

**SENATE BILL No. 369**

By Committee on Federal and State Affairs

1-21

1 AN ACT concerning taxation; relating to income, privilege and premium  
2 taxes; establishing the Kansas affordable housing tax credit act;  
3 providing a tax credit for qualified low-income housing projects.  
4

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

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

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

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

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

15 (c) "compliance period" means the period of 15 years beginning with  
16 the first taxable year of the credit period;

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

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

21 (f) "director" means the director of taxation pursuant to K.S.A. 75-  
22 5102, and amendments thereto;

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

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

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

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

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

1 (l) "qualified basis" means the qualified basis of the development as  
2 determined pursuant to section 42 of the federal internal revenue code;

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

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

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

28 (b) The KHRC shall issue an allocation certificate to an owner of a  
29 qualified development. The KHRC shall issue an allocation certificate to  
30 the qualified development simultaneously with issuance of federal form  
31 8609 with respect to the federal tax credits.

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

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

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

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

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

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

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

43 Sec. 5. The KHRC and the director, in consultation with each other,

1 shall promulgate rules and regulations necessary for their respective  
2 administration of this act.

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

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

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

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

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

23 Sec. 7. This act shall take effect and be in force from and after its  
24 publication in the statute book.