic Innovation Center; and Sunflower Electric Power Corporation.

The proponents generally indicated there is a need for new housing in the state, and the bill would incentivize developers to create new housing opportunities.

Written-only proponent testimony was provided by representatives of Building Kansas, LLC; Community Housing Development Corporation of Central Kansas; the Greater Kansas City Chamber of Commerce; Osborne Industries, Inc.; Solomon State Bank; and Thrive Allen County. No other testimony was provided.

The Senate Committee amended the bill to:

- Replace references to the Secretary of Commerce with the Director of Housing of the Kansas Development Finance Authority [*Note: The Conference Committee retained the amendment.*]
- Replace references to the Department of Commerce with the KHRC [*Note: The Conference Committee retained the amendment.*];
- Replace references to tax credits being awarded with tax credits being issued [*Note: The Conference Committee retained the amendment.*];



- Add tiers that award greater tax credits to qualified housing projects in less populated counties [*Note*: The Conference Committee retained the amendment.];
- Require at least \$4.0 million of the annual \$18.0 million aggregate amount of tax credits issued annually go to qualified housing projects in less populated counties [*Note*: The Conference Committee retained the amendment.]; and
- Make several technical changes [*Note*: The Conference Committee retained the amendment.].

The Senate Committee then inserted the contents of SB 375, as amended, into SB 369.

*SB 369 (Kansas Affordable Housing Tax Credit Act)*

SB 369 was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Olson.

**Senate Committee on Federal and State Affairs.** In the Senate Committee hearing, **proponent** testimony was provided by representatives of Advantage Capital; Kansas Corn Growers Association; Kansas Farm Bureau; Kansas Housing Association; Northwest Kansas Economic Innovation Center; Sisters of Charity of Leavenworth; and Sunflower Electric Power Corporation.

The proponents generally indicated that providing low-income housing tax credits is needed to incentivize the creation of new affordable housing in the state. The proponents further indicated the bill is needed to stay competitive in the region, as all states neighboring Kansas have state low-income housing tax credit programs.

Written-only proponent testimony was provided by representatives of the Greater Kansas City Chamber of Commerce, Health Forward Foundation, Kansas Association of Realtors, Kansas Bankers Association, Kansas Building Industry Association, Kansas Manufactured Housing Association, and the Overland Park Chamber of Commerce,

The Executive Director of the KHRC provided neutral testimony, stating that a lack of affordable, quality housing has been a problem in Kansas for many years; that this program is a public-private partnership; and that the KHRC generally receives \$3 in requests for credit for every \$1 they have available to award. No other testimony was provided.

The Senate Committee amended the bill to insert the contents of SB 375, as amended, and to make technical amendments. [*Note*: The Conference Committee retained the amendments.]

The Senate Committee then removed the contents of HB 2212, inserted the contents of SB 369, as amended, and recommended a substitute bill be passed.

## ***HB 2569 (Historic Kansas Act)***

The bill was introduced by Representative Proctor and 14 others and referred to the House Committee on Taxation. The bill was rereferred to the House Committee on Financial Institutions and Rural Development on February 8, 2022.

### *House Committee on Financial Institutions and Rural Development*

In the House Committee hearing, Representative Proctor, a private citizen from Leavenworth, and representatives of Davis Preservation, Friends of Historic Preservation, the Kansas Bankers Association, League of Kansas Municipalities, the Office of Rural Prosperity within the Department of Commerce, and the Territory Ballroom (Council Grove) provided proponent testimony. The proponents stated the current Historic Preservation Tax Credit is too burdensome and only allows for projects listed on the Register of Kansas Historic Places or located in and contributing to a district listed on the Register of Kansas Historic Places. The proponents also stated this new tax credit would allow downtown buildings to be restored and re-purposed instead of sitting vacant or possibly demolished.

Written-only proponent testimony was provided by two private citizens from Leavenworth and Newton, a Leavenworth City Commissioner, and representatives of Downtown Wichita, Emporia Main Street, Flint Hills Holding Group, Frontier Property Management, and Independence Main Street. No other testimony was provided.

The House Committee amended the bill to:

- Replace “qualified expenditures” references in a new section pertaining to the Older Structures Tax Credit with “costs and expenses” [*Note: The Conference Committee retained the amendment.*];
- Replace a “qualified structure” reference to “commercial structure at least 50 years old that does not receive” a Historic Structures Tax Credit [*Note: The Conference Committee retained the amendment.*];
- Replace a “qualified structure” reference with “commercial structure at least 50 years old” [*Note: The Conference Committee retained the amendment.*];
- Increase the total amount of costs and expenses requirement from at least equal to \$2,000 to at least equal to \$25,000 [*Note: The Conference Committee retained the amendment.*];
- Decrease the cap on the total amount of costs and expenses requirement from \$1.0 million to \$500,000 [*Note: The Conference Committee retained the amendment.*];
- Replace a reference to when a rehabilitation is “done” with when it is “completed” [*Note: The Conference Committee retained the amendment.*];
- Remove a reference to credit unions in financial institutions subject to the bill [*Note: The Conference Committee retained the amendment.*];

- Increase the percentage, from 25 percent to 50 percent, of the amount of the interest earned on loans to taxpayers that financial institutions would pay taxes on [*Note*: The Conference Committee retained the amendment.];
- Delete the definition section in a new section pertaining to the Older Structures Tax Credit [*Note*: The Conference Committee retained the amendment.];
- Authorize the Director of Taxation, Department of Revenue, to adopt rules and regulations [*Note*: The Conference Committee retained the amendment.];
- Add “pursuant to a qualified rehabilitation plan by a qualified taxpayer if the total amount of such expenditures equal \$5,000 or more” to the requirements of those claiming the Historic Structures Tax Credit [*Note*: The Conference Committee retained the amendment.];
- Require financial institutions 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 [*Note*: The Conference Committee retained the amendment.];
- Authorize the Executive Director of the Kansas State Historical Society to adopt rules and regulations [*Note*: The Conference Committee retained the amendment.]; and
- Make technical amendments [*Note*: The Conference Committee retained the amendment.].

### ***HB 2268 (Kansas Rural Home Loan Guarantee Act)***

The bill was introduced by the House Committee on Financial Institutions and Rural Development at the request of Representative Kelly, who stated the request was made on behalf of Representative Waymaster.

#### *House Committee on Financial Institutions and Rural Development*

In the House Committee hearing on February 17, 2021, representatives of the Heartland Credit Union Association (HCUA) and the Kansas Bankers Association (KBA) provided **proponent** testimony. Written-only proponent testimony was submitted by Representative Waymaster and a representative of the Kansas Association of Realtors. Proponents generally stated the bill would address one of the rural housing challenges. An example of this challenge was provided, noting for individuals either building or extensively renovating an existing single-family home, the costs far exceed the final appraisal, making it nearly impossible to obtain a residential mortgage. The HCUA and KBA representatives indicated the loan guarantee program would provide a helpful tool and resource for some borrowers. No other testimony was provided.

On February 7, 2022, the House Committee received an update on the bill and presentations were provided on rural housing topics. Presenters included representatives from the KBA, Kansas Corn Growers Association and Kansas Farm Bureau, KHRC, the Kansas

State Treasurer, Northwest Kansas Economic Innovation Center (EICI), and Sunflower Electric Power Corporation.

The representative from the Kansas Corn Growers Association and Kansas Farm Bureau presented an amendment to the bill during the presentation. The amendment would:

- Replace the State Treasurer with the KHRC as the administrator of the Act [*Note: The Conference Committee retained the amendment.*];
- Modify the guarantee amount specified for a certain portion of loans with moneys from the State Housing Trust Fund [*Note: The Conference Committee retained the amendment.*];
- Establish a limit on the total amount of such loan guarantees at \$2.0 million (the bill, as introduced, would have required the guarantees and Act administration to be funded subject to Appropriations and moneys receipted to a new fund) [*Note: The Conference Committee retained the amendment.*]; and
- Require fees and charges imposed by KHRC and other moneys received by KHRC to be remitted and credited to the Fund. [*Note: The Conference Committee retained the amendment.*]

On February 16, 2022, the House Committee amended the bill to incorporate the above-described changes proposed by the representative from the Kansas Corn Growers Association and Kansas Farm Bureau. [*Note: The Conference Committee retained the amendment.*]

### ***HB 2236 (Residential Real Estate Appraisals in Rural Counties)***

The bill was introduced by the House Committee on Financial Institutions and Rural Development at the request of Representative Kelly on behalf of Representative Waymaster.

#### *House Committee on Financial Institutions and Rural Development*

In the House Committee hearing, Representative Waymaster and the Executive Director of the Kansas Manufactured Housing Association provided written-only proponent testimony. The written-only proponents indicated the bill would address challenges that appraisers in rural areas have with finding similar properties for comparison to complete a sales comparison approach. The written-only proponents further indicated sales comparison issues have resulted in applicants for mortgages being declined by financial institutions. No other testimony was provided.

The House Committee amended the bill to allow financial institutions to decline to proceed with a mortgage finance transaction due to the exclusion of the sales comparison approach if the sales comparison approach is required for such mortgage finance transaction loan to be guaranteed or sold in the secondary market. [*Note: The Conference Committee retained the amendment.*]

### ***HB 2701 (Kansas Rural Housing Incentive District Act)***

The bill was introduced by the House Committee on Commerce, Labor, and Economic Development at the request of Representative Curtis.

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

In the House Committee hearing, **proponent** testimony was provided by Representative Baker, who discussed how the Act has been utilized in his community.

Written-only proponent testimony was provided by a representative of the Kansas Association of Realtors stating a shortage of quality housing is a barrier to economic growth and development in any community, and the bill makes important changes to the Act by allowing its use in economically distressed urban areas. No other testimony was provided.

### ***SB 376 (Kansas Rural Housing Incentive District Act)***

The bill was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Olson.

#### *Senate Committee on Federal and State Affairs*

In the Senate Committee hearing, representatives of Building Kansas, Farm Bureau, Heartland Housing Partners, Kansas Association of Realtors, Kansas Bankers Association, Kansas Manufactured Housing Association, and League of Kansas Municipalities provided **proponent** testimony, stating the Act has had a positive impact on the population of rural areas, assisted renters and home buyers with affordable housing, and created additional funding streams for needed renovation and construction on residential dwellings. Proponents expressed support for expanding the program as described in the bill.

Written-only proponent testimony was provided by the Housing Development Corporation of Central Kansas, Kansas Building Industry Association, and Thrive Allen County.

Neutral testimony was provided by Kansas Housing Resource Corporation. No opponent testimony was provided.

The Senate Committee amended the bill to specify the amount of funds allocated for infrastructure and housing development in rural areas, providing not less than \$3.0 million in loans and grants for counties with a population less than 8,000 and not less than \$3.0 million in loans and grants for counties with populations of more than 8,000, but not more than 25,000. [Note: The Conference Committee retained part of the amendment.]

### ***HB 2237 (Child Day Care Services Tax Credit)***

The bill was introduced by the House Committee on Financial Institutions and Rural Development at the request of Representative Kelly. The bill, as introduced, would have extended the sunset on the Rural Opportunity Zone (ROZ) student loan repayment.

The Senate Committee of the Whole amended the bill to add provisions related to the child day care tax credit and adopted a technical amendment to remove provisions of the bill that were previously enacted into law. [Note: The Conference Committee retained the amendment on the child day care services tax credit, but did not retain the provisions regarding ROZ.]

### Fiscal Information

Enactment of the conference committee report for HB 2237 is expected to have the following impact on state receipts.

(Dollars in Millions)	FY 2023	FY 2024	FY 2025
Affordable Housing Investor Tax Credit	\$ -	\$ (14.4)	\$ (28.8)
Housing Investor Tax Credit	(13.0)	(13.0)	(13.0)
Rural Home Loan Guarantee Act	(2.0)	(2.0)	(2.0)
Historic Kansas Act – Older Structures Tax Credit	(10.0)	(10.0)	(10.0)
Historic Kansas Act – Historic Structures Tax Credit Modifications	(1.3)	(1.3)	(1.3)
Child Day Care Assistance Tax Credit	(0.1)	(0.1)	(0.1)
<b>Total State General Fund</b>	<b>\$ (26.4)</b>	<b>\$ (40.8)</b>	<b>\$ (55.2)</b>

Further information on the estimated fiscal impact of individual provisions of the bill is provided below.

### **Senate Sub. for HB 2212 (Housing Tax Credits)**

#### *SB 375 (Kansas Housing Investor Tax Credit Act)*

According to the fiscal note prepared by the Division of the Budget (DOB) on SB 375, as introduced, the Kansas Department of Revenue (KDOR) estimates the bill would decrease State General Fund (SGF) revenues by \$18.0 million in FY 2023 and in each future fiscal year. To formulate these estimates, KDOR reviewed population data from the DOB. According to 2021 certified population data, housing projects in 98 counties would qualify for this new tax credit. KDOR assumes the maximum tax credit amount would be awarded each fiscal year. KDOR notes projects receiving the current 25.0 percent historic rehabilitation credit may also qualify for this new tax credit.

[Note: The Conference Committee action on HB 2237 would change this projected decrease of SGF revenues from \$18.0 million to \$13.0 million.]

KDOR indicates it would require \$207,181 SGF in FY 2023 to implement the bill and to modify the automated tax system. The bill would require KDOR to hire 1.0 new FTE position to answer questions from taxpayers and manage the new tax credit program. The required programming for this bill by itself would be performed by existing KDOR staff. In addition, if the combined effect of implementing the bill and other enacted legislation exceeds KDOR programming resources, or if the time for implementing the changes is too short, additional expenditures for outside contract programmer services beyond the current KDOR budget may be required.

The Department of Commerce (Commerce) indicates the bill would require \$25,161 SGF in FY 2023 to implement the bill, as it would require Commerce to hire a 0.5 new FTE position or an Administrative Assistant who would assist the program manager to manage the new housing program.

Any fiscal effect associated with SB 375 is not reflected in *The FY 2023 Governor's Budget Report*.

#### ***SB 369 (Kansas Affordable Housing Tax Credit Act)***

According to the fiscal note prepared by the DOB on SB 369, as introduced, KDOR estimates the bill would not have a fiscal effect on state revenues until FY 2024. The bill would reduce SGF revenues by \$14.4 million in FY 2024, increasing by \$14.4 million per year until leveling off at \$144.0 million in the tenth year of the program.

KDOR indicates it would require \$191,312 SGF in FY 2023 to implement the bill and to modify the automated tax system. The bill would require KDOR to hire 1.0 new FTE position to answer questions from taxpayers and manage the new tax credit program. The required programming for this bill by itself would be performed by existing KDOR staff. In addition, if the combined effect of implementing the bill and other enacted legislation exceeds KDOR programming resources, or if the time for implementing the changes is too short, additional expenditures for outside contract programmer services beyond the current KDOR budget may be required.

The Insurance Department indicates the bill would also allow insurance companies to claim this new tax credit. If insurance companies claim this tax credit, it would reduce insurance premium tax collections that are distributed to the SGF (99.0 percent) and the Insurance Service Regulation Fund (1.0 percent). The Insurance Department indicates it would require \$1,000 from the Insurance Service Regulation Fund in FY 2023 for computer programming costs that would allow the processing of insurance premium tax returns that include this new tax credit.

Any fiscal effect associated with SB 369 is not reflected in *The FY 2023 Governor's Budget Report*.

#### ***HB 2236 (Residential Real Estate Appraisals in Rural Counties)***

According to the fiscal note prepared by the DOB on the HB 2236, as introduced, the Kansas Real Estate Appraisal Board indicates the bill would have no fiscal effect on its operations.

### ***HB 2268 (Rural Home Loan Guarantee Program)***

According to KDOR, HB 2268, as amended by the House Committee, would have no fiscal or administrative impact.

### ***HB 2569 (Historic Kansas Act)***

The provisions pertaining to the Older Structures tax credit, as amended by the Conference Committee, would reduce SGF revenues by \$10.0 million in FY 2023 and in each year thereafter. According to KDOR, the proposed Historic Tax credit changes would result in an average increase in tax credits for 2022 of \$1,273,031.

KDOR states it would require \$104,584, all from the SGF, for administrative and IT expenditures. The Kansas State Historical Society states it would require \$827,850, all from the SGF, and 7.50 FTE positions for a new database and employees to run the database and conduct research.

### ***HB 2701 (RHID Act, Expanded Use of Bond Proceeds and Funds)***

According to the fiscal note prepared by the DOB on HB 2701, the Department of Commerce estimates enactment of the bill would not result in any fiscal effect on agency operations. The Kansas Association of Counties states enactment of the bill could increase revenue to counties if new housing were developed, but the fiscal effect could not be estimated. The League of Kansas Municipalities states there would be a potential fiscal effect on cities, but the League is unable to estimate the fiscal effect.

### ***HB 2237 (Child Day Care Assistance Tax Credit)***

According to the fiscal note prepared by the DOB on legislation relating to the child day care assistance tax credit, KDOR estimates the bill would decrease SGF revenues by \$89,000 in FY 2023. KDOR indicates that similar results would also occur in future fiscal years. To formulate these estimates, KDOR reviewed historical data on the child day care assistance tax credit that was available to be claimed by individual taxpayers prior to tax year 2013. While the tax credit is capped at \$3.0 million per year, KDOR estimates that only an additional \$89,000 in tax credits will be claimed in tax year 2022 or FY 2023.

KDOR estimates it would require a total of \$59,026 from the SGF in FY 2023 to implement this bill and to modify the automated tax system.

Any fiscal effect associated with the bill is not reflected in *The FY 2023 Governor's Budget Report*.

Economic development; housing; childcare; rural

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