

UPDATED
SESSION OF 2022

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2569

As Amended by House Committee on Financial
Institutions and Rural Development

Brief*

HB 2569, as amended, would create the Historic Kansas Act, which would modify and establish certain tax credits for older commercial structures in the state.

Older Structures Tax Credit (New Sections 1-2)

The bill would establish for all taxable years after December 31, 2021, a tax credit against a tax liability imposed upon a taxpayer by the Kansas Income Tax Act, the financial institutions privilege tax, or the premium tax, of 10 percent of costs and expenses incurred for the restoration and preservation of a commercial structure at least 50 years old that does not receive the continuing Historic Structures Tax Credit (KSA 79-32,211). An additional 10 percent tax credit of costs and expenses would be allowed for the installation of fire suppression materials or equipment by a taxpayer.

Required Costs and Expenses

The bill would require the total amount of costs and expenses to at least equal \$25,000, but not exceed \$500,000.

*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>

Allowable Carry Over

The bill would provide that if the tax credit exceeds the taxpayer's income, privilege, or premium tax liability for the year in which the rehabilitation was completed, the excess amount could be carried over for deduction in the next year or years until the total amount of the credit has been deducted from tax liability, except no credit could be carried forward after the 10th taxable year succeeding the taxable year in which the rehabilitation plan was placed in service.

Financial Institutions

The bill would require financial institutions subject to the privilege tax (e.g., banks, savings and loan associations, and savings banks) to pay taxes on 50 percent of the interest earned on loans to taxpayers used for costs and expenses for the restoration and preservation of a commercial structure at least 50 years old or for the installation of fire suppression materials or equipment.

Corporations

The bill would detail, for purposes of a corporation having an election in effect under subchapter S of the federal Internal Revenue Code, the entities that could claim the tax credits.

Transfer of Tax Credits

The bill would allow for the transfer of tax credits. The taxpayer acquiring credits (assignee) would be able to use the amount of the acquired credits to offset up to 100 percent of the assignee's income, privilege, or premium tax liability for either the taxable year in which the costs and expenses were made. The bill would allow unused credit amounts claimed by the assignee to be carried forward for up to five years, with all credits being claimed within ten years following the tax year in

which the costs and expenses were made. The bill would require the assignee and assignor to enter into a written agreement, including terms and conditions of the agreement.

Prohibition

The bill would prohibit a person claiming a tax credit under the provisions of the bill from claiming a tax credit for the same structure under the continuing Historic Structures Tax Credit.

Rules and Regulations – Department of Revenue

The bill would authorize the Director of Taxation to adopt rules and regulations necessary for the efficient and effective administration of the provisions of this section of the bill.

Historic Structures Tax Credit – Amendments (Section 3)

The bill would amend the Historic Preservation Tax Credit by adding two tax credits, pursuant to a qualified rehabilitation plan by a qualified taxpayer if the total amount of expenditures equals \$5,000 or more. The credits would equal:

- 30 percent of qualified expenditures incurred in the restoration and preservation of a qualified historic structure located in a city with a population between 9,500 and 50,000; and
- 40 percent of qualified expenditures incurred in the restoration and preservation of a qualified historic structure located in a city with a population of less than 9,500.

Under continuing law, a historic structures tax credit is permitted for 25 percent of qualified expenditures for

restoration and preservation if the total amount of expenditures equals \$5,000 or more.

Cap on Tax Credits

The bill would eliminate the cap on allowable tax credits of \$3.75 million.

Financial Institutions

The bill would require the financial institutions specified in the bill to pay taxes on 50 percent of the interest earned on loans to qualified taxpayers used for qualified expenditures for the restoration and preservation of a qualified historic structure.

Rules and Regulations – State Historical Society

The bill would authorize the Executive Director of the Kansas State Historical Society to adopt rules and regulations necessary for the efficient and effective administration of the provisions of this section of the bill.

Technical Amendments

The bill would also make technical amendments.

Background

The bill was introduced by Representative Proctor and 14 others and referred to the House Committee on Taxation. The bill was rereferred to the House Committee on Financial Institutions and Rural Development on February 8, 2022.

House Committee on Financial Institutions and Rural Development

In the House Committee hearing, Representative Proctor, a private citizen from Leavenworth, and representatives of Davis Preservation, Friends of Historic Preservation, the Kansas Bankers Association, League of Kansas Municipalities, the Office of Rural Prosperity within the Department of Commerce, and the Territory Ballroom (Council Grove) provided **proponent** testimony. The proponents stated the current Historic Preservation Tax Credit is too burdensome and only allows for projects listed on the Register of Kansas Historic Places or located in and contributing to a district listed on the Register of Kansas Historic Places. The proponents also stated this new tax credit would allow downtown buildings to be restored and repurposed instead of sitting vacant or possibly demolished.

Written-only proponent testimony was provided by two private citizens from Leavenworth and Newton, a Leavenworth City Commissioner, and representatives of Downtown Wichita, Emporia Main Street, Flint Hills Holding Group, Frontier Property Management, and Independence Main Street.

No other testimony was provided.

The House Committee amended the bill to:

- Replace “qualified expenditures” references in a new section pertaining to the Older Structures Tax Credit with “costs and expenses”;
- Replace a “qualified structure” reference to “commercial structure at least 50 years old that does not receive” a Historic Structures Tax Credit;
- Replace a “qualified structure” reference with “commercial structure at least 50 years old”;

- Increase the total amount of costs and expenses requirement from at least equal to \$2,000 to at least equal to \$25,000;
- Decrease the cap on the total amount of costs and expenses requirement from \$1.0 million to \$500,000;
- Replace a reference to when a rehabilitation is “done” with when it is “completed”;
- Remove a reference to credit unions in financial institutions subject to the bill;
- Increase the percentage, from 25 percent to 50 percent, of the amount of the interest earned on loans to taxpayers that financial institutions would pay taxes on;
- Delete the definition section in a new section pertaining to the Older Structures Tax Credit;
- Authorize the Director of Taxation (Department of Revenue) to adopt rules and regulations;
- Add “pursuant to a qualified rehabilitation plan by a qualified taxpayer if the total amount of such expenditures equal \$5,000 or more” to the requirements of those claiming the Historic Structures Tax Credit;
- Require financial institutions to pay taxes on 50 percent of the interest earned on loans to qualified taxpayers used for qualified expenditures for the restoration and preservation of a qualified historic structure;
- Authorize the Executive Director of the Kansas State Historical Society to adopt rules and regulations; and
- Make technical amendments.

Fiscal Information

After the House Committee recommended the bill for passage, as amended, the Department of Revenue provided updated information on the fiscal impact of the bill.

The bill, as amended by the House Committee, would reduce state revenue by \$65.8 million in FY 2023, \$66.5 million in FY 2024, and \$67.1 million in FY 2025.

[*Note:* The fiscal note prepared by the Division of the Budget on the bill, as introduced, stated the bill would reduce state revenue by \$83.0 million in FY 2023, \$84.1 million in FY 2024, and \$85.0 million in FY 2025.]

The Department of Revenue states it would require \$104,584, all from the State General Fund, for administrative and IT expenditures. The Kansas State Historical Society states it would require \$827,850, all from the State General Fund, and 7.50 FTE positions for a new database and employees to run the database and conduct research.

[*Note:* The expenditures and FTE positions are similar to the amounts listed in the fiscal note on the bill, as introduced.]

Historic Kansas Act; Older Structures Tax Credit; Historic Structures Tax Credit; Department of Revenue; Kansas State Historical Society; restoration; preservation; tax credit; income, privilege, and premium tax