

Loan Deposit Programs—Kansas Extraordinary Utility Costs Loan Deposit Program; Changes to 2021 Law (SB 15, House Sub. for SB 88); SB 86

SB 86 creates the Kansas Extraordinary Utility Costs Loan Deposit Program (Program), which will provide incentives for the making of loans to eligible borrowers for the extraordinary natural gas costs incurred during the extreme winter weather event of February 2021. The total aggregate amount of loans issued under the Program, which is administered by the State Treasurer, cannot exceed the amount of unencumbered funds certified by the State Treasurer and directed to be reinvested by provisions of this bill (Section 17). The bill also amends law governing the investment of state moneys to add Program loans and applicable interest rates and modify provisions governing the City Utility Low-interest Loan Program.

The 2021 Legislature had earlier passed legislation creating a linked deposit program (SB 15, Kansas Economic Recovery Loan Deposit Program) and a loan deposit program (House Sub. for SB 88, City Utility Low-interest Loan Program). The provisions relating to the Kansas Economic Recovery Loan Deposit Program are repealed and reenacted within SB 86, allowing the provisions to be effective upon publication in the *Kansas Register*. Provisions pertaining to the City Utility Low-interest Loan Program became effective on March 4, 2021, and are restated in the bill with amendments relevant to both that program and the program created by this bill.

The bill will be in effect upon publication in the *Kansas Register*.

Kansas Extraordinary Utility Costs Loan Deposit Program (New Section 1)

The bill designates its provisions and amendments thereto as the Program and the Program part of and supplemental to Article 42 of Chapter 75 of the *Kansas Statutes Annotated* (Article 42 pertains to state moneys, including the investment of state moneys, activities of the Pooled Money Investment Board [PMIB], and the administration of certain loan deposit programs).

Program Definitions (New Section 2)

The bill defines terms including:

- “Extraordinary utility costs loan deposit” to mean an investment account placed by the Director of Investments, PMIB, under the provisions of Article 42, Chapter 75 of the *Kansas Statutes Annotated* with an eligible lending institution for the purpose of carrying out the intent of the Program;
- “Extraordinary utility costs loan deposit loan” or “loan” to mean a loan made by an eligible lending institution to an eligible borrower from the eligible lending institution’s extraordinary utility cost loan deposit as part of the Program;
- “Extraordinary utility costs loan deposit program” or “program” to mean a state-administered program in which eligible lenders are charged less than the market

rate of interest and eligible borrowers receive a reduction in interest charged on a loan in the amount of the deposit;

- “Eligible borrower” to mean any wholesale natural gas customer located in the state of Kansas that incurs extraordinary natural gas costs due to the extreme winter weather event of February 2021 and is not an individual obtaining a loan for personal, family, or household purposes;
- “Eligible lending institution” to mean a financial institution that is:
 - A bank, as defined in KSA 75-4201, that agrees to participate in the Program and is eligible to be a depository of state funds;
 - A credit union, as defined in the State Credit Union Code, that agrees to participate in the Program and provides securities acceptable to the PMIB pursuant to Article 42, Chapter 75 of the *Kansas Statutes Annotated*; or
 - An institution of the Farm Credit System organized under the federal Farm Credit Act of 1971, as amended, having at least one branch in the state of Kansas that agrees to participate in the Program and provides securities acceptable to the PMIB pursuant to Article 42, Chapter 75.

The bill also defines the terms “director of investments” and “extraordinary utility costs loan deposit loan package.”

***Program Administration; Eligible Borrowers; Report and Legislative Review
(New Section 3)***

The bill authorizes the State Treasurer to administer the Program. The bill states the Program’s purpose is to provide incentives for the making of loans to eligible borrowers for the extraordinary natural gas costs incurred during the extreme winter weather event of February 2021. The bill restricts the total amount of loans under the Program to an amount not to exceed the amount of unencumbered funds certified by the State Treasurer and directed to be reinvested by provisions of this bill (in Section 17).

Eligible Borrowers—School Districts

The bill makes the following provisions applicable to school districts electing to participate as eligible borrowers:

- Notwithstanding the provisions of any statute to the contrary, a school district (as defined in KSA 72-6486) that is an eligible borrower will be authorized to enter into loan agreements under the Program;
- The provisions and restrictions of the cash basis and budget laws do not apply to any loan received by a school district under this Program;

- To the extent any of the provisions regarding the Program (in sections 1-7) conflict with the provisions of Chapter 72, *Kansas Statutes Annotated*, the Program provisions of this bill will control; and
- Any loan made to a school district under the Program will not be considered bonded indebtedness for the purpose of any statute imposing a limitation on indebtedness of a school district.

Rules and Regulations

The State Treasurer is required to adopt all rules and regulations necessary to administer the Program. The bill requires Program rules and regulations to be adopted no later than February 1, 2022.

Report to the Legislature

The State Treasurer is required to submit an annual report to the Governor and Legislature identifying the eligible lending institutions participating in the Program and the eligible borrowers who have received a loan. The bill requires the report to provide the aggregate amount of moneys loaned and the amount of moneys still available for loan, if any. The report is due on or before January 1, 2023, and each January 1 thereafter. The Legislature is required to perform a review of the Program as part of the State Treasurer's annual report on or after January 1, 2024.

Program Loan Applications (New Section 4)

The bill authorizes the State Treasurer to disseminate information and to provide extraordinary utility costs loan deposit loan packages (loan packages) to lending institutions eligible for Program participation.

The bill requires the loan package to be completed by the eligible borrower before being forwarded to the lending institution for consideration.

Eligible Borrowers, Applications, Loan Limitations

The bill requires the following for participation in the Program:

- An eligible lending institution that agrees to receive an extraordinary utility costs loan deposit is required to accept and review applications for loans from eligible borrowers;
- The lending institution is required to apply all usual lending standards to determine the credit worthiness of eligible borrowers;
- No single extraordinary utility costs loan deposit loan can exceed \$500,000;

- Only one extraordinary utility costs loan deposit loan can be made and be outstanding at any one time to any eligible borrower; and
- No loan could be amortized for a period of more than three years.

Certification and Loan Approval

The bill requires an eligible borrower to certify on the loan application that the reduced rate loan will be used exclusively for the expenses involved in the borrower's utility costs in Kansas incurred during the extreme winter weather event of February 2021. The eligible lending institution is permitted to approve or reject a loan package based on the institution's evaluation of the eligible borrowers included in the package, the amount of the individual loan in the package, and other appropriate considerations.

The eligible lending institution is required to forward to the State Treasurer an approved loan package in the prescribed form and manner. The bill requires the package to include a certification by the applicant that the applicant is an eligible borrower.

Certification of Program Loans; Interest Rate (New Section 5)

The bill authorizes the State Treasurer to accept or reject a loan package based on the State Treasurer's evaluation of whether the eligible borrower meets the Program requirements. If sufficient funds are not available for a Program loan deposit, the applications may be considered in the order received when funds become available, subject to a review by the lending institution. The bill further provides that receiving a loan under the Kansas Economic Recovery Loan Deposit Program will not preclude an eligible borrower from receiving a loan under this Program.

Upon the acceptance of an application, the bill requires the State Treasurer to certify to the Director of Investments the amount required for the loan package and the Director will place a deposit of this certified amount with the eligible lending institution at an interest rate that is 2.0 percent below the market rate provided in KSA 75-4237 (a floating rate). The bill requires such rate to be recalculated on the first business day of January each year using the market rate then in effect. The bill further specifies the minimum interest rate (or floor) would be 0.25 percent if the market rate is below 2.25 percent. When necessary, the bill permits the State Treasurer to request the Director place an extraordinary utility costs loan deposit with the eligible lending institution prior to acceptance of a loan package.

An eligible lending institution is required to enter into an extraordinary utility costs loan deposit agreement with the State Treasurer. Such agreement will include requirements necessary to implement the purposes of the Program. The bill specifies requirements will include an agreement by the eligible lending institution to lend an amount equal to the loan deposit to eligible borrowers at an interest rate that is no more than 3.0 percent greater than the interest rate made available to the lending institution (effectively capping the interest rate spread at 3.0 percent). The borrower's rate will be recalculated on an annual basis. The bill provides the loan agreement will also include provisions for the loan deposit to be placed for a time not to exceed a period of three years and that is considered appropriate in coordination with the

underlying loan. The bill also requires the agreement to include provisions for the reduction of the loan deposit in an amount equal to any payment of loan principal by the eligible borrower.

Funding of the Loan by the Lending Institution (New Section 6)

The bill requires, upon placement of a loan deposit with an eligible lending institution, the institution to fund the loan to each approved eligible borrower listed in the loan package in accordance with the agreement between the institution and the State Treasurer. The bill requires the loan to be at the rate established in the agreement and established pursuant to requirements of this bill. The bill also requires a certification of compliance with this section to be provided by the eligible lending institution in the form and manner prescribed by the State Treasurer.

Liability for Default or Delay in Payments (New Section 7)

The bill states the State and the State Treasurer will not be liable to any eligible lending institution in any manner for payment of the principal or interest on any extraordinary utility costs loan deposit loan to an eligible borrower. The bill also states any delay in payments or default on the part of the eligible borrower does not in any manner affect the extraordinary utility costs loan deposit agreement between the eligible lending institution and the State Treasurer.

Kansas Economic Recovery Loan Deposit Program (New Sections 8-14)

The bill repeals and reenacts provisions pertaining to the Kansas Economic Recovery Loan Deposit Program. These sections were included in 2021 SB 15, signed into law on February 25, 2021, and would have become effective upon publication in the statute book. With enactment of SB 86, such provisions will become effective upon publication in the *Kansas Register*.

[*Note:* Under SB 15 and provisions reenacted in this bill, the State Treasurer is authorized to administer the Kansas Economic Recovery Loan Deposit Program, which is established for the purpose of providing incentives for the making of business loans. The bill further specifies the total aggregate amount of loans made under this loan deposit program would not exceed \$60.0 million of unencumbered funds pursuant to Article 42 of Chapter 75 of the *Kansas Statutes Annotated*.]

Amendments to 2021 House Sub. for SB 88 (Sections 15-20)

The bill amends 2021 law establishing the City Utility Low-interest Loan Deposit Program to provide for the use of unencumbered funds for the Program that established by this bill.

[*Note:* House Sub. for SB 88, effective upon publication in the *Kansas Register* (Issue 9A, March 4, 2021), authorized the State Treasurer to administer this loan deposit program. The law states this program's purpose is to provide loans to cities for extraordinary electric or natural gas costs incurred during the extreme winter weather event of February 2021. The law restricts

the total amount of loans under the Program to an amount not to exceed \$100.0 million of unencumbered funds pursuant to Article 42 of Chapter 75, *Kansas Statutes Annotated*.]

Definitions (Section 16)

The bill amends the definition for the term “city” to include a municipal energy agency as defined in KSA 12-886.

Administration of Programs; Use of Unencumbered Funds (Section 17)

The bill amends a provision authorizing the State Treasurer to administer the City Utility Low-interest Loan Program to specify the State Treasurer and any city are authorized to enter into binding commitments for the provision and receipt of loans in accordance with the provisions of this loan deposit program.

Unencumbered funds, City Utility Low-interest Loan Program. The bill specifies that on the effective date of this act, the State Treasurer will certify to the Director of Investments the amount of \$20.0 million of unencumbered funds under the City Utility Low-interest Loan Program. Upon receipt of this certification, the Director of Investments will be required to reinvest that certified amount in accordance with the Kansas Extraordinary Utility Costs Loan Deposit Program (New Sections 1-7 of this bill).

The bill also requires the State Treasurer, on June 1, 2021, to certify to the Director of Investments the amount of any remaining unencumbered funds under the City Utility Low-interest Loan Program. Upon receipt of the certification, the Director of Investments will be required to reinvest the certified amount in accordance with the Kansas Extraordinary Utility Costs Loan Deposit Program (New Sections 1-7 of this bill).

The bill also provides that any loan received by a city under the City Utility Low-interest Loan Program will be construed as bonds for the purposes of KSA 10-1116 (governing when limits of indebtedness may be exceeded).

Rules and regulations; reporting. The bill modifies required rules and regulations governing the City Utility Low-interest Loan Program to update the references to the effective date of the act to the *Kansas Register* publication date (March 4, 2021). The bill also modifies a reporting requirement to remove language about moneys that may still be available for loan under this loan deposit program.

City Utility Low-interest Loan Program Loans and Applications (Section 18)

The bill amends law governing the City Utility Low-interest Loan Program loans to specify payments on such loans may be made monthly, quarterly, or semi-annually upon the execution of an agreement between the city and State Treasurer. Under current law, the payments are not required to be made more frequently than on an annual basis.

Lien. The bill permits the State Treasurer to create a lien against the city’s utility revenue and surcharges to satisfy any outstanding loan balance. Any city that receives a loan under this

loan deposit program will be required to apply the proceeds of any lawsuit or restitution relating to the extraordinary electric or natural gas costs incurred during the extreme weather event of February 2021 to the payment of the outstanding loan balance.

Loans approved, limitation on. The bill also provides that no more than \$20.0 million of loans shall be approved by the State Treasurer under the City Utility Low-interest Loan Program on and after the effective date of this act (*Kansas Register* publication), and further, that no loans shall be approved by the State Treasurer for this loan deposit program on and after June 1, 2021.

A referenced date also is updated.

Certification of City Utility Low-interest Loan Program Loans (Section 19)

Remittance to state fiscal agent. The bill adds provisions to direct the treasurer of each city to remit to the state fiscal agent at least 20 days before the due date of a loan payment sufficient moneys for such payment. The city treasurer, in lieu of remitting such moneys to the state fiscal agent, can provide the fiscal agent with electronic fund transfer instructions on forms prescribed by the State Treasurer that certify there will be funds on deposit on the transaction date sufficient for the loan payment and that such funds will either reach the office of the fiscal agent on or before 12 noon of the third working day before the due date of such loan payment or reach the office of the fiscal agent on or before 12 noon of the first working day before the due date of such loan payment.

Use of moneys in the county treasury for payments. The bill also includes provisions for when cities require the use of moneys in the county treasury to make loan payments. The city treasurer would make a written request of the county treasurer for the amount needed no later than 25 days prior to the due date of such loan payment. If the full amount is not in the county treasury, the bill requires the county treasurer to forward that portion that is in the county treasurer's possession for such purpose.

The bill further provides that when a county treasurer is charged with the collection of tax moneys for a city, the territory of which is more than one county, the county treasurer will be required to forward any such funds collected to the proper county treasurer as soon as practical or no later than two days following the receipt of a request.

Failure to pay loan payment moneys. The bill provides failure to pay loan payment moneys when due would be any of the following:

- Failure of a county treasurer to forward moneys in the county treasury when requested as provided in this section;
- Failure of the city treasurer or any county treasurer to make timely request for moneys; or
- Failure of the city treasurer to make timely remittance of moneys for payments for loans under this loan deposit program when such moneys are available for remittance.

The bill provides that failure to pay loan payment moneys when due would be a class C misdemeanor.

Conflict of Provisions with Other Law Governing State Moneys (Section 20)

The bill amends law governing the City Utility Low-Interest Loan Program to provide, in the event a conflict arises between provisions of this bill (as amended) and provisions of Article 42 of Chapter 75, *Kansas Statutes Annotated*, or any other provision of law, the provisions of the bill's sections 15-20 shall control.

Requirements on City Treasurers (Section 21)

The bill also amends law governing the remittance of moneys by city treasurers to permit city treasurers to provide the state fiscal agent with electronic fund transfer instructions on forms prescribed by the State Treasurer that certify there will be funds on deposit on the transaction date sufficient for redemption.

Deposits of Securities; Secured Accounts (Section 22)

The bill amends provisions in Article 42, Chapter 75 (investment of moneys law) to add a credit union that has the prior approval of PMIB to the list of entities able to accept securities securing state bank accounts.

Program Interest Rates, Investment in State Moneys (Section 23)

The bill amends law governing the investment of state moneys, as amended by 2021 House Sub. for SB 88, to provide that:

- Notwithstanding the provisions of this section, economic recovery loan deposit loans made pursuant to the Kansas Economic Recovery Loan Deposit Program will be at an interest rate that is 2.0 percent less than the market rate provided by this section, which will be recalculated on the first business day of each calendar year using the market rate then in effect; and
- Notwithstanding the provisions of this section, extraordinary utility costs loan deposit loans made pursuant to the Program will be at an interest rate that is 2.0 percent less than the market rate provided by this section, which will be recalculated on the first business day of each calendar year using the market rate then in effect.