

Senate Substitute for HOUSE BILL No. 2212

By Committee on Federal and State Affairs

2-17

1 AN ACT concerning taxation; relating to income, privilege and premium
2 taxes; enacting the Kansas affordable housing tax credit act and the
3 Kansas housing investor tax credit act; providing tax credits for
4 qualified housing projects.
5

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

7 Section 1. The provisions of sections 1 through 6, and amendments
8 thereto, shall be known and may be cited as the Kansas affordable housing
9 tax credit act.

10 Sec. 2. As used in sections 1 through 6, and amendments thereto:

11 (a) "Act" means the provisions of sections 1 through 6, and
12 amendments thereto;

13 (b) "allocation certificate" means a statement issued by the KHRC
14 certifying that a given development is eligible for the credit and specifying
15 the amount of the credit allowed;

16 (c) "credit" means the Kansas affordable housing tax credit allowed
17 pursuant to this act;

18 (d) "credit period" means the credit period as defined in section 42(f)
19 (1) of the federal internal revenue code;

20 (e) "director" means the director of taxation pursuant to K.S.A. 75-
21 5102, and amendments thereto;

22 (f) "federal tax credit" means the federal low-income housing tax
23 credit provided by section 42 of the federal internal revenue code;

24 (g) "KHRC" means the Kansas housing resources corporation, a not-
25 for-profit subsidiary of the Kansas development finance authority
26 incorporated pursuant to K.S.A. 74-8904(v), and amendments thereto;

27 (h) "pass-through entity" means any: (1) Limited liability company;
28 (2) limited partnership; or (3) limited liability partnership;

29 (i) "pass-through certification" means a certification provided to the
30 director by any pass-through entity allocating a credit to its partners or
31 members, certifying the amount of credit to be allocated to each partner or
32 member of such pass-through entity;

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

36 (k) "qualified development" means a "qualified low-income housing

1 project," as that term is defined in section 42 of the federal internal
2 revenue code that is located in Kansas and is determined by the KHRC to
3 be eligible for a federal tax credit whether or not a federal tax credit is
4 allocated with respect to such qualified development; and

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

12 Sec. 3. (a) For all taxable years commencing after December 31,
13 2022, there shall be allowed a credit against the income tax liability
14 imposed pursuant to the Kansas income tax act, the privilege tax liability
15 imposed upon any national banking association, state bank, trust company
16 or savings and loan association pursuant to article 11 of chapter 79 of the
17 Kansas Statutes Annotated, and amendments thereto, or the premium tax
18 liability imposed upon an insurance company pursuant to K.S.A. 40-252,
19 and amendments thereto, for each qualified development for each year of
20 the credit period, in an amount equal to the federal tax credit allocated or
21 allowed by the KHRC to such qualified development, except that there
22 shall be no reduction in the credit allowable in the first year of the credit
23 period due to the calculation in section 42(f)(2) of the federal internal
24 revenue code.

25 (b) The KHRC shall issue an allocation certificate to an owner of a
26 qualified development to which a credit has been allocated. The KHRC
27 shall issue an allocation certificate to the qualified development
28 simultaneously with issuance of federal form 8609 with respect to the
29 federal tax credits.

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

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

42 (e) An owner of a qualified development to which a credit has been
43 allocated and each qualified taxpayer to which such owner has allocated a

1 portion of such credit, if any, shall file with their state income, privilege or
2 premium tax return a copy of the allocation certificate issued by the
3 KHRC with respect to such qualified development and a copy of any pass-
4 through certification, as prescribed by the director.

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

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

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

29 Sec. 4. If, under section 42 of the federal internal revenue code, a
30 portion of any federal tax credit taken on a qualified development is
31 required to be recaptured or is otherwise disallowed during the credit
32 period, the qualified taxpayer that claimed the credit pursuant to this act
33 with respect to such qualified development shall also be required to
34 recapture a portion of any credits authorized by this act. The percentage of
35 credits subject to recapture shall be equal to the percentage of federal tax
36 credits subject to recapture or otherwise disallowed during such period.
37 Any credits recaptured or disallowed shall increase the tax liability of the
38 qualified taxpayer who claimed the credits and shall be included on the tax
39 return of the qualified taxpayer submitted for the taxable year in which the
40 recapture or disallowance event is identified.

41 Sec. 5. The KHRC and the director, in consultation with each other,
42 shall promulgate rules and regulations necessary for their respective
43 administration of this act.

1 Sec. 6. (a) The KHRC, in consultation with the director, shall monitor
2 and oversee compliance with the provisions of this act and shall report
3 specific occurrences of noncompliance to the director.

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

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

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

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

21 Sec. 7. (a) The purpose of the Kansas housing investor tax credit act
22 is to bring housing investment dollars to communities that lack adequate
23 housing. Development of suitable residential housing will complement
24 economic development of rural and urban areas that lack adequate housing
25 resources and enable such communities to attract businesses, employees
26 and new residents.

27 (b) Sections 7 through 12, and amendments thereto, shall be known
28 and may be cited as the Kansas housing investor tax credit act.

29 Sec. 8. As used in the Kansas housing investor tax credit act, sections
30 7 through 12, and amendments thereto:

31 (a) "Act" means the Kansas housing investor tax credit act;

32 (b) "cash investment" means, as approved by the director, money or
33 money equivalent in consideration for qualified securities;

34 (c) "city" means any city incorporated in accordance with Kansas law
35 with a population of less than 70,000, as certified to the secretary of state
36 by the division of the budget on the previous July 1 in accordance with
37 K.S.A. 11-201, and amendments thereto;

38 (d) "corporation" means the Kansas housing resources corporation;

39 (e) "county" means any county organized in accordance with K.S.A.
40 18-101 et seq., and amendments thereto, with a population of less than
41 75,000, as certified to the secretary of state by the division of the budget
42 on the previous July 1 in accordance with K.S.A. 11-201, and amendments
43 thereto;

1 (f) "director" means the director of housing of the Kansas
2 development finance authority;

3 (g) "Kansas investor" means an individual who is a resident of
4 Kansas or any business entity domiciled in Kansas, or any corporation,
5 even if a wholly owned subsidiary of a foreign corporation, that does
6 business primarily in Kansas or conducts substantially all of its business
7 activities in Kansas, or a bank or other financial institution or association
8 chartered or incorporated under the laws of Kansas that does business
9 primarily in Kansas or conducts substantially all of its business activities
10 in Kansas;

11 (h) "manufactured home" means a "manufactured home" as defined
12 in K.S.A. 58-4202, and amendments thereto, that is installed on a
13 permanent foundation. The permanent foundation shall be of a type not
14 removable intact from the site, constructed of durable materials such as
15 concrete, mortared masonry or treated wood, site built and shall have
16 attachment points to anchor and stabilize the manufactured home to
17 transfer all loads to the underlying soil or rock;

18 (i) "modular home" means a "modular home" as defined in K.S.A.
19 58-4202, and amendments thereto, that is installed on a permanent
20 foundation. The permanent foundation shall include a basement or crawl
21 space;

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

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

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

1 Sec. 9. (a) There is hereby established the Kansas housing investor
2 tax credit program within the Kansas housing resources corporation, to be
3 administered by the director of housing. The purpose of tax credits issued
4 under the Kansas housing investor tax credit program is to facilitate
5 investment in suitable housing that will support the growth of communities
6 that lack adequate housing by attracting new employees, residents and
7 families and will support the development and expansion of businesses
8 that are job and wealth creating enterprises.

9 (b) To achieve this purpose and to optimize the use of the limited
10 resources of the state, the director is authorized to issue tax credits for
11 qualified housing projects to qualified investors who make cash
12 investments in such qualified housing projects and to project builders and
13 developers. Such tax credits shall be issued for those qualified housing
14 projects that, as determined by the director, are most likely to provide the
15 greatest economic benefit to and best meet the needs of the community
16 lacking adequate housing where the project is located. In issuing tax
17 credits, the director shall give priority to Kansas investors.

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

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

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

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

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

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

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

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

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

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

43 (1) Has the support of the community and the governing body of the

1 city or county where such project is located;

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

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

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

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

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

18 (e) If the director approves the application, the director shall enter
19 into an agreement with the project builder or developer for the project
20 prior to issuing any tax credits for the project. The agreement shall set
21 forth the amount of tax credits to be issued for the project, the
22 requirements for a cash investment and the issuance of tax credits. If the
23 project builder or developer has been approved by the director for tax
24 credits for the project builder's or developer's cash investment in the
25 project, the agreement shall set forth the amount of credits so approved
26 and the amount of credits remaining for issuance to other qualified
27 investors. Such agreement shall require, as a condition of the issuance of
28 tax credits, binding commitments by the project builder or developer to the
29 corporation for:

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

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

36 (3) the provision of information for purposes of the economic
37 development incentive program information database pursuant to K.S.A.
38 2021 Supp. 74-50,226, and amendments thereto;

39 (4) the repayment requirements upon loss of designation pursuant to
40 section 11, and amendments thereto; and

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

42 (f) To be eligible to receive tax credits, a qualified investor shall
43 make a cash investment in the project in accordance with the agreement

1 required by subsection (e). Each project builder or developer of a
2 designated qualified housing project shall promptly report to the
3 corporation the following information at the time such information
4 becomes known to the builder or developer:

5 (1) The name, address and taxpayer identification number of each
6 qualified investor who has made a cash investment in qualified securities
7 in the project and has received tax credits for this investment during the
8 preceding year and all other preceding years;

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

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

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

17 (g) Any violation of the reporting requirements set forth in this
18 section shall be grounds for loss of the designation as a qualified housing
19 project, as provided by section 5, and amendments thereto.

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

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

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

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

32 Sec. 10. (a) (1) For tax year 2022 and all tax years thereafter, a credit
33 against the income tax liability imposed pursuant to the Kansas income tax
34 act, the privilege tax liability imposed upon any national banking
35 association, state bank, trust company or savings and loan association
36 pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and
37 amendments thereto, or the premium tax liability imposed upon an
38 insurance company pursuant to K.S.A. 40-252, and amendments thereto,
39 shall be allowed to:

40 (A) A qualified investor for a cash investment in a qualified housing
41 project that has been approved and issued a tax credit by the director. The
42 tax credit may be claimed in its entirety in the taxable year the cash
43 investment is made; and

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

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

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

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

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

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

22 (2) A qualified housing project shall be limited to a total of 40 such
23 residential units per year for both single-family and multi-family
24 dwellings.

25 (3) Tax credits may be issued to a qualified investor in the amount of
26 a cash investment of up to the total amount that may be issued by the
27 director under this subsection for the qualified housing project, or as
28 provided in the agreement required by section 9, and amendments thereto.
29 Project builders or developers may apply to the director each year for tax
30 credits for additional units or phases of a project. Qualified investors may
31 be issued tax credits for cash investments in multiple qualified housing
32 projects. Project builders or developers may apply and be approved for
33 multiple qualified housing projects in the same tax year.

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

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

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

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

7 (d) Any qualified investor without a current tax liability at the time of
8 the investment in a qualified housing project that does not reasonably
9 believe such investor will owe any such tax for the current taxable year
10 and who receives a tax credit pursuant to this section shall be deemed to
11 acquire an interest in the nature of a transferable credit limited to the
12 amount of the credit issued to the qualified investor by the director. This
13 interest may be transferred to any person whether or not such person is
14 then a qualified investor and be claimed by the transferee as a credit
15 against the transferee's Kansas tax liability in the same manner as the
16 transferor beginning in the year the credit is transferred. The credit may be
17 carried forward as permitted by subsection (a). No person shall be entitled
18 to a refund for any interest on such tax credit that may be created under
19 this section. Only the full amount of the tax credit for any one qualified
20 housing project investment may be transferred and may only be transferred
21 one time. A credit acquired by transfer shall be subject to the limitations
22 prescribed in this section. Documentation of any credit acquired by
23 transfer shall be provided by the taxpayer claiming such credit in the
24 manner required by the secretary of revenue. The qualified investor
25 transferring such credit shall provide the director and the secretary of
26 revenue with the name, address and taxpayer identification number of each
27 person to whom tax credits have been transferred and such other
28 information as may be required by the director or the secretary of revenue.

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

31 Sec. 11. (a) If the director determines that a project is not in
32 substantial compliance with the requirements of this act or the agreement
33 executed pursuant to section 9, and amendments thereto, the director shall
34 inform the project builder or developer of the project in writing that the
35 project will lose designation as a qualified housing project in 120 days
36 from the date of mailing of the notice unless such builder or developer
37 corrects the deficiencies and becomes compliant with with the
38 requirements for designation.

39 (b) At the end of such 120-day period, if the project is still not in
40 substantial compliance, the director shall send a notice of loss of
41 designation to the project builder or developer, the secretary of revenue
42 and all known qualified investors in the project. Loss of designation of a
43 qualified housing project shall preclude the issuance of any additional tax

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

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

10 Sec. 12. (a) On or before January 31, 2023, and on or before January
11 31 of each year thereafter, the director shall transmit a report annually to
12 the governor, the standing committee on commerce of the senate and the
13 standing committee on commerce, labor and economic development of the
14 house of representatives. Such report shall be based upon information
15 received from each qualified housing project for which tax credits have
16 been issued during the preceding year and shall describe the following:

17 (1) The manner in which the purpose, as described in this act, has
18 been carried out;

19 (2) the total cash investments made for qualified securities in
20 qualified housing projects during the preceding year and cumulatively
21 since the enactment of this act;

22 (3) an estimate of jobs facilitated by housing developed through such
23 investments; and

24 (4) an estimate of the multiplier effect on the Kansas economy of the
25 investments. The amount of tax credits claimed in the previous fiscal year;
26 a general description of the investors that benefited from the tax credits;
27 and any aggregate job creation or capital investment in Kansas that
28 resulted from the tax credits for a period of five years beginning from the
29 date on which the tax credits were issued.

30 (b) The director shall conduct an annual review of the activities
31 undertaken pursuant to this act to ensure that tax credits issued pursuant to
32 this act are issued in compliance with the provisions of this act and rules
33 and regulations adopted by the director.

34 Sec. 13. This act shall take effect and be in force from and after its
35 publication in the statute book.