

SESSION OF 2021

**SUPPLEMENTAL NOTE ON HOUSE SUBSTITUTE FOR
SENATE BILL NO. 88**

As Recommended by House Committee on
Financial Institutions and Rural Development

Brief*

House Sub. for SB 88 would create the City Utility Low-Interest Loan Program (Program), which would provide loans to cities for extraordinary electric or natural gas costs incurred during the extreme winter weather event of February 2021. The total aggregate amount of loans issued under the Program, which would be administered by the State Treasurer, could not exceed \$100.0 million of unencumbered funds. The bill would also amend law governing the investment of state moneys to add Program loans and applicable interest rates.

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

City Utility Low-Interest Loan Program (New Section 1)

The bill would designate its provisions and amendments thereto as the Program. The Program would be part of and supplemental to Article 42 of Chapter 75 of the *Kansas Statutes Annotated* (Article 42 pertains to state moneys, including the investment of state moneys, activities of the Pooled Money Investment Board (PMIB), and the administration of certain loan deposit programs).

*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>

Program Definitions (New Section 2)

The bill would establish definitions for terms including:

- “City” would mean a city organized and existing under the laws of Kansas; and
- “Loan” would mean a deposit of unencumbered state funds to a city pursuant to the Program.

The bill would also define the terms “director of investments” and “program.”

Program Administration; Report and Legislative Review (New Section 3)

The bill would authorize the State Treasurer to administer the Program. The bill would state the Program’s purpose would be for providing loans to cities for extraordinary electric or natural gas costs incurred during the extreme winter weather event of February 2021. The bill would restrict the total amount of loans under the Program to an amount not to exceed \$100.0 million of unencumbered funds pursuant to Article 42 of Chapter 75, *Kansas Statutes Annotated*.

The State Treasurer would be required to adopt all rules and regulations necessary to administer the Program, including the development of a streamlined application process. The bill would provide that rules and regulations must be adopted no later than January 1, 2022, except the streamlined application process must be established within 14 days from the effective date of the act (*Kansas Register* publication). The bill would further specify the adoption of such rules and regulations would not be a prerequisite for the approval of Program loans by the State Treasurer. The bill would state the State Treasurer shall approve loans under the Program in the most expeditious manner possible on or after the effective date of this act.

The State Treasurer would be required to submit an annual report to the Governor and Legislature identifying the cities participating in the Program. The report would be required to provide the aggregate amount of moneys loans and the amount of moneys available for loan. The report would be due on or before January 1, 2022, and each January 1 thereafter. The Legislature would be required to perform of a review of the Program as part of the State Treasurer's annual report on or after January 1, 2024.

Program Loan Applications (New Section 4)

The bill would authorize the State Treasurer to disseminate information and to provide loan applications as soon as practicable on or after the effective date of this act to cities for Program participation.

A city would be required to forward an application to the State Treasurer in a form and manner prescribed by the State Treasurer. The application would be required to:

- Include information regarding the amount of the loan requested by the city and such information the State Treasurer may require, including but not limited to, the specific fund or account of the city in which loan proceeds would be deposited; and
- Contain a certification by the governing body of the city that, if the city receives any federal moneys related to the extreme winter weather event of February 2021, the first priority for expenditure of such moneys would be for the payment of any outstanding balance of a loan made to the city under the Program.

The bill would further specify a Program loan could be only for those extraordinary electric or natural gas costs incurred during the extreme weather event of February 2021,

as certified by the city's governing body, and not for any other utility costs previously budgeted for by the city.

The bill would also provide that no loan could be amortized for a period of more than ten years. Payments on such loan would not be required to be more frequently than annually but could be made more frequently upon agreement between the city and State Treasurer.

Certification of Program Loans; Interest Rate (New Section 5)

The bill would authorize the State Treasurer to accept or reject an application based on the State Treasurer's evaluation of whether the city meets the Program requirements. If sufficient funds are not available for a Program loan, the applications may be considered in the order received when funds become available.

Upon the acceptance of an application, the bill would require the State Treasurer to certify to the Director of Investments the amount required for the loan and the Director would place a deposit of this certified amount in the specific fund or account of the city indicated in the loan application and approved by the State Treasurer.

The bill would provide the interest rate on a loan must be 2.0 percent below the market rate provided in KSA 75-4237 (a floating rate). The bill would require such rate to be recalculated on the first business day of January each year using the market rate then in effect. The bill would further specify the minimum interest rate (or floor) would be 0.25 percent if the market rate is below 2.25 percent. When necessary, the bill would provide the State Treasurer may request the Director of Investments to place such deposit with the city prior to approval of an application.

The bill would require all moneys received by the State Treasurer from cities for payments of the Program loans to be

deposited in the State Treasury to the credit of the Pooled Money Investment Portfolio.

Conflict of Provisions with Other Law Governing State Moneys; Exemption from Bonded Indebtedness (New Section 6)

The bill would provide, in the event a conflict arises between provisions of this bill and provisions of Article 42 of Chapter 75, *Kansas Statutes Annotated*, or any other provision of law, the provisions of the bill shall control.

The bill would also provide that any Program loan made to a city shall not be considered bonded indebtedness for the purposes of KSA 10-308 (pertaining to bonded indebtedness of cities) or any other statute imposing a limitation on indebtedness of a city.

Program Interest Rates, Investment in State Moneys (Section 7)

The bill would amend law governing the investment of state moneys to add those loan deposits made under the Program and applicable interest rates established by the bill.

The bill would also make technical amendments.

Background

The House Committee on Financial Institutions and Rural Development recommended a substitute bill incorporating provisions pertaining to the establishment of the City Utility Low-Interest Loan Program (Program) originally contained in HB 2429, as introduced by the House Committee on Appropriations.

SB 88, as recommended by the Senate Committee on Local Government, would have amended law regarding the

process for vacation of city streets or other public easements and would have added law regarding challenging a street vacation ordinance. A companion bill, HB 2176, was introduced by the House Committee on Local Government.

[*Note:* The provisions pertaining to local government topics were not retained in the substitute bill.]

HB 2429 – City Utility Low-Interest Loan Program

The bill was introduced by the House Committee on Appropriations at the request of Representative Finch.

House Committee on Financial Institutions and Rural Development

In the House Committee hearing, Representative Finch, representatives of the Kansas Municipal Utilities and the League of Kansas Municipalities (LKM), and the State Treasurer provided **proponent** testimony.

Conferees indicated the bill is in response to the extreme cold weather event in February 2021 that impacted Kansas and much of the United States. The weather event caused energy supply issues that resulted in significant and unexpected increases in the purchase price of natural gas and electricity. The conferees indicated the 118 municipal electric utilities and 53 municipal gas utilities in Kansas were uniquely impacted by the weather event because they are required to operate under the cash basis law, which prohibits a municipality from creating debt in excess of the amount of funds the municipality has on-hand in the treasury at the time. The cash basis law, which is not applicable to investor-owned utilities and electric cooperatives, prevents municipalities from spreading out excess expenses over time to reduce the economic impact to customers. The conferees discussed the urgent need for the bill, as payments are coming due and municipalities are not able to pay the costs.

Conferees further indicated the bill would allow municipalities to avoid the added cost of bonding and issuing no-fund warrants; would provide economic stability; and would allow municipalities to use federal funding, if it becomes available, to be directed towards loan repayment.

Written-only **proponent** testimony was provided by representatives of the Kansas Chamber, Kansas City Board of Public Utilities, Kansas Municipal Gas Agency, Kansas Municipal Energy Agency, and McPherson Board of Public Utilities; representatives of 36 municipalities in Kansas; 8 residents of Denison; 1 resident of Humboldt; 2 residents of Lyons; 3 residents of Osawatomie; and 1 resident of Walton. Written-only proponents discussed the financial hardship the cost increases would put on their organization, municipality, customers, or individual budgets, if not mitigated.

No other testimony was provided.

The House Committee amended the bill to remove the contents of SB 88 and insert the contents of HB 2429.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on HB 2429, the Office of the State Treasurer (Office) estimates enactment of the bill would require \$33,000 in FY 2021 and \$46,000 in FY 2022 to implement the Program and the agency would request that amount come from the State Treasurer's Operating Fund or other fees within the agency. The Office estimates enactment of the bill would require the agency to hire at least 0.50 new FTE position to manage the Program. In addition, there would be the need to hire outside legal counsel to draft loan contracts with cities and to write expedited rules and regulations. The bill, the Office notes, would require it to assume full credit risk in administering these loans to cities. If a city were to default on the loan, the funds, which would otherwise be available to the State of Kansas, would be lost. Since the idle funds

balance is used as the funding source for the loans, it is assumed that State General Fund resources would be needed to backfill idle fund balances if a city were to default on a loan.

The bill would require the PMIB, at the direction of the State Treasurer, to make deposits of up to \$100.0 million of idle funds to cities qualifying for the Program. The bill would require the PMIB, at the direction of the State Treasurer, to make deposits of up to \$100.0 million of idle funds at eligible lending institutions to fund the Program. The PMIB is authorized to make investments in U.S. Treasury and federal agency securities, highly rated commercial paper and corporate bonds, and repurchase agreements and certificates of deposit at Kansas banks. Declining balances have required the PMIB to maintain a highly liquid portfolio, which reduces the amount of return available to the pool. The PMIB maintains a significant portion of its investments in overnight repurchasing agreements.

According to the fiscal note, rates that the PMIB could earn in that market fell to near zero after actions from the Federal Reserve in 2020 (and are likely to stay low for the foreseeable future according to the November 2020 Consensus Revenue Estimate Memo). Recalculating the rate on the loan to cities each year has the potential to lock in a lower or higher interest rate that could be earned in the market; however, without knowing the timing of future interest rate changes, it is not possible to estimate the impact of the bill on interest earnings from requiring the deposit of up to \$100.0 million of idle funds at eligible lending institutions compared to other investments the PMIB might make. The PMIB and the State Treasurer indicate sufficient idle fund cash balances would fund the Program; however, future balances that would be used to support this program over the course of the next ten years are unknown. The PMIB indicates the costs to administer the deposit of idle funds at eligible lending institutions would be negligible and could be absorbed within existing resources and staff levels.

The LKM is unable to determine the precise amount of loans that would be requested by cities, as not all cities have received bills that cover the time frame of the extreme winter weather event in February 2021.

Any fiscal effect associated with HB 2429 is not reflected in *The FY 2022 Governor's Budget Report*.

Cities; utility costs; loan deposit program; City Utility Low-Interest Loan Program; State Treasurer; weather event