

SESSION OF 2023

SUPPLEMENTAL NOTE ON SENATE BILL NO. 37

As Amended by Senate Committee on Financial
Institutions and Insurance

Brief*

SB 37, as amended, would amend the Kansas Housing Investor Tax Credit Act (Act) to expand the transferability of tax credits issued under the Act.

Under the Act, for tax years 2022 and thereafter, a tax credit could be claimed against Kansas income tax liability, the privilege tax liability imposed upon certain financial institutions, and the premium tax liability imposed upon insurance companies. The tax credit could be claimed by qualified investors and project builders or developers of a qualified housing project.

The bill would amend the Act to permit, in addition to those investors, builders, and developers, transferees the ability to claim the tax credit. Regarding claiming of a tax credit, the will would also specify:

- Any portion of the tax credit that is carried forward could be transferred to another taxpayer;
- All or a portion of the tax credit could be transferred by the qualified investor or any subsequent transferees to one or more persons; and.
- There will be no limit on the number of times a credit or any portion that can be transferred.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The bill would also remove a limitation that specified only the full amount of the tax credit for any one investment may be transferred and may only be transferred one time.

The bill would provide that the transferee would receive all remaining rights and restrictions for the tax credit being transferred on the date of the transfer.

The bill would also provide for the calculation of any tax due under provisions in the Insurance Code pertaining to retaliatory taxes (taxes imposed on out-of-state insurance companies); the tax credit would be treated as a tax paid as part of the insurance company's premium tax owed.

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

Background

The bill was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Olson. The bill was referred to the Senate Committee on Financial Institutions and Insurance.

Senate Committee on Financial Institutions and Insurance

In the Senate Committee hearing, **proponent** testimony was provided by Senator Olson and representatives of the American Property Casualty Insurance Association (APCIA); Heartland Housing Partners; and Kansas Farm Bureau, Kansas Corn Growers Association, Sunflower Electric Power Corporation, and the Northwest Kansas Economic Innovation Center (termed "Coalition" in testimony). Proponents indicated the bill would remove a restriction in the Act to allow investors to sell more than one tax credit at a time. An example provided indicated an investor would be permitted to sell the tax credit to a banking trust department that could

then, in turn, resell or transfer the benefits of the original tax credit to a banking client or other beneficiary. The APCIA representative requested consideration of an amendment regarding premium tax credit treatment for out-of-state insurance companies to provide retaliatory protections to these companies.

Written-only proponent testimony was submitted by representatives of the Kansas Department of Commerce, Haag Development Company, the Kansas Association of Realtors, Kansas Bankers Association, and Sugar Creek Capital.

Neutral testimony provided by a representative of the Kansas Housing Resources Corporation (KHRC) indicated the allowance of unlimited transfers and transfers of only a portion of the tax credits allocated to an investor would likely lead to more administrative work for the KHRC. The representative stated a limit to the number of transfers could alleviate this administrative burden while supporting the goals of the legislation.

Written-only opponent testimony was submitted by a representative of Americans for Prosperity Kansas. The testimony stated a concern for the limitation of the tax credit to only those making investments in qualified housing projects.

The Senate Committee amended the bill to address the retaliatory tax consideration of taxes paid by certain insurance companies.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Department of Revenue indicates the bill would have fiscal effect on State General Fund (SGF) revenue. The bill would allow the Kansas Housing Investor Tax Credit to be transferred to

multiple taxpayers; however, the total amount of these credits would still be capped at \$13.0 million per tax year.

The Department indicates the bill would require \$42,780 from the SGF in FY 2024 to implement the bill and for additional information technology expenditures. In addition, if the combined effect of implementing this bill and other enacted legislation exceeds the Department's programming resources, or if the time for implementing the changes is too short, additional expenditures for outside contract programmer services beyond the Department's current budget may be required.

A fiscal note was not immediately available regarding the effect of the inclusion of certain premiums tax paid in consideration of taxes owed by insurance companies.

Any fiscal effect associated with the bill is not reflected in *The FY 2024 Governor's Budget Report*.

Economic development; housing; Kansas Housing Investor Tax Credit Act; transferability; retaliatory taxes