

**SENATE BILL No. 375**

By Committee on Federal and State Affairs

1-24

1 AN ACT concerning economic development; relating to tax incentives for  
2 housing; enacting the Kansas housing investor tax credit act; providing  
3 an income tax or privilege tax credit for the development of residential  
4 dwellings and apartment buildings in underserved rural and urban  
5 communities to accommodate new employees and facilitate business  
6 growth.

7  
8 *Be it enacted by the Legislature of the State of Kansas:*

9 Section 1. (a) The purpose of the Kansas housing investor tax credit  
10 act is to bring housing investment dollars to communities that lack  
11 adequate housing. Development of suitable residential housing will  
12 complement economic development of rural and urban areas that lack  
13 adequate housing resources and enable such communities to attract  
14 businesses, employees and new residents.

15 (b) Sections 1 through 6, and amendments thereto, shall be known  
16 and may be cited as the Kansas housing investor tax credit act.

17 Sec. 2. As used in the Kansas housing investor tax credit act, sections  
18 1 through 6, and amendments thereto:

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

20 (b) "cash investment" means, as approved by the secretary, money or  
21 money equivalent in consideration for qualified securities;

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

26 (d) "county" means any county organized in accordance with K.S.A.  
27 18-101 et seq., and amendments thereto, with a population of less than  
28 75,000, as certified to the secretary of state by the division of the budget  
29 on the previous July 1 in accordance with K.S.A. 11-201, and amendments  
30 thereto;

31 (e) "department" means the department of commerce;

32 (f) "Kansas investor" means an individual who is a resident of Kansas  
33 or any business entity domiciled in Kansas, or any corporation, even if a  
34 wholly owned subsidiary of a foreign corporation, that does business  
35 primarily in Kansas or conducts substantially all of its business activities  
36 in Kansas, or a bank or other financial institution or association chartered

1 or incorporated under the laws of Kansas that does business primarily in  
2 Kansas or conducts substantially all of its business activities in Kansas;

3 (g) "manufactured home" means a "manufactured home" as defined  
4 in K.S.A. 58-4202, and amendments thereto, that is installed on a  
5 permanent foundation. The permanent foundation shall be of a type not  
6 removable intact from the site, constructed of durable materials such as  
7 concrete, mortared masonry or treated wood, site built and shall have  
8 attachment points to anchor and stabilize the manufactured home to  
9 transfer all loads to the underlying soil or rock;

10 (h) "modular home" means a "modular home" as defined in K.S.A.  
11 58-4202, and amendments thereto, that is installed on a permanent  
12 foundation. The permanent foundation shall include a basement or crawl  
13 space;

14 (i) "qualified housing project" means a project within a city or county  
15 for the construction of single-family residential dwellings, including, but  
16 not limited to, manufactured housing or modular housing, or multi-family  
17 residential dwellings or buildings that: (1) Meets the requirements of this  
18 act; (2) meets the requirements of any rules and regulations adopted by the  
19 secretary of commerce pursuant to this act; and (3) is eligible for selection  
20 by the secretary as a project for the purposes of the tax credit allowed  
21 under this act. "Qualified housing project" does not include a project  
22 eligible for income or other tax credits designated for low-income housing  
23 under state or federal law, including, but not limited to, the low income  
24 housing tax credit pursuant to 26 U.S.C. § 42, or a project participating in  
25 tenant-based or project-based programs pursuant to section 8 of the United  
26 States housing act of 1937, 42 U.S.C. § 1437f;

27 (j) "qualified investor" means an investor that has made a cash  
28 investment in a qualified housing project and is eligible for a tax credit  
29 under this act. A "qualified investor" may be a natural person, a business or  
30 a bank or other financial institution or association and may include the  
31 builder or project developer; and

32 (k) "qualified securities" means a cash investment through any form  
33 or combination of forms of financial assistance, including equity or debt  
34 instruments or bank or financial institution or association loans pursuant to  
35 rules and regulations adopted by the secretary, and that with respect to any  
36 investment made for the purpose of receiving a tax credit under this act  
37 have been approved in form and substance by the secretary.

38 Sec. 3. (a) There is hereby established the Kansas housing investor  
39 tax credit program within the department of commerce, to be administered  
40 by the secretary of commerce. The purpose of tax credits issued under the  
41 Kansas housing investor tax credit program is to facilitate investment in  
42 suitable housing that will support the growth of communities that lack  
43 adequate housing by attracting new employees, residents and families and

1 will support the development and expansion of businesses that are job and  
2 wealth creating enterprises.

3 (b) To achieve this purpose and to optimize the use of the limited  
4 resources of the state, the secretary is authorized to award tax credits for  
5 qualified housing projects to be issued to qualified investors who make  
6 cash investments in such qualified housing projects. Such tax credits shall  
7 be awarded for those qualified housing projects that, as determined by the  
8 secretary, are most likely to provide the greatest economic benefit to and  
9 best meet the needs of the community lacking adequate housing where the  
10 project is located. The secretary may award credits in amounts of up to the  
11 maximum amounts of tax credits authorized by section 4, and amendments  
12 thereto, based on such assessment of the qualified housing project. The  
13 secretary may issue credits to a builder or developer involved in a  
14 qualified housing project if the secretary determines that issuing credits to  
15 the builder or developer will further the purposes of this act. The builder or  
16 developer may issue remaining credits to qualified investors. In issuing  
17 such credits, the builder or developer shall give priority to Kansas  
18 investors.

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

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

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

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

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

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

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

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

41 (8) such additional information as the secretary may require.

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

- 1 (1) Has the support of the community and the governing body of the  
2 city or county;
- 3 (2) will enhance the ability of the community that lacks adequate  
4 housing to attract new businesses or expand existing business by providing  
5 suitable housing directly for employees or make such housing significantly  
6 more available, or will meet other significant housing needs of the  
7 community making the community attractive to new or expanding  
8 businesses or their employees, as determined by the secretary;
- 9 (3) has the financial support, management, planning and market to be  
10 successful;
- 11 (4) has provided, or the governing body of the city or county where  
12 the project is located has provided, an analysis or survey of the housing  
13 needs of the community that, in the secretary's judgment, supports  
14 proceeding with the proposed project for the purposes of this act;
- 15 (5) has met all other requirements of this act to the satisfaction of the  
16 secretary; and
- 17 (6) has met such other requirements of the secretary as adopted in  
18 rules and regulations.
- 19 (e) If the secretary approves the application, the secretary shall enter  
20 into an agreement with the builder or developer for the project prior to  
21 approving any tax credits for the project. The agreement shall set forth the  
22 amount of tax credits to be awarded for the project and the requirements  
23 for a cash investment and the issuance of a tax credit. If the project builder  
24 or developer has been approved by the secretary for tax credits for the  
25 project builder's or project developer's investment in the project, the  
26 agreement shall set forth the amount of credits so approved and the  
27 amount of credits remaining for issuance by the project builder or  
28 developer to other qualified investors. Such agreement shall require, as a  
29 condition of the award of tax credits, binding commitments by the project  
30 builder or developer to the department of commerce for:
  - 31 (1) The reporting of progress and financial data, including investor  
32 information. The builder or developer shall have the obligation to notify  
33 the secretary in a timely manner of any changes in the qualifications of the  
34 project or in the eligibility of investors to claim a tax credit;
  - 35 (2) the right of access to the project and to the financial records of the  
36 builder or developer;
  - 37 (3) the provision of information for purposes of the economic  
38 development incentive program information database pursuant to K.S.A.  
39 2021 Supp. 74-50,226, and amendments thereto;
  - 40 (4) the repayment requirements upon loss of designation pursuant to  
41 section 5, and amendments thereto; and
  - 42 (5) any additional terms and conditions required by the secretary.
- 43 (f) To receive a tax credit from the builder or developer, a qualified

1 investor shall make a cash investment in the project in accordance with the  
2 agreement required by subsection (e). Each builder or developer of a  
3 project for which tax credits have been awarded by the secretary pursuant  
4 to this act shall promptly report to the department the following  
5 information at the time such information becomes known to the builder or  
6 developer:

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

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

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

17 (4) any additional information as the secretary may require when  
18 requested.

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

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

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

31 (j) The secretary of commerce shall provide information regarding  
32 qualified housing projects and qualified investors to the secretary of  
33 revenue.

34 (k) The secretary of commerce shall adopt rules and regulations as  
35 necessary to implement the provisions of this act.

36 Sec. 4. (a) For tax year 2022 and all tax years thereafter, a credit  
37 against the tax imposed by article 32 of chapter 79 of the Kansas Statutes  
38 Annotated, and amendments thereto, or the privilege tax as measured by  
39 net income of financial institutions imposed pursuant to article 11 of  
40 chapter 79 of the Kansas Statutes Annotated, and amendments thereto,  
41 shall be allowed to a qualified investor for a cash investment in a qualified  
42 housing project, as such terms are defined in section 2, and amendments  
43 thereto, that has been approved and awarded a tax credit by the secretary

1 of commerce for issuance to qualified investors pursuant to the provisions  
2 of section 3, and amendments thereto. The credit to the qualified investor  
3 shall be in the amount of such qualified investors' cash investment. This  
4 tax credit may be claimed in its entirety in the taxable year the cash  
5 investment is made. To claim the credit, the qualified investor shall  
6 provide all information or documentation in the form and manner required  
7 by the secretary of revenue. If the amount of the credit exceeds the  
8 qualified investors' tax liability in any one taxable year, the remaining  
9 portion of the credit may be carried forward in the succeeding taxable  
10 years until the total amount of the credit is used, except that no credit may  
11 be claimed after four taxable years next succeeding the taxable year that  
12 the cash investment was made, and any remaining credit shall be forfeited.

13 (b) Tax credits may be awarded by the secretary of commerce for a  
14 qualified housing project in an amount of up to \$30,000 per residential unit  
15 or up to 30% of the total cost of a residential unit, whichever is less. A  
16 qualified housing project shall be limited to a total of 40 such residential  
17 unit credits for residential units that are single-family dwellings per year  
18 and a total of 40 such residential unit credits for residential units within  
19 multi-family dwellings or buildings per year. Credits awarded for a  
20 qualified housing project may be issued to a qualified investor in the  
21 amount of a cash investment of up to the total amount awarded by the  
22 secretary for the qualified project, or as provided in the agreement required  
23 by section 3, and amendments thereto. Project builders or developers may  
24 apply to the secretary of commerce each year for credits for additional  
25 units or phases of a project. Qualified investors may claim credits for  
26 investments in multiple qualified projects, and multiple projects from the  
27 same builder or developer may be authorized as qualified projects during  
28 the same tax year. The aggregate amount of tax credits that may be  
29 allowed under this section shall not exceed \$18,000,000 per fiscal year.  
30 The balance of tax credits not awarded by the secretary of commerce may  
31 be carried over by the secretary of commerce to award in succeeding fiscal  
32 years. The secretary of commerce shall provide the secretary of revenue  
33 with information regarding qualified investors and the award and issuance  
34 of tax credits.

35 (c) A cash investment in a qualified housing project shall be deemed  
36 to have been made on the date of acquisition of the qualified security, as  
37 such date is determined by the secretary of commerce.

38 (d) Any qualified investor without a current tax liability at the time of  
39 the investment in a qualified housing project, that does not reasonably  
40 believe it will owe any such tax for the current taxable year and who  
41 claims and receives a tax credit pursuant to this section shall be deemed to  
42 acquire an interest in the nature of a transferable credit of such tax limited  
43 to the amount of the credit allowed the qualified investor by the secretary

1 of revenue pursuant to subsection (b). This interest may be transferred to  
2 any person whether or not such person is then a qualified investor and be  
3 claimed by the transferee as a credit against the transferee's Kansas tax  
4 liability beginning in the year the credit is transferred. The credit may be  
5 carried forward as permitted by subsection (a). No person shall be entitled  
6 to a refund for the interest created under this section. Only the full credit  
7 for any one qualified housing project investment may be transferred, and  
8 this interest may only be transferred one time. A credit acquired by transfer  
9 shall be subject to the limitations prescribed in this section. Documentation  
10 of any credit acquired by transfer shall be provided by the credit claimant  
11 in the manner required by the secretary of revenue. The original qualified  
12 investor shall provide the secretary of commerce and the secretary of  
13 revenue with the name, address and taxpayer identification number of each  
14 person to whom tax credits have been transferred and such other  
15 information as may be required by the secretary of commerce or the  
16 secretary of revenue.

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

19 Sec. 5. (a) If the secretary of commerce determines that a project is  
20 not in substantial compliance with the requirements of this act or the  
21 agreement executed pursuant to section 3, and amendments thereto, the  
22 secretary shall inform the builder or developer of the project in writing that  
23 the project will lose designation as a qualified project in 120 days from the  
24 date of mailing of the notice unless such builder or developer corrects the  
25 deficiencies and becomes compliant with with the requirements for  
26 designation.

27 (b) At the end of the 120-day period, if the project is still not in  
28 substantial compliance, the secretary of commerce shall send a notice of  
29 loss of designation to the builder or developer, the secretary of revenue and  
30 all known investors in the project. Loss of designation of a qualified  
31 housing project shall preclude the issuance of any additional tax credits  
32 with respect to the project and the secretary of commerce shall not approve  
33 the application of such project as a qualified housing project. Upon loss of  
34 the designation as a qualified housing project, the project builder or  
35 developer shall repay tax credits that have been received by or issued by  
36 the project builder or developer to the department of commerce in an  
37 amount determined by the secretary of commerce. Each builder or  
38 developer of a qualified housing project that loses such designation shall  
39 enter into a repayment agreement with the secretary of commerce  
40 specifying the terms of such repayment obligation. The secretary shall  
41 remit such repayments to the state treasurer in accordance with the  
42 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of  
43 each such remittance, the state treasurer shall deposit the entire amount in

1 the state treasury to the credit of the state general fund.

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

7 Sec. 6. (a) On or before January 31, 2023, and on or before January  
8 31 of each year thereafter, the secretary of commerce shall transmit a  
9 report annually to the governor, the standing committee on commerce of  
10 the senate and the standing committee on commerce, labor and economic  
11 development of the house of representatives. Such report shall be based  
12 upon information received from each qualified housing project for which  
13 tax credits have been awarded during the preceding year and shall describe  
14 the following:

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

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

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

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

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

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