TESTIMONY ON SENATE BILL NO. 369
BEFORE THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

Kansas Housing Resources Corporation
Ryan Vincent, Executive Director
February 3, 2022

Disposition: Neutral
ORAL in-person Testimony

Chairman Olson and members of the Committee, Kansas Housing Resources Corporation (KHRC) is the public nonprofit corporation that administers Federal and State housing programs on behalf of the State. KHRC's mission is to help Kansans access the safe, affordable housing they need and the dignity they deserve.

The Challenge – A Housing Problem. A lack of affordable, quality housing has been a problem in Kansas for many years. Escalating construction costs, a shortage of skilled construction labor, aging or no infrastructure, low real estate appraisals on new houses, lack of down payment capacity and more have effectively closed the housing market to many of our low- and moderate-income citizens. Historically, Kansas lacked concrete data to truly understand each community's and region's unique housing needs, which in turn affected KHRC's and the State's ability to allocate resources effectively to best meet those needs. In partnership with the Office of Rural Prosperity, in 2021, KHRC completed our first Statewide Housing Needs Assessment in nearly 30 years. The study provides detailed data on our housing market in each region of the state, as well as Goals and Strategies for tackling the problems. These goals include extending housing security and reinvesting in older housing stock.

Kansas Housing Tax Credit Program. Fortunately, KHRC offers a number of solutions to help address the ongoing affordable housing problem. One of these programs is the federal Housing Tax Credit (HTC) Program, which has produced about 35,000 units of rental housing since 1987, representing an investment of over $2 billion across the state, with about half of that in rural areas. Below is some data on the existing federal HTC Program:

- Every year, KHRC receives approximately $7.6 million in annual tax credits from the U.S. Department of Treasury, which equates to about $76,000,000 over the 10-year credit period.
- The HTC is awarded to housing developments through a highly competitive process outlined in our Qualified Allocation Plan. Our most recent awards can be found on our website. The credits are sold to investors and the equity generated by the sale generally finances about 2/3

of the cost of the housing development. The development commits to Federal and State affordability and compliance requirements.

- On average, KHRC generally receives $3.05 in requests for credit for every $1 we have available to allocate.
- In 2021 alone, KHRC denied credits to 12 housing developments that met our eligibility criteria – had KHRC had the resources, KHRC would have awarded these developments, which would have generated 452 units of affordable housing to Kansas communities (247 units of new construction and 205 units of rehab).

Senate Bill No. 369 would establish a Kansas Affordable Housing Tax Credit that would be used in concert with the existing Federal HTC. While KHRC does not endorse or advocate for specific policy decisions, in our role of educating legislators and stakeholders, please find below our analysis of the Bill and its implications on KHRC's program and mission:

- State housing tax credits are a popular tool in a number of states (including those surrounding Kansas) to provide additional equity for housing development.
- Benefits of a state housing tax credit include:
    - *Utilizing an Existing Program & Infrastructure:* As detailed above, KHRC already has an established federal HTC Program and a network of developers, housing partners, and stakeholders familiar with the Program.
    - *Additional Equity for Housing Development:* a state housing tax credit would significantly increase the number of developments to which KHRC could award credits, leveraging Federal dollars and private investment to serve this high area of need. As written, and based on a credit pricing of 50 cents, KHRC projects it could allocate an increase of 60% over the number of developments it historically awards.
    - *Minimal Administrative Expense:* Since it utilizes an existing program and infrastructure, KHRC's administrative costs would be minimal. Costs would be covered by the additional allocation and compliance fees we would assess for the state credits, similar to what we currently charge for the Federal program.
    - *Public-Private Partnership:* The tax credit structure requires coordination and partnership between the public and private sectors. This results in increased compliance oversight, as both the government and investors have a stake in the success of the development.
- State housing tax credit considerations:
    - The pricing on state housing tax credits is generally below the Federal credit pricing. Accordingly, a dollar's worth of state tax credit investment may only result in housing equity of 50-60 cents, depending on pricing and market conditions.
    - A state housing tax credit used in conjunction with the Federal credit will generally be limited to lower income households. The Federal program income limits average around 60% of area median income.
- Specific comments on Senate Bill No. 369:
    - The Bill utilizes and references the existing Federal program, so should be relatively easy to implement and administer.

- KHRC is attaching a summary of technical analysis and suggestions from bond counsel Gilmore & Bell behind our testimony that may assist the Committee in its deliberations.

As KHRC's 2021 Annual Report details, the stars are aligning in Kansas to address our underlying housing problems. Long-term, sustained investments in housing will Unlock Home for generations to come. KHRC is pleased to further its mission of Unlocking Home for those we serve through these challenging times and beyond. Thank you for your interest in exploring housing needs and resources. I am happy to answer any questions you may have.

Technical Comments on SB No. 369
Provided by Gilmore & Bell, PC

- The definition of the term "pass-through entity" says it is any "(1) Limited liability company; (2) partnership; or (3) limited liability partnership." They suggest Option 2 should say "limited partnership". Limited partnerships are the single most common form of entity used in tax credit projects. Limited liability companies are also used, but not nearly as frequently. Allowing limited partnerships as an acceptable form of pass-through entity would be desirable to the housing development community.
- We noticed one typo in the definition of the term "pass-through entity." The "Limited" in "Limited liability company" as used in that definition should be capitalized.
- The term "qualified basis" is defined but not used anywhere in the text of the statute, so we suggest deleting it.
- The term "compliance period" is also defined but not actually used anywhere in the text of the statute. That said, Section 3(f), in stating the requirement for recording restrictive covenants against each project, could use the term "compliance period". Instead, it describes the duration for which such covenants would need to be in place (effectively reciting the definition for the term compliance period). We suggest the term "compliance period" either be inserted in that section or otherwise deleted from the defined terms.
- The definition of the term "qualified development" defers to the definition of "qualified low-income housing project" as defined in Section 42 of the tax code. While "qualified low-income housing project" is defined in Section 42, most of the provisions in Section 42, as well as the form 8609, are predicated on each "qualified low-income building" as that term is defined in Section 42. As a result, limiting a "qualified development" to only a development constituting a "qualified low-income housing project" could become problematic given how "qualified development" is used in the statute. For instance, Section 3(b) says the delivery of the allocation certificate to the "qualified development" is simultaneous with the issuance of an 8609. The 8609 would be issued for each qualified low-income building as it is placed in service, so this would serve to create a disconnect between when federal credits start flowing for each building and when state credits become available. We suggest each use of the term "qualified development" within the statute be evaluated to determine whether it should really apply on a building by building basis as opposed to a project wide basis so that revisions can be made accordingly.
- Section 3(a) provides for a credit "in an amount equal to the federal tax credit allocated or allowed by the KHRC to such qualified development." This language seems to suggest that the federal and state credit amounts would always be equal. However, Section 3(h), says "Any combination of federal tax credits and credits allowed pursuant to this act shall be the least amount necessary to ensure the financial feasibility of a qualified project." That language allows the credit award to potentially be adjusted downward to only award the level of credits necessary to make the project financially viable. What's not clear when reading these two sections together is whether the federal and state credits would both need to be adjusted in equal amounts under the 3(h) analysis in order to satisfy 3(a) or whether 3(h) is allowing a deviation from the keeping the amount of each credit equal. We suggest this be clarified somewhere in the statute.
- We suggest adding "to which a credit has been allocated" to the end of the first sentence of Section 3(b). This will be consistent with wording in other parts of the statute and make clear that it only applies to projects which have actually been awarded credits by KHRC.

- The proposed legislation is silent on 4% versus 9% credits. Section 3(a) of the draft legislation could arguably in interpreted to approve both since it approves a credit “in an amount equal to the federal tax credit allocated or allowed” by KHRC. That said, we suggest that this be addressed more clearly.