

## HOUSE BILL No. 2541

By Committee on Taxation

Requested by Representative A. Smith on behalf of Advantage Capital

1-26

AN ACT concerning economic development; enacting the Kansas rural business growth program act; establishing a premium tax credit program to be administered by the secretary of commerce for the purpose of incentivizing capital investment in rural areas.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. Sections 1 through 7, and amendments thereto, shall be known and may be cited as the Kansas rural business growth program act.

Sec. 2. As used in this act:

(a) "Act" means the Kansas rural business growth program act.

(b) "Affiliate" means an entity that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under the common control of another entity. An entity is controlled by another entity if the controlling entity holds, directly or indirectly, the majority of voting or ownership interest in the controlled entity or has control over day-to-day operations of the controlled entity by contract or by law.

(c) "Applicable percentage" means 0% for the first two credit allowance dates and 15% for the next four credit allowance dates.

(d) (1) "Capital investment" means any equity investment in a rural fund by a rural investor that:

(A) Is acquired on or after July 1, 2026, and the equity investment original issuance was solely in exchange for cash;

(B) has 100% of equity investment cash purchase price used by the rural fund to make qualified investments in eligible businesses located in Kansas by the second anniversary of the initial credit allowance date; and

(C) is designated by the rural fund as a capital investment and certified by the department under section 3, and amendments thereto.

(2) Capital investment shall include any capital investment that does not satisfy the requirements set forth in paragraph (1)(A) if such investment was a capital investment in the possession of a prior holder.

(e) "Credit allowance date" means the date on which the department certifies a rural fund's capital investment and each of the five anniversary dates of such date thereafter.

(f) "Department" means the Kansas department of commerce.

(g) "Eligible business" means a business that at the time of the initial

1 qualified investment in the business has fewer than 250 employees and:

2 (1) Has its principal business operations in a rural area in the state of  
3 Kansas; or

4 (2) if not located in a rural area, is:

5 (A) Engaged in North American Industry Classification System  
6 (NAICS) sectors 11, 21, 22, 31-33, 48-49, 62, 811 or 5417; or

7 (B) determined by the department that such investment will be  
8 beneficial to the rural area and economic growth of the state.

9 (h) "Principal business operations" means the location where at least  
10 60% of employees of a business work or the location where employees  
11 constituting 60% of the business's payroll works. A business that has  
12 agreed to relocate employees using the proceeds of a qualified investment  
13 to establish the business's principal business operations in a new location  
14 shall be deemed to have the business's principal business operations in  
15 such new location if the business satisfied the requirements of this  
16 paragraph not later than 180 days after receiving a qualified investment.

17 (i) "Purchase price" means the amount paid to the rural fund that  
18 issues a capital investment, which shall not exceed the amount of capital  
19 investment authority certified under the provisions of section 3, and  
20 amendments thereto.

21 (j) "Qualified investment" means any investment in an eligible  
22 business or any loan to an eligible business with a stated maturity date of  
23 at least one year after the date of issuance, excluding revolving lines of  
24 credit and senior-secured debt unless the chief executive or similar officer  
25 of the eligible business certifies that the eligible business sought and was  
26 denied similar financing from a depository institution by a rural fund. For  
27 any one eligible business, the maximum amount of investments made in  
28 such business by one or more rural funds, on a collective basis with all of  
29 the businesses' affiliates, with the proceeds of the capital investments, shall  
30 be the greater of 20% of the rural fund's capital investment authority or  
31 \$6,500,000, exclusive of investments made with repaid or redeemed  
32 investments or interest or profits realized thereon.

33 (k) "Rural area" means an area of the state that is not in:

34 (1) A municipality with a population of more than 50,000 according  
35 to the last decennial census of the United States; or

36 (2) an urbanized area contiguous and adjacent to a city that has a  
37 population of more than 50,000 inhabitants.

38 (l) "Rural fund" means a fund certified by the department under the  
39 provisions of section 3, and amendments thereto.

40 (m) "Rural investor" means any entity that makes a capital investment  
41 in a rural fund.

42 (n) "Senior-secured debt" means any loan that is secured by a first  
43 mortgage on real estate with a loan-to-value ratio of less than 80%.

1 (o) "State tax liability" means the premium tax liability imposed upon  
2 an insurance company pursuant to K.S.A. 40-252, and amendments  
3 thereto, or the retaliatory tax imposed pursuant to K.S.A. 40-253, and  
4 amendments thereto, including any other fee, charge or other penalty  
5 levied pursuant to K.S.A. 40-252 and 40-253, and amendments thereto.

6 Sec. 3. (a) A rural fund that seeks to have an equity investment  
7 certified as a capital investment eligible for credits authorized under the  
8 provisions of this act shall apply to the department. The department shall  
9 begin accepting applications on and after October 1, 2026. The application  
10 shall include:

11 (1) The amount of capital investment requested;

12 (2) a copy of the applicant's or an affiliate of the applicant's licenses  
13 as a rural business investment company under 7 U.S.C. § 2009cc or as a  
14 small business investment company under 15 U.S.C. § 681 and a  
15 certificate executed by an executive officer of the applicant attesting that  
16 such license remains in effect and has not been revoked;

17 (3) evidence that, as of the date the application is submitted, the  
18 applicant or affiliates of the applicant have invested at least \$100,000,000  
19 in nonpublic companies located in counties within the United States with a  
20 population of less than 75,000 according to the 2010 United States  
21 decennial census. Such evidence may be in the form of a list containing  
22 the names of the companies, their location and the amounts invested by the  
23 applicant or affiliates of the applicant, if an officer of the applicant certifies  
24 such list;

25 (4) a business plan that includes a revenue-impact assessment  
26 projecting state and local tax revenue to be generated by the applicant's  
27 proposed qualified investments prepared by a nationally recognized, third-  
28 party, independent economic forecasting firm using a dynamic economic  
29 forecasting model that analyzes the applicant's business plan over the 10  
30 years following the date that the application is submitted to the  
31 department. Such plan shall include an estimate of the number of jobs  
32 created and jobs retained in this state as a result of the applicant's qualified  
33 investments; and

34 (5) a nonrefundable application fee of \$5,000 payable to the  
35 department.

36 (b) Within 30 days after the receipt of a completed application, the  
37 department shall grant or deny the application in full or in part. The  
38 department shall deny the application if:

39 (1) The applicant does not satisfy all the criteria provided under  
40 subsection (a);

41 (2) the revenue-impact assessment submitted with the application  
42 does not demonstrate that the applicant's business plan will result in a  
43 positive fiscal impact on the state over a 10-year period that exceeds the

1 cumulative amount of credits that would be issued to the applicant if the  
2 application was approved; or

3 (3) the department has already approved the maximum amount of  
4 capital investment authority under Section 4, and amendments thereto.

5 (c) If the department denies any part of the application, the  
6 department shall inform the applicant of the grounds for such denial. If the  
7 applicant provides any additional information required by the department  
8 or otherwise completes the application within 15 days of the notice of  
9 denial, the application shall be considered complete as of the original date  
10 of submission. If the applicant fails to provide the information or fails to  
11 complete the application within the 15-day period, the application shall  
12 remain denied and must be resubmitted with a new submission date and a  
13 new application fee.

14 (d) Upon approval of an application, the department shall certify  
15 pursuant to this subsection the proposed equity investment as a capital  
16 investment eligible for credits, subject to limitations provided in section 4,  
17 and amendments thereto. The department shall provide written notice of  
18 the certification to the applicant, which shall include the amount of the  
19 applicant's capital investment authority and a schedule of credits by year  
20 and amount related to the capital investment authority. The department  
21 shall certify capital investments in the order that the application is received  
22 by the department. Applications received on the same day shall be deemed  
23 to have been received simultaneously. For applications that are complete  
24 and received on the same day, the department shall certify applications in  
25 proportionate percentages based upon the ratio of the amount of capital  
26 investment authority requested in all applications.

27 (e) Any business that is classified as an eligible business at the time  
28 of the initial investment in such business by a rural fund shall remain  
29 classified as an eligible business and may receive follow-on investments  
30 from any rural fund, and such follow-on investments shall be qualified  
31 investments even though such business may not meet the definition of an  
32 eligible business at the time of such follow-on investment.

33 (f) The secretary of commerce shall remit all moneys received by or  
34 for the secretary from such application fees and collected under this  
35 section to the state treasurer in accordance with the provisions of K.S.A.  
36 75-4215, and amendments thereto. Upon receipt of each such remittance,  
37 the state treasurer shall deposit the entire amount in the state treasury to  
38 the credit of the state general fund.

39 Sec. 4. (a) The department shall certify capital investment authority  
40 under the provisions of this act in amounts that would not authorize more  
41 than \$7,500,000 in credits to be claimed against state tax liability in any  
42 calendar year, excluding any credit amounts carried forward as provided  
43 under section 5(a), and amendments thereto. Within 90 days of the

1 applicant receiving notice of certification, the rural fund shall issue the  
2 capital investment to and receive cash in the amount of the certified  
3 amount from a rural investor. At least 10% of the rural investor's capital  
4 investment shall be composed of capital raised by the rural investor  
5 directly or indirectly from sources, including directors, members,  
6 employees, officers and affiliates of the rural investor, other than the  
7 amount invested by the allocatee claiming the credits in exchange for such  
8 allocation of credits. The rural fund shall provide the department with  
9 evidence of the receipt of the cash investment within 95 days of the  
10 applicant receiving notice of certification.

11 (b) If the rural fund does not receive the cash investment and issue  
12 the capital investment within such time period following receipt of the  
13 certificate notice, the certification shall lapse and the rural fund shall not  
14 issue the capital investment without reapplying to the department for  
15 certification. Lapsed certifications shall revert to the department and shall  
16 be reissued pro rata to applicants whose capital investment allocations  
17 were reduced in accordance with the application process provided under  
18 section 3(d), and amendments thereto.

19 Sec. 5. (a) Upon making a capital investment in a rural fund, a rural  
20 investor shall have an earned and vested right to tax credits against such  
21 entity's state tax liability that may be utilized on each credit allowance date  
22 of such capital investment in an amount equal to the applicable percentage  
23 for such credit allowance date multiplied by the purchase price paid to the  
24 rural fund for the capital investment. The amount of the credit claimed by  
25 a rural investor shall not exceed the amount of such entity's state tax  
26 liability for the tax year for which the credit is claimed. Any amount of  
27 credit that a rural investor is prohibited from claiming in a tax year as a  
28 result of this section may be carried forward for use in any of the five  
29 subsequent tax years but shall not be carried back to prior tax years. A  
30 rural investor claiming a credit under this act is not required to pay any  
31 additional tax that may arise as a result of claiming such credit.

32 (b) No credit claimed under this section shall be refundable or  
33 transferable.

34 (c) Credits earned by or allocated to a partnership, limited liability  
35 company or S corporation may be allocated to the partners, members or  
36 shareholders of such entity for their use in accordance with the provisions  
37 of any agreement among such partners, members or shareholders, and any  
38 such entity shall notify the department of the names of the entities that are  
39 eligible to utilize such credit. Such allocation shall not be considered a  
40 sale. An insurer may transfer a credit under this section to an affiliate of  
41 the insurer that is subject to taxation if the insurer notifies the department  
42 of the transfer and includes with the notification a copy of the transfer  
43 documents.

1 (d) The department may recapture credits from a taxpayer that  
2 claimed a credit authorized under this section if:

3 (1) The rural fund does not invest 100% of the rural fund's capital  
4 investment authority in qualified investments in this state within two years  
5 of the initial credit allowance date. In no event shall more than 20% of  
6 such qualified investments be made in eligible businesses located outside  
7 of a rural area;

8 (2) the rural fund fails to maintain qualified investments equal to  
9 100% of the rural fund's capital investment authority from the second  
10 anniversary until the sixth anniversary of the credit allowance date, with  
11 80% of such investments maintained in eligible businesses located in rural  
12 areas, except that in no event shall more than 20% of such qualified  
13 investments be located outside of a rural area. For the purposes of this  
14 paragraph, a qualified investment is considered maintained even if the  
15 qualified investment was sold or repaid so long as the rural fund reinvests  
16 an amount equal to the capital returned, recovered or repaid by the rural  
17 fund from the original investment, exclusive of any profits realized, in  
18 other qualified investments in this state within 12 months of receipt of  
19 such capital. Amounts received periodically by a rural fund shall be treated  
20 as maintained in qualified investments if the amounts are reinvested in one  
21 or more qualified investments by the end of the following calendar year. A  
22 rural fund shall not be required to reinvest capital returned from qualified  
23 investments after the fifth anniversary of the credit allowance date, and  
24 such qualified investments shall be considered maintained by the rural  
25 fund through the sixth anniversary of the credit allowance date;

26 (3) prior to the earlier of exiting the program in accordance with  
27 section 7, and amendment thereto, or 30 days after the sixth anniversary of  
28 the credit allowance date, the rural fund makes a distribution or payment  
29 that results in the rural fund having less than 100% of its capital  
30 investment authority invested in qualified investments in the state or held  
31 in cash or other marketable securities; or

32 (4) the rural fund violates the provisions of section 6, and  
33 amendments thereto, in which case, the department may recapture an  
34 amount equal to the amount of the rural fund's capital investment authority  
35 found to be in violation of such provisions.

36 (e) Recaptured credits and related capital investment authority shall  
37 revert to the department and shall be reissued pro rata to applicants whose  
38 capital investment allocations were reduced in accordance with the  
39 application process provided under section 3(d), and amendments thereto.

40 (f) No recapture shall occur until the rural fund has been given notice  
41 of noncompliance and provided six months from the date of such notice to  
42 cure the noncompliance.

43 (g) A rural fund, before making a qualified investment, may request

1 from the department a written opinion as to whether the business in which  
2 the rural fund proposes to invest is an eligible business. The department,  
3 not later than 15 business days after the date of receipt of such request,  
4 shall notify the rural fund of the department's determination. If the  
5 department fails to notify the rural fund of the department's determination  
6 by the 20<sup>th</sup> business day, the business in which the rural fund proposes to  
7 invest shall be deemed an eligible business.

8 (h) An insurance company claiming a credit against state premium  
9 tax or retaliatory tax shall not be required to pay any additional premium  
10 tax, retaliatory tax, fee, charge or other penalty or tax imposed on an  
11 insurer to claim the credit allowed under this act or as a result of claiming  
12 the credit. The credit may fully offset any retaliatory tax imposed.

13 Sec. 6. No eligible business that receives a qualified investment under  
14 the provisions of this act, or any affiliates of such eligible business, shall  
15 directly or indirectly:

16 (a) Own or have the right to acquire an ownership interest in a rural  
17 fund or member or affiliate of a rural fund including, but not limited to, a  
18 holder of a capital investment issued by a rural fund; or

19 (b) loan to or invest in a rural fund or any member or affiliate of a  
20 rural fund, including, but not limited to, a holder of capital investment  
21 issued by a rural fund where the proceeds of such loan or investment are  
22 directly or indirectly used to fund or refinance the purchase of capital  
23 investments under this act.

24 Sec. 7. (a) Rural funds shall submit a report to the department by June  
25 30 of each calendar year during the compliance period. The report  
26 following the second anniversary of the initial credit allowance date shall  
27 provide documentation as to the investment of 100% of the purchase price  
28 of such capital investment in qualified investments. Unless previously  
29 reported pursuant to this subsection, such reports shall also include:

30 (1) The name and location of each eligible business receiving a  
31 qualified investment;

32 (2) bank statements of such rural fund evidencing each qualified  
33 investment;

34 (3) a copy of the written opinion of the department, as provided in  
35 section 5(f), and amendments thereto, or evidence that such business was  
36 an eligible business at the time of such qualified investment, as applicable;

37 (4) the number of jobs created and jobs retained as a result of each  
38 qualified investment;

39 (5) the average salary of positions described in paragraph (4); and

40 (6) such other information as required by the department.

41 (b) For all subsequent years, rural funds shall submit an annual report  
42 to the department by June 30 of each calendar year during the compliance  
43 period. The report shall include, but not be limited to, the following:

1       (1) The number of jobs created and jobs retained as a result of  
2 qualified investments;

3       (2) the average annual salary of positions described in paragraph (1);  
4 and

5       (3) such other information as required by the department.

6       (c) On or after the sixth anniversary of the credit allowance date, a  
7 rural fund may apply to the department to exit the program and no longer  
8 be subject to provisions of this act. The department shall respond to the  
9 exit application within 15 days of receipt of such application. In evaluating  
10 the exit application, the fact that no credits have been recaptured and the  
11 rural fund has not received a notice of recapture that has not been cured  
12 pursuant to section 5(e), and amendments thereto, shall be sufficient  
13 evidence to prove the rural fund is eligible for exit. The department shall  
14 not unreasonably deny an exit application submitted under this section. If  
15 an exit application is denied, the notice shall include the reasons for the  
16 determination.

17       Sec. 8. This act shall take effect and be in force from and after its  
18 publication in the statute book.