

SESSION OF 2020

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR SENATE  
BILL NO. 238**

As Recommended by Senate Committee on  
Financial Institutions and Insurance

**Brief\***

Sub. for SB 238 would amend field of membership requirements placed on state-chartered credit unions to increase the permissible geographic area for a credit union's field of membership. In addition, the bill would permit national banking associations, state banks, trust companies, and savings and loan associations, for all taxable years commencing after December 31, 2019, to deduct from net income the net interest income received from business loans attributed to Kansas and the net interest income received from single family residence loans to the extent such interest is included in the Kansas taxable income of a corporation.

***Field of Membership—Credit Unions***

The bill would amend one of three criteria (occupation, association, and geographic) associated with defining field of membership for state-chartered credit unions in the State Credit Union Code (Code). Continuing law requires credit union members to be linked under by one of three fields of membership.

Under current law, a geographic area is permitted to include a single political jurisdiction or multiple contiguous political jurisdictions, until the aggregate total of the population of the geographic area reaches 500,000. The law further provides, however, if the headquarters of the credit

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\*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>

union is located within a metropolitan statistical area (MSA) of more than one county, a different maximum population limit would apply. That limit is determined by a formula:

Multiply the population of the most populous MSA within Kansas (*i.e.*, the population of the Kansas City MSA counties within Kansas) by the fraction having 1.0 million as the numerator and 750,000 as the denominator. [*Note:* Current population numbers are those of the adjusted federal census information presented to the Legislature by the Secretary of State.]

The bill would modify the above criteria to:

- Permit a single political jurisdiction (continuing law);
- Increase the permitted maximum for multiple contiguous political jurisdictions for an aggregate of the total population from 500,000 to 2.5 million, as determined by official state population figures, or any portion thereof, which are identical to the decennial census data from the enumeration conducted by the U.S. Census Bureau (language attributable to the Census data is located in the definition of “population data” in the current field of membership requirements); and
- Remove language that separately applied to credit unions with headquarters located within an MSA of more than one county (allowed for a different maximum population limit).

The bill would also modify a requirement that provides, from and after July 1, 2008, no geographic area shall consist of any congressional district or the entire state of Kansas to instead state no geographic area shall consist of the entire state of Kansas.

The bill would remove definitions within the Code for “MSA,” “population data,” and “overt act.” Some of the requirements within the definitions had been specific to operations of credit unions, including branch locations, construction of new buildings, and membership of occupation or association groups on or before either February 1, 2008, or June 30, 2008.

### ***Kansas Financial Institutions Privilege Tax—Definitions***

The bill would permit a deduction from net income for financial institutions subject to the Kansas Financial Institutions Privilege Tax (privilege tax). It would create definitions for the terms “business,” “interest,” and “single family residence” and would also create a calculation methodology for “net interest income from business loans” and for “net interest from single family residence loans” as follows:

- “Business” would mean any entity operated primarily for commercial or agricultural purposes and not an individual obtaining a loan primarily for personal, family, or household purposes;
- “Interest” would mean interest on indebtedness attributed to Kansas and incurred in the ordinary course of the active conduct of any business and interest on indebtedness incurred that is secured by a single family residence;
- “Net interest income received from business loans” would mean the product of the ratio of the interest income earned on business loans over total interest earned, in relation to the net income of the national banking association, state bank, trust company, or savings and loan association without regard to this deduction;

- “Net interest received from single family residence loans” would mean the product of the ratio of the interest income earned on single family residence loans over total interest income earned, in relation to the net income of the national banking association, state bank, trust company, or savings and loan association without regard to this deduction; and
- “Single family residence” would mean a residence that is:
  - The principal residence of its occupant;
  - Located in Kansas, in a rural area as defined by the U.S. Department of Agriculture that is not within a MSA and has a population of 2,500 or less as determined by the most recent census for which data is available; and
  - Purchased or improved with the proceeds of the loan.

## **Background**

Privilege tax legislation introduced in 2019 (SB 238 and SB 239) was one of several topics assigned to the interim Special Committee on Financial Institutions and Insurance. The Special Committee held a combined hearing on the two bills and received testimony from the interested parties. This committee made no recommendation on SB 238, which also would have created a similar deduction to that in SB 259, as introduced, and did not recommend SB 239, which would have imposed a privilege tax on certain credit unions.

The Senate Committee on Financial Institutions and Insurance (Senate Committee) recommended a substitute bill, which removes the original contents of SB 238 as introduced by the Senate Committee on Assessment and Taxation (privilege tax) and inserts provisions of SB 259

(financial institutions, privilege tax and field of membership), as amended by the Senate Committee, with technical amendments suggested by the Office of Revisor of Statutes.

***SB 259 – Financial Institutions, Privilege Tax and Field of Membership Requirements***

SB 259 was introduced by the Senate Committee at the request of the Kansas Bankers Association (KBA).

In the Senate Committee hearing on January 21-22, 2020, proponents included representatives of the KBA and Community Bankers Association; officials from Farmers & Drovers Bank, First Bank Kansas, Heartland Tri-State Bank, and Kaw Valley Bank; and the owner of a ranch partnership. Written-only proponent testimony was provided by officials with Alden State Bank, City State Bank, Community State Bank, Denison State Bank, Fidelity State Bank & Trust, First National Bank & Trust, First State Bank, Stanley Bank, The Bank, TriCentury Bank, and Vision Bank. Proponents generally commented on the issue of fairness for banks, especially as it applies to the current privilege tax, with the KBA representative stating the bill would help “level the playing field” between lenders. Several conferees indicated the bill would help revitalize rural communities, benefit borrowers with lower rates, and sustain local access to credit.

Opponents appearing before the Senate Committee included representatives of the Heartland Credit Union Association (HCUA); officials from Envista Credit Union, Farmway Credit Union, Frontier Community Credit Union, Mainstreet Credit Union, McPherson Co-Op Credit Union, and Skyward Credit Union; and the Kansas Cooperative Council. Written-only opponent testimony was provided by officials with Azura Credit Union, Catholic Family Credit Union, and Credit Union of America. Opponents generally commented on the credit unions as non-profit cooperatives with a different corporate structure, with the HCUA stating taxation of financial institutions is determined by the corporate

structure the financial institution chooses. Conferees also highlighted structural rules and differences between credit unions and other financial institutions or lenders, including a federal cap on certain business lending, field of membership laws, and a state prohibition on the deposit of public funds.

The Senate Committee amended the bill to limit business and residential loans subject to the permissible deduction from the privilege tax created by the bill to those in Kansas and add provisions that would modify field of membership requirements placed on credit unions.

The fiscal note prepared by the Division of the Budget on SB 259, as introduced, states the Department of Revenue (Department) estimates the bill would decrease state revenues by \$43.0 million in FY 2021, all from the State General Fund. The Department further indicates the bill would not limit the deductions to loans tied to Kansas; banks making loans in other states or foreign countries would be able to claim interest from those loans as a Kansas deduction. The Department concludes the bill would likely eliminate all Kansas privilege tax liability. [Note: The Senate Committee amendment would add limitations on loans subject to the deduction.] Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2021 Governor's Budget Report*.

A revised fiscal note was not immediately available for the bill, as amended by Senate Committee.