

STATE OF KANSAS

SENATE CHAMBER

MR. PRESIDENT:

I move to amend **SB 282**, on page 4, following line 3, by inserting:

"Sec. 7. The provisions of sections 7 through 12, and amendments thereto, shall be known and may be cited as the Kansas affordable housing tax credit act.

Sec. 8. As used in sections 7 through 12, and amendments thereto:

- (a) "Act" means the provisions of sections 7 through 12, and amendments thereto;
- (b) "allocation certificate" means a statement issued by the KHRC certifying that a given development is eligible for the credit and specifying the amount of the credit allowed;
- (c) "credit" means the Kansas affordable housing tax credit allowed pursuant to this act;
- (d) "credit period" means the credit period as defined in section 42(f)(1) of the federal internal revenue code;
- (e) "director" means the director of taxation pursuant to K.S.A. 75-5102, and amendments thereto;
- (f) "federal tax credit" means the federal low-income housing tax credit provided by section 42 of the federal internal revenue code;
- (g) "KHRC" means the Kansas housing resources corporation, a not-for-profit subsidiary of the Kansas development finance authority incorporated pursuant to K.S.A. 74-8904(v), and amendments thereto;
- (h) "pass-through entity" means any: (1) Limited liability company; (2) limited partnership; or (3) limited liability partnership;
- (i) "pass-through certification" means a certification provided to the director by any

pass-through entity allocating a credit to its partners or members, certifying the amount of credit to be allocated to each partner or member of such pass-through entity;

(j) "qualified allocation plan" means the qualified allocation plan adopted by the KHRC pursuant to section 42(m) of the federal internal revenue code;

(k) "qualified development" means a "qualified low-income housing project," as that term is defined in section 42 of the federal internal revenue code that is located in Kansas and is determined by the KHRC to be eligible for a federal tax credit whether or not a federal tax credit is allocated with respect to such qualified development; and

(l) "qualified taxpayer" means an individual, a person, firm, corporation, or other entity that owns an interest, direct or indirect, in a qualified development and is subject to the taxes imposed by the Kansas income tax act, the privilege taxes imposed pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, or the premium taxes imposed pursuant to K.S.A. 40-252, and amendments thereto.

Sec. 9. (a) For all taxable years commencing after December 31, 2022, there shall be allowed a credit against the income tax liability imposed pursuant to the Kansas income tax act, the privilege tax liability imposed upon any national banking association, state bank, trust company or savings and loan association pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, or the premium tax liability imposed upon an insurance company pursuant to K.S.A. 40-252, and amendments thereto, 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, except that there shall be no reduction in the credit allowable in the first year of the credit period due to the calculation in section 42(f)(2) of the federal internal revenue code.

(b) The KHRC shall issue an allocation certificate to an owner of a qualified

development to which a credit has been allocated. The KHRC shall issue an allocation certificate to the qualified development simultaneously with issuance of federal form 8609 with respect to the federal tax credits.

(c) All allocations shall be made pursuant to the qualified allocation plan.

(d) If an owner of a qualified development receiving an allocation of a credit is a pass-through entity, the owner may allocate the credit among its partners or members in any manner agreed to by such persons and, in the case of multiple tiers of pass-through entities, the credit may be so allocated through any number of pass-through entities in any manner agreed by the owners of such pass-through entities, none of which shall be considered a transfer. Any pass-through entity allocating a credit to its partners or members shall attach a pass-through certification to its tax return annually. Each partner or member shall be allowed to claim or further allocate such amount subject to any restrictions set forth in this act.

(e) An owner of a qualified development to which a credit has been allocated and each qualified taxpayer to which such owner has allocated a portion of such credit, if any, shall file with their state income, privilege or premium tax return a copy of the allocation certificate issued by the KHRC with respect to such qualified development and a copy of any pass-through certification, as prescribed by the director.

(f) No credit shall be allocated pursuant to this act unless the qualified development is the subject of a recorded restrictive covenant requiring the development to be maintained and operated as a qualified development and is in accordance with the accessibility and adaptability requirements of the federal tax credits and title VIII of the civil rights act of 1968, as amended by the fair housing amendments act of 1988, for a period of 15 taxable years, or such longer period as may be agreed to between the KHRC and the owner of the qualified development, beginning with the first taxable year of the credit period.

(g) The allocated credit amount may be taken against the income, privilege or premium taxes imposed for each taxable year of the credit period. Any amount of credit that exceeds the income, privilege or premium tax liability of a qualified taxpayer for a taxable year may be carried forward as a credit against subsequent years' tax liability up to 11 tax years following the tax year in which the allocation was made and shall be applied first to the earliest years possible. Any amount of the credit that is not used shall not be refunded to the taxpayer.

(h) Unless otherwise provided in this act or the context or law requires otherwise, the KHRC shall determine eligibility for a credit and allocate credits in accordance with the standards and requirements set forth in section 42 of the federal internal revenue code. Any combination of federal tax credits and credits allowed pursuant to this act shall be the least amount necessary to ensure the financial feasibility of a qualified development.

Sec. 10. If, under section 42 of the federal internal revenue code, a portion of any federal tax credit taken on a qualified development is required to be recaptured or is otherwise disallowed during the credit period, the qualified taxpayer that claimed the credit pursuant to this act with respect to such qualified development shall also be required to recapture a portion of any credits authorized by this act. The percentage of credits subject to recapture shall be equal to the percentage of federal tax credits subject to recapture or otherwise disallowed during such period. Any credits recaptured or disallowed shall increase the tax liability of the qualified taxpayer who claimed the credits and shall be included on the tax return of the qualified taxpayer submitted for the taxable year in which the recapture or disallowance event is identified.

Sec. 11. The KHRC and the director, in consultation with each other, shall promulgate rules and regulations necessary for their respective administration of this act.

Sec. 12. (a) The KHRC, in consultation with the director, shall monitor and oversee compliance with the provisions of this act and shall report specific occurrences of

noncompliance to the director.

(b) For each allocation year, the KHRC shall submit a written report to the legislature on or before December 31 of each year and make such report available to the public. The report shall:

(1) Specify the number of qualified developments that have been allocated credits during the allocation year and the total number of units supported by each development;

(2) describe each qualified development that has been allocated credits including, without limitation, the geographic location of the development, the household type and any specific demographic information available about residents intended to be served by the development, the income levels intended to be served by the development, and the rents or set-asides authorized for each development; and

(3) provide housing market and demographic information that demonstrates how the qualified developments supported by the credits are addressing the need for affordable housing within the communities they are intended to serve as well as information about any remaining disparities in the affordability of housing within those communities.

Sec. 13. (a) The purpose of the Kansas housing investor tax credit act is to bring housing investment dollars to communities that lack adequate housing. Development of suitable residential housing will complement economic development of rural and urban areas that lack adequate housing resources and enable such communities to attract businesses, employees and new residents.

(b) Sections 13 through 18, and amendments thereto, shall be known and may be cited as the Kansas housing investor tax credit act.

Sec. 14. As used in the Kansas housing investor tax credit act, sections 13 through 18, and amendments thereto:

- (a) "Act" means the Kansas housing investor tax credit act;
- (b) "cash investment" means, as approved by the director, money or money equivalent in consideration for qualified securities;
- (c) "city" means any city incorporated in accordance with Kansas law with a population of less than 70,000, as certified to the secretary of state by the division of the budget on the previous July 1 in accordance with K.S.A. 11-201, and amendments thereto;
- (d) "corporation" means the Kansas housing resources corporation;
- (e) "county" means any county organized in accordance with K.S.A. 18-101 et seq., and amendments thereto, with a population of less than 75,000, as certified to the secretary of state by the division of the budget on the previous July 1 in accordance with K.S.A. 11-201, and amendments thereto;
- (f) "director" means the director of housing of the Kansas development finance authority;
- (g) "Kansas investor" means an individual who is a resident of Kansas or any business entity domiciled in Kansas, or any corporation, even if a wholly owned subsidiary of a foreign corporation, that does business primarily in Kansas or conducts substantially all of its business activities in Kansas, or a bank or other financial institution or association chartered or incorporated under the laws of Kansas that does business primarily in Kansas or conducts substantially all of its business activities in Kansas;
- (h) "manufactured home" means a "manufactured home" as defined in K.S.A. 58-4202, and amendments thereto, that is installed on a permanent foundation. The permanent foundation shall be of a type not removable intact from the site, constructed of durable materials such as concrete, mortared masonry or treated wood, site built and shall have attachment points to anchor and stabilize the manufactured home to transfer all loads to the underlying soil or rock;

(i) "modular home" means a "modular home" as defined in K.S.A. 58-4202, and amendments thereto, that is installed on a permanent foundation. The permanent foundation shall include a basement or crawl space;

(j) "qualified housing project" means a project within a city or county for the construction of single-family residential dwellings, including, but not limited to, manufactured housing or modular housing, or multi-family residential dwellings or buildings, that is eligible for designation by the director as a project for the purposes of the tax credit allowed under this act. "Qualified housing project" does not include a project eligible for income or other tax credits designated for low-income housing under state or federal law, including, but not limited to, the low income housing tax credit pursuant to 26 U.S.C. § 42, or a project participating in tenant-based or project-based programs pursuant to section 8 of the United States housing act of 1937, 42 U.S.C. § 1437f;

(k) "qualified investor" means an investor that has made a cash investment in a qualified housing project and is eligible for a tax credit under this act. A "qualified investor" includes a natural person, a business or a bank or other financial institution or association and the project builder or developer; and

(l) "qualified securities" means a cash investment through any form or combination of forms of financial assistance, including equity or debt instruments or bank or financial institution or association loans pursuant to rules and regulations adopted by the director, and that with respect to any investment made for the purpose of receiving a tax credit under this act have been approved in form and substance by the director.

Sec. 15. (a) There is hereby established the Kansas housing investor tax credit program within the Kansas housing resources corporation, to be administered by the director of housing. The purpose of tax credits issued under the Kansas housing investor tax credit program is to

facilitate investment in suitable housing that will support the growth of communities that lack adequate housing by attracting new employees, residents and families and will support the development and expansion of businesses that are job and wealth creating enterprises.

(b) To achieve this purpose and to optimize the use of the limited resources of the state, the director is authorized to issue tax credits for qualified housing projects to qualified investors who make cash investments in such qualified housing projects and to project builders and developers. Such tax credits shall be issued for those qualified housing projects that, as determined by the director, 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. In issuing tax credits, the director shall give priority to Kansas investors.

(c) To be designated as a qualified housing project, the project builder or developer shall apply to the director. Such application shall be in a form and substance as required by the director and shall include:

(1) The name and address of the project builder or developer and names of all principals or management;

(2) if the project builder or developer is seeking tax credits for such builder's or developer's cash investment in the project, information as required by the director for consideration of the request;

(3) a project plan, including a description of the project, timeline, housing to be constructed, intended market, costs and anticipated pricing for the housing and any other information that may be required by the director;

(4) a statement of the potential economic impact of the project;

(5) a description of all financing for the project, the amount of any tax credits requested and the earliest year in which the tax credits may be claimed;

(6) a statement of the amount, timing and projected use of the proceeds to be raised from qualified investors;

(7) the names, addresses and taxpayer identification numbers of all investors who may qualify for the tax credit. Such list of investors who may qualify for the tax credit shall be amended as any information on the list shall change; and

(8) such additional information as the director may require.

(d) In determining whether to designate a project as a qualified housing project, the director shall consider whether the project:

(1) Has the support of the community and the governing body of the city or county where such project is located;

(2) will enhance the ability of the community that lacks adequate housing to attract new businesses or expand existing business by providing suitable housing directly for employees or make such housing significantly more available, or will meet other significant housing needs of the community making the community attractive to new or expanding businesses or their employees, as determined by the director;

(3) has the financial support, management, planning and market to be successful;

(4) has an analysis or survey of the housing needs of the community provided by the project builder or developer or the governing body of the city or county where the project is located that, in the director's judgment, supports proceeding with the proposed project for the purposes of this act;

(5) has met all other requirements of this act to the satisfaction of the director; and

(6) has met such other requirements of the director as adopted in rules and regulations.

(e) If the director approves the application, the director shall enter into an agreement with the project builder or developer for the project prior to issuing any tax credits for the

project. The agreement shall set forth the amount of tax credits to be issued for the project, the requirements for a cash investment and the issuance of tax credits. If the project builder or developer has been approved by the director for tax credits for the project builder's or developer's cash investment in the project, the agreement shall set forth the amount of credits so approved and the amount of credits remaining for issuance to other qualified investors. Such agreement shall require, as a condition of the issuance of tax credits, binding commitments by the project builder or developer to the corporation for:

(1) The reporting of progress and financial data, including investor information. The project builder or developer shall have the obligation to notify the director in a timely manner of any changes in the qualifications of the project or in the eligibility of investors to claim a tax credit;

(2) the right of access to the project and to the financial records of the project builder or developer;

(3) the provision of information for purposes of the economic development incentive program information database pursuant to K.S.A. 2021 Supp. 74-50,226, and amendments thereto;

(4) the repayment requirements upon loss of designation pursuant to section 17, and amendments thereto; and

(5) any additional terms and conditions required by the director.

(f) To be eligible to receive tax credits, a qualified investor shall make a cash investment in the project in accordance with the agreement required by subsection (e). Each project builder or developer of a designated qualified housing project shall promptly report to the corporation the following information at the time such information becomes known to the builder or developer:

(1) The name, address and taxpayer identification number 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 the preceding year and all other preceding years;

(2) the amounts of the cash investments by each qualified investor and a description of the qualified securities issued in consideration of such cash investments;

(3) the name, address and taxpayer identification number of each person to whom tax credits have been transferred by the original qualified investor; and

(4) any additional information as the director may require when requested.

(g) Any violation of the reporting requirements set forth in this section shall be grounds for loss of the designation as a qualified housing project, as provided by section 17, and amendments thereto.

(h) The reasonable costs of the administration of this act, the review of applications for certification as qualified housing projects and the issuance of tax credits to qualified housing projects as authorized by this act may be reimbursed in total or in part through fees paid by the qualified project, qualified investors or transferees of investors, according to a reasonable fee schedule adopted by the director.

(i) The state of Kansas shall not be held liable for any damages to any qualified investor that makes an investment in a qualified housing project.

(j) The director shall provide information regarding qualified housing projects and qualified investors to the secretary of revenue.

(k) The director shall adopt rules and regulations as necessary to implement the provisions of this act.

Sec. 16. (a) (1) For tax year 2022 and all tax years thereafter, a credit against the income tax liability imposed pursuant to the Kansas income tax act, the privilege tax liability

imposed upon any national banking association, state bank, trust company or savings and loan association pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, or the premium tax liability imposed upon an insurance company pursuant to K.S.A. 40-252, and amendments thereto, shall be allowed to:

(A) 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 may be claimed in its entirety in the taxable year the cash investment is made; and

(B) a project builder or developer of a qualified housing project that has been approved and issued a tax credit by the director.

(2) To claim such tax credit, the qualified investor or project builder or developer shall provide all information or documentation in the form and manner required by the secretary of revenue. If the amount of the credit exceeds the taxpayer's tax liability in any one taxable year, the remaining portion of the credit may be carried forward in the succeeding taxable years until the total amount of the credit is used, except that no credit may be claimed after four taxable years next succeeding the taxable year that such credit was issued, and any remaining credit shall be forfeited.

(b) (1) Tax credits may be issued by the director for a qualified housing project as follows:

(A) For qualified housing projects located in a county with a population of not more than 8,000, in an amount not to exceed \$35,000 per residential unit;

(B) for qualified housing projects located in a county with a population of more than 8,000 but not more than 25,000, in an amount not to exceed \$32,000 per residential unit; and

(C) for all other qualified housing projects, in an amount not to exceed \$30,000.

(2) A qualified housing project shall be limited to a total of 40 such residential units per

year for both single-family and multi-family dwellings.

(3) Tax credits may be issued to a qualified investor in the amount of a cash investment of up to the total amount that may be issued by the director under this subsection for the qualified housing project, or as provided in the agreement required by section 15, and amendments thereto. Project builders or developers may apply to the director each year for tax credits for additional units or phases of a project. Qualified investors may be issued tax credits for cash investments in multiple qualified housing projects. Project builders or developers may apply and be approved for multiple qualified housing projects in the same tax year.

(4) The aggregate amount of tax credits that may be issued under this section shall not exceed \$18,000,000 each tax year, except that if the director issues an aggregate amount of tax credits in one tax year that is less than \$18,000,000, then the director may carry forward the difference and issue such amount of tax credits in the immediately succeeding tax year in addition to the statutory amount that may be issued under this section. Of the aggregate amount of tax credits issued in one tax year, the director shall allocate:

(A) Not less than \$2,000,000 in tax credits for qualified housing projects located in counties with a population of not more than 8,000; and

(B) not less than \$2,000,000 in tax credits for qualified housing projects located in counties with a population of more than 8,000 but not more than 25,000.

(c) A cash investment in a qualified housing project shall be deemed to have been made on the date of acquisition of the qualified security, as such date is determined by the director.

(d) Any qualified investor without a current tax liability at the time of the investment in a qualified housing project that does not reasonably believe such investor will owe any such tax for the current taxable year and who receives a tax credit pursuant to this section shall be deemed to acquire an interest in the nature of a transferable credit limited to the amount of the credit

issued to the qualified investor by the director. This interest may be transferred to any person whether or not such person is then a qualified investor and be claimed by the transferee as a credit against the transferee's Kansas tax liability in the same manner as the transferor beginning in the year the credit is transferred. The credit may be carried forward as permitted by subsection (a). No person shall be entitled to a refund for any interest on such tax credit that may be created under this section. Only the full amount of the tax credit for any one qualified housing project investment may be transferred and may only be transferred one time. A credit acquired by transfer shall be subject to the limitations prescribed in this section. Documentation of any credit acquired by transfer shall be provided by the taxpayer claiming such credit in the manner required by the secretary of revenue. The qualified investor transferring such credit shall provide the director and the secretary of revenue with the name, address and taxpayer identification number of each person to whom tax credits have been transferred and such other information as may be required by the director or the secretary of revenue.

(e) The secretary of revenue may adopt rules and regulations as necessary to implement and administer the provisions of this act.

Sec. 17. (a) If the director determines that a project is not in substantial compliance with the requirements of this act or the agreement executed pursuant to section 15, and amendments thereto, the director shall inform the project builder or developer of the project in writing that the project will lose designation as a qualified housing project in 120 days from the date of mailing of the notice unless such builder or developer corrects the deficiencies and becomes compliant with with the requirements for designation.

(b) At the end of such 120-day period, if the project is still not in substantial compliance, the director shall send a notice of loss of designation to the project builder or developer, the secretary of revenue and all known qualified investors in the project. Loss of

designation of a qualified housing project shall preclude the issuance of any additional tax credits with respect to the project, and the director shall not approve any subsequent application for such project as a qualified housing project. Upon loss of the designation as a qualified housing project, the project builder or developer shall repay any tax credits such taxpayer has claimed.

(c) Qualified investors other than the project builder or developer who have lawfully made a cash investment in a qualified housing project approved by the director shall not have tax credits disallowed solely due to the project losing its designation as a qualified housing project under this act.

Sec. 18. (a) On or before January 31, 2023, and on or before January 31 of each year thereafter, the director shall transmit a report annually to the governor, the standing committee on commerce of the senate and the standing committee on commerce, labor and economic development of the house of representatives. Such report shall be based upon information received from each qualified housing project for which tax credits have been issued during the preceding year and shall describe the following:

- (1) The manner in which the purpose, as described in this act, has been carried out;
- (2) the total cash investments made for qualified securities in qualified housing projects during the preceding year and cumulatively since the enactment of this act;
- (3) an estimate of jobs facilitated by housing developed through such investments; and
- (4) 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 that resulted from the tax credits for a period of five years beginning from the date on which the tax credits were issued.

(b) The director shall conduct an annual review of the activities undertaken pursuant to

this act to ensure that tax credits issued pursuant to this act are issued in compliance with the provisions of this act and rules and regulations adopted by the director.";

And by renumbering sections accordingly;

On page 1, in the title, in line 3, after "graduates" by inserting "; enacting the Kansas affordable housing tax credit act and the Kansas housing investor tax credit act; providing tax credits against income, privilege and premium taxes for qualified housing projects"

Senator _____