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MEMORANDUM

To: Chairman Kelly and members of the House Financial Institutions and Rural Development Committee

From: Office of Revisor of Statutes

Date: January 25, 2021

Subject: **HB 2069 - Enacting the Kansas economic recovery loan deposit program, updating field of membership requirements of credit unions and allowing privilege tax deductions on agricultural real estate loans and single family residence loans.**

House Bill No. 2069 would enact the Kansas Economic Recovery Loan Deposit Program, update field of membership requirements for credit unions, and allow privilege tax deductions on agricultural real estate loans and single-family residence loans for those financial institutions subject to the tax.

New Sections 1 through 7 enact all new law and create the Kansas Economic Recovery Loan Deposit Program. New Section 1 provides the citation to the program.

New Section 2 provide the definitions used in the Kansas Economic Recovery Loan Deposit Program. Of specific interest are the following definitions:

- "Economic recovery loan deposit" means an investment account placed by the director of investments...with an eligible lending institution for the purpose of carrying out the intent of the Kansas Economic Recovery Loan Deposit Program.
- "Economic recovery loan deposit loan" or "loan" means a loan made by an eligible lending institution to an eligible borrower from the eligible lending institution's economic recovery loan deposit as part of the economic recovery loan deposit program.
- "Economic recovery loan deposit program" or "program" means a state-administered program in which eligible lenders are charged less than the market rate of interest and eligible borrowers receive a reduction in interest charged on a loan in the amount of the deposit.

- "Eligible borrower" means any individual or entity operating a business primarily for business or agricultural purposes and is not an individual obtaining a loan primarily for personal, family, or household reasons.

New Section 3 provides for the State Treasurer to be the administrator of the Kansas Economic Recovery Loan Deposit Program and sets the total aggregate amount of economic recovery loan deposit funds at a maximum \$60M of unencumbered funds. The section also authorizes the State Treasurer to adopt all rules and regulations necessary to enact and administer the Kansas Economic Recovery Loan Deposit Program. Finally, the section requires the State Treasurer to submit a report on January 1 of the year following enactment and annually thereafter, to the Governor and the Legislature that identifies the eligible lending institutions and the eligible borrowers participating in the program, the aggregate total of moneys loaned and moneys available to loan, if any.

New Section 4 provides for the eligible lending institution's application process for eligible borrowers and economic recovery loan deposit loan requirements. Eligible lending institutions are required to apply all usual lending standards to determine the credit worthiness of eligible borrowers and an eligible borrower may only have one outstanding economic recovery loan deposit loan at any one time. No such loan may exceed \$250,000, and no such loan may be amortized for more than 10 years. An eligible lending institution forwards an approved economic recovery loan deposit loan package to the State Treasurer, along with any additional information that the State Treasurer may require.

New Section 5 specifies the process for the economic recovery loan deposit loan package once it is received by the State Treasurer. The State Treasurer may accept or reject the economic recovery loan deposit loan package based on the State Treasurer's evaluation of whether the loan to borrower meets the requirements of the Kansas Economic Recovery Loan Deposit Program. If there are not sufficient funds for an economic recovery loan deposit, then applications may be considered in the order received when funds once again become available, subject to review by the lending institution. Upon acceptance of an economic recovery loan deposit loan package, the State Treasurer certifies to the Director of Investments the amount required for the economic recovery loan deposit loan package. The Director of Investments then places an economic

recovery loan deposit in the amount certified with the eligible lending institution at an interest rate that is 2% below the market rate provided in K.S.A. 75-4237, and amendments thereto. Such interest rate will be recalculated annually, on the first business day of January, using the market rate then in effect. The minimum interest rate charged will be 0.25% if the market rate is below 2.25%.

An eligible lending institution would be required to enter into an economic recovery loan deposit agreement with the State Treasurer. Such agreement would include requirements necessary to implement Kansas Economic Recovery Loan Deposit Program, including an agreement by the eligible lending institution to lend an amount equal to the loan deposit to eligible borrowers at an interest rate that is not more than 3% greater than the interest rate made available to the lending institution, to be recalculated on an annual basis. The loan agreement also includes provisions for the loan deposit to be placed for an annually renewable one-year maturity up to a period of ten years, and also would require the agreement to include provisions for the reduction of the loan deposit in an amount equal to any payment of loan principal by the eligible borrower.

New Section 6 requires the eligible lending institution, upon placement of an economic recovery loan deposit, to fund the loan to each approved eligible borrower listed in the economic recovery loan deposit package in accordance with the agreement between the State Treasurer and the eligible lending institution. This section stipulates that the loan to the eligible lending institution be made at the rate established in New Section 5.

New Section 7 provides that neither the State, nor the State Treasurer, would be liable to any eligible lending institution in any manner for payment of the principal or interest on any economic recovery loan deposit loan deposit loan to an eligible borrower. This section also states that the eligible lending institution is ultimately responsible for any delay in payments or default on the part of the eligible borrower.

Section 9 amends K.S.A. 75-4237, which pertains to the investment of state moneys by the director of investments. The amendment adds loan deposits made under the Kansas Economic Recovery Loan Deposit Program, and its attendant interest rate calculation.

Section 8 amends K.S.A. 2020 Supp. 17-2205, pertaining to credit union membership. Under current law, credit union members must share one or more common bonds of membership (occupation, association, geographic). 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 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 a 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.]

Amendments to Geographical Criteria:

The bill would:

- 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).

- 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 strike the date-related lead-in language and state instead that "no geographic area shall consist of the entire state of Kansas."

General Amendments to Statute

The definitions of "MSA," "population data," and "overt act" were struck from the statute.

Section 10 amends K.S.A. 79-1109, pertaining the definition of net income and allowable deductions therefrom. The amendment would create a deduction for those financial institutions subject to the Kansas Financial Institutions Privilege Tax, pursuant to K.S.A. 79-1106 et seq., for tax years commencing after December 31, 2022, a deduction of net interest income from certain qualified agricultural real estate and single-family residence loans from net income to the extent such interest is included in the Kansas taxable income of a corporation. The following definitions have also been created to support the new deduction:

- (1) "Interest" means 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;
- (2) "qualified agricultural real estate" means real property that is substantially used for the production of one or more agricultural products;
- (3) "single family residence" means a residence that:
 - (A) Is the principal residence of its occupant;
 - (B) is located in Kansas, in a rural area as defined by the United States department of agriculture that is not within a metropolitan statistical area and has a population of 2,500 or less as determined by the most recent census for which data is available; and
 - (C) is purchased or improved with the proceeds of the loan;
- (4) "net interest income received from qualified agricultural real estate loans attributed to Kansas" means the product of the ratio of the interest income earned on qualified agricultural real estate 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
- (5) "net interest income received from single family residence loans attributed to Kansas" means 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.