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H.B. No. 1058

A BILL TO BE ENTITLED

AN ACT

relating to a franchise or insurance premium tax credit for certain housing developments.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 171, Tax Code, is amended by adding Subchapter K to read as follows:

SUBCHAPTER K. TAX CREDIT FOR CERTAIN HOUSING DEVELOPMENTS

Sec. 171.551. DEFINITIONS. In this subchapter:

(1) "Allocation certificate" means a statement issued by the department certifying that a qualified development qualifies for credits under this subchapter and Chapter 233, Insurance Code, and specifying the total amount of the credits awarded in connection with the qualified development for the credit period.

(2) "Credit" means the low-income housing development tax credit authorized by this subchapter.

(3) "Credit period" means, with respect to a building that is part of a qualified development, the period of 10 tax years beginning with the tax year in which the building is placed in service.

(4) "Department" means the Texas Department of Housing and Community Affairs.

(5) "Development" has the meaning assigned by Section 2306.6702, Government Code.

(6) "Federal tax credit" means the federal low-income

1 housing credit created by Section 42, Internal Revenue Code.

2 (7) "Qualified basis" means the qualified basis of a
3 qualified development, as determined under Section 42, Internal
4 Revenue Code.

5 (8) "Qualified development" means a development in
6 this state that the department determines is eligible for a federal
7 tax credit and that:

8 (A) is the subject of a recorded restrictive
9 covenant requiring the development to be maintained and operated as
10 a qualified development;

11 (B) meets all applicable requirements of the
12 qualified allocation plan, as defined by Section 2306.6702,
13 Government Code; and

14 (C) for the lesser of 15 years after the
15 beginning of the credit period or the period required by the
16 department, is in compliance with:

17 (i) all accessibility and adaptability
18 requirements for a federal tax credit; and

19 (ii) Title VIII of the Civil Rights Act of
20 1968 (42 U.S.C. Section 3601 et seq.).

21 (9) "State housing credit ceiling" means \$25 million
22 each year.

23 Sec. 171.552. ENTITLEMENT TO CREDIT. A taxable entity is
24 entitled to a credit against the taxes imposed under this chapter in
25 the amount and under the limitations provided by this subchapter if
26 the taxable entity owns a direct or indirect interest in a qualified
27 development.

1 Sec. 171.553. ALLOCATION CERTIFICATE. (a) In a year during
2 a credit period, a taxable entity or an entity subject to state
3 premium tax liability as defined by Section 233.0001, Insurance
4 Code, may apply to the department for an allocation certificate in
5 connection with a development in which the taxable entity or other
6 entity owns an interest.

7 (b) The department shall issue an allocation certificate if
8 the development is a qualified development.

9 Sec. 171.554. AMOUNT OF CREDITS. (a) The department shall
10 in the manner provided by this section determine the total amount of
11 credits under this subchapter and Chapter 233, Insurance Code,
12 awarded for the credit period in connection with a qualified
13 development and indicate the amount of credits awarded on the
14 allocation certificate.

15 (b) The amount of credits awarded in connection with a
16 qualified development over the credit period must be the minimum
17 amount necessary for the financial feasibility of the qualified
18 development after considering any federal tax credit, subject to
19 the limitations of this section.

20 (c) The amount of credits awarded in connection with a
21 qualified development over the credit period may not exceed the
22 total federal tax credit awarded to the owner or owners of the
23 qualified development over the 10-year federal tax credit period.

24 (d) The manner in which the department awards the amount of
25 credits must be consistent with criteria established by the
26 department.

27 (e) The total amount of credits awarded for a year in

1 connection with all qualified developments financed through tax
2 exempt bonds may not exceed the sum of:

3 (1) 50 percent of the state housing credit ceiling for
4 the year;

5 (2) any unallocated credits for the preceding year;
6 and

7 (3) any credit recaptured or otherwise returned to the
8 department in the year.

9 (f) The total amount of credits awarded for a year in
10 connection with all qualified developments not financed through tax
11 exempt bonds may not exceed the sum of:

12 (1) 50 percent of the state housing credit ceiling for
13 the year;

14 (2) any unallocated credits for the preceding year;
15 and

16 (3) any credit recaptured or otherwise returned to the
17 department in the year.

18 Sec. 171.555. APPORTIONMENT OF CREDIT. The direct or
19 indirect owners of a qualified development who intend to claim a
20 credit under this subchapter or Chapter 233, Insurance Code, may by
21 agreement determine the portion of the total amount of credits
22 awarded under Section 171.554 that each owner is entitled to claim.
23 If the owners do not agree, the department shall determine the
24 portion each owner is entitled to claim based on each owner's
25 ownership interest in the qualified development.

26 Sec. 171.556. LENGTH OF CREDIT; LIMITATION. (a) A taxable
27 entity entitled to a credit under this subchapter shall claim the

1 credit in equal installments during each year of the credit period.

2 (b) The total credit claimed under this subchapter for a
3 report, including any carry forward or backward under Section
4 171.557, may not exceed the amount of franchise tax due for the
5 report after any other applicable credit.

6 Sec. 171.557. CARRY FORWARD OR BACKWARD. (a) If a taxable
7 entity is eligible for a credit that exceeds the limitations under
8 Section 171.556, the taxable entity may carry the unused credit
9 back for not more than three tax years or forward for not more than
10 10 consecutive reports following the tax year in which the
11 allocation was made. A credit carryforward from a previous report
12 is considered to be used before the current year installment.

13 (b) A credit that is not used may not be refunded.

14 Sec. 171.558. RECAPTURE. (a) The comptroller shall
15 recapture the amount of a credit claimed on a report filed under
16 this chapter from a taxable entity if, on the last day of a tax year,
17 the amount of the qualified basis of the qualified development is
18 less than the amount of the qualified basis as of the last day of the
19 prior tax year. The comptroller shall determine the amount
20 required to be recaptured using the formula provided by Section
21 42(j), Internal Revenue Code, as that section existed on January 1,
22 2023.

23 (b) A report must include any portion of credit required to
24 be recaptured, the identity of any taxable entity subject to the
25 recapture, and the amount of any credit previously allocated to the
26 taxable entity.

27 Sec. 171.559. ALLOCATION OF CREDIT. (a) If a taxable

1 entity receiving a credit under this subchapter is a partnership,
2 limited liability company, S corporation, or similar pass-through
3 entity, the taxable entity may allocate the credit to its partners,
4 shareholders, members, or other constituent taxable entities in any
5 manner agreed to by those entities.

6 (b) A taxable entity that makes an allocation under this
7 section shall certify to the comptroller the amount of credit
8 allocated to each constituent taxable entity or shall notify the
9 comptroller that it has delegated the duty of certification to one
10 constituent taxable entity that shall provide the notification to
11 the comptroller. Each constituent taxable entity is entitled to
12 claim the allocated amount subject to any restrictions prescribed
13 by this subchapter.

14 (c) An allocation under this section is not a transfer for
15 purposes of state law.

16 Sec. 171.560. FILING REQUIREMENTS AFTER ALLOCATION. A
17 taxable entity that allocates a portion of the credit under Section
18 171.559, and each taxable entity to which a portion was allocated,
19 shall file with the taxable entity's report a copy of the allocation
20 certificate on which the credit is based.

21 Sec. 171.561. RULES; PROCEDURES. The department and
22 comptroller, in consultation with each other, shall adopt rules and
23 procedures to implement, administer, and enforce this subchapter.

24 Sec. 171.562. COMPLIANCE MONITORING. (a) The department,
25 in consultation with the comptroller, shall monitor compliance with
26 this subchapter in the same manner as the department monitors
27 compliance with the federal tax credit program.

1 (b) The department shall report any instances of
2 noncompliance with this subchapter to the comptroller.

3 Sec. 171.563. INCLUSION OF INFORMATION IN LOW INCOME
4 HOUSING PLAN. The department shall include in the low income
5 housing plan under Section 2306.0721, Government Code, information
6 relating to the performance of the credit during the previous
7 calendar year. The information must:

8 (1) specify the number of qualified developments for
9 which allocation certificates were issued during the year and the
10 total number of units supported by the developments;

11 (2) describe each qualified development for which an
12 allocation certificate was issued during the year, including:

13 (A) location;

14 (B) household type;

15 (C) available demographic information for the
16 residents intended to be served by the development;

17 (D) the income levels intended to be served by
18 the development; and

19 (E) the rents or set-asides authorized for the
20 development;

21 (3) include housing market and demographic
22 information to demonstrate how the qualified developments,
23 supported by the tax credits under this subchapter and Chapter 233,
24 Insurance Code, are addressing the need for affordable housing in
25 their communities; and

26 (4) analyze any remaining disparities in the
27 affordability of housing within those communities.

1 Sec. 171.564. EXPIRATION OF SUBCHAPTER. This subchapter
2 expires December 31, 2035.

3 SECTION 2. Subtitle B, Title 3, Insurance Code, is amended
4 by adding Chapter 233 to read as follows:

5 CHAPTER 233. CREDIT AGAINST CERTAIN TAXES FOR CERTAIN HOUSING
6 DEVELOPMENTS

7 SUBCHAPTER A. GENERAL PROVISIONS

8 Sec. 233.0001. DEFINITIONS. In this chapter:

9 (1) "Allocation certificate" and "qualified
10 development" have the meanings assigned by Section 171.551, Tax
11 Code.

12 (2) "State premium tax liability" means any tax
13 liability incurred by an entity under Chapters 221 through 226.

14 SUBCHAPTER B. CREDIT

15 Sec. 233.0051. CREDIT. An entity is eligible for a credit
16 against the entity's state premium tax liability in the amount and
17 under the limitations provided by this chapter if the entity owns a
18 direct or indirect interest in a qualified development.

19 Sec. 233.0052. LENGTH OF CREDIT; LIMITATIONS. (a) The
20 entity shall claim the credit in the manner provided by Section
21 171.556(a), Tax Code.

22 (b) The total credit claimed under this chapter for a
23 report, including any carry forward or backward described by
24 Subsection (c), may not exceed the amount of the entity's state
25 premium tax liability due for the report after any other applicable
26 credit.

27 (c) The entity may carry a surplus credit forward or

1 backward as provided by Section 171.557, Tax Code.

2 Sec. 233.0053. APPLICATION FOR CREDIT. (a) An entity must
3 apply for a credit under this chapter on or with the tax report for
4 the tax year for which the credit is claimed and submit with the
5 application a copy of the allocation certificate issued in
6 connection with the qualified development and any other information
7 required by Subchapter K, Chapter 171, Tax Code.

8 (b) The comptroller shall adopt a form for the application
9 for the credit. An entity must use this form in applying for the
10 credit.

11 Sec. 233.0054. RULES; PROCEDURES. The comptroller and the
12 Texas Department of Housing and Community Affairs, in consultation
13 with each other, shall adopt rules and procedures to implement,
14 administer, and enforce this chapter.

15 Sec. 233.0055. APPLICABLE PROVISIONS. The provisions of
16 Subchapter K, Chapter 171, Tax Code, relating to recapture,
17 allocation of credit, filing requirements after allocation, and
18 compliance monitoring apply to the credit authorized by this
19 chapter.

20 SUBCHAPTER C. EXPIRATION OF CHAPTER

21 Sec. 233.0101. EXPIRATION OF CHAPTER. This chapter expires
22 December 31, 2035.

23 SECTION 3. (a) The Texas Department of Housing and
24 Community Affairs may begin issuing allocation certificates under
25 Section 171.553, Tax Code, as added by this Act, in an open cycle
26 beginning on January 1, 2024.

27 (b) Except as provided by Subsections (d) and (e) of this

1 section, Subchapter K, Chapter 171, Tax Code, as added by this Act,
2 and Chapter 233, Insurance Code, as added by this Act, apply only to
3 a tax report originally due on or after January 1, 2026, and before
4 January 1, 2036.

5 (c) An entity may not carry back a credit under Section
6 171.557, Tax Code, as added by this Act, to a tax year the report for
7 which is originally due before January 1, 2026.

8 (d) The expiration of Subchapter K, Chapter 171, Tax Code,
9 as added by this Act, in accordance with Section 171.564, Tax Code,
10 as added by this Act, does not affect the carryforward of a credit
11 under Section 171.557, Tax Code, as added by this Act.

12 (e) The expiration of Chapter 233, Insurance Code, as added
13 by this Act, in accordance with Section 233.0101, Insurance Code,
14 as added by this Act, does not affect the carryforward of a credit
15 under Section 233.0052(c), Insurance Code, as added by this Act.

16 SECTION 4. This Act takes effect January 1, 2024.