

By: Ritter

H.B. No. 3287

A BILL TO BE ENTITLED

AN ACT

relating to a franchise tax credit for qualified low-income community investments.

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

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

SUBCHAPTER J-1. CREDIT FOR QUALIFIED LOW-INCOME COMMUNITY INVESTMENTS

Sec. 171.521. DEFINITIONS. In this subchapter:

(1) "Credit allowance date" means, with respect to a qualified equity investment:

(A) the date on which the investment is initially made; and

(B) each of the next six anniversaries of that date.

(2) "Long-term debt security" means a debt instrument issued by a qualified community development entity, at par value or a premium, with an original maturity date of at least seven years from the date of its issuance, with no acceleration of repayment, amortization, or prepayment features before its original maturity date, and with no distribution, payment, or interest features related to the profitability of the qualified community development entity or the performance of the qualified community development entity's investment portfolio. This subdivision does not limit the

1 ability of the holder of the debt instrument to accelerate payments  
2 on the debt instrument in a situation in which the issuer has  
3 defaulted on a covenant designed to ensure compliance with this  
4 subchapter or Section 45D, Internal Revenue Code of 1986.

5 (3) "Qualified active low-income community business"  
6 has the meaning assigned by Section 45D(d)(2), Internal Revenue  
7 Code of 1986, except that a business that derives or projects to  
8 derive 15 percent or more of its annual revenue from the rental or  
9 sale of real estate is not a qualified active low-income community  
10 business for purposes of this subchapter.

11 (4) "Qualified community development entity" has the  
12 meaning assigned by Section 45D(c), Internal Revenue Code of 1986,  
13 but only if the entity has entered into an allocation agreement with  
14 the Community Development Financial Institutions Fund of the United  
15 States Department of the Treasury with respect to credits  
16 authorized by Section 45D, Internal Revenue Code of 1986.

17 (5) "Qualified equity investment" means an equity  
18 investment in, or long-term debt security issued by, a qualified  
19 community development entity that:

20 (A) is acquired after January 1, 2008, at the  
21 investment's original issuance solely in exchange for cash or that  
22 was a qualified equity investment in the hands of a prior holder;

23 (B) has at least 85 percent of its cash purchase  
24 price used by the issuer to make qualified low-income community  
25 investments; and

26 (C) is designated by the issuer as a qualified  
27 equity investment under this subchapter, regardless of whether it

1 also has been designated as a qualified equity investment under  
2 Section 45D, Internal Revenue Code of 1986.

3 (6) "Qualified low-income community investment" means  
4 a capital or equity investment in, or loan to, a qualified active  
5 low-income community business.

6 Sec. 171.522. TOTAL AMOUNT OF CREDITS THAT MAY BE CLAIMED.

7 (a) Notwithstanding any other provision of this subchapter, the  
8 total amount of tax credits that may be claimed by taxable entities  
9 under this subchapter in a state fiscal year may not exceed \$15  
10 million.

11 (b) The comptroller by rule shall prescribe procedures by  
12 which the comptroller may allocate credits under this subchapter.  
13 The procedures:

14 (1) must provide that credits are allocated on a  
15 "first-come, first-served" basis unless the comptroller determines  
16 that allocation on this basis would violate state or federal law;

17 (2) may provide for allocating the credits on a pro  
18 rata basis if the comptroller determines that credits may not be  
19 allocated as provided by Subdivision (1); and

20 (3) may include requiring a taxable entity to apply  
21 for a credit before the due date of the report on which the taxable  
22 entity will first claim the credit.

23 (c) To assist the comptroller in determining the amount of  
24 credits that may be claimed each year, the issuer of a qualified  
25 equity investment shall certify to the comptroller the anticipated  
26 dollar amount of that investment to be made in this state during the  
27 first 12-month period following the initial credit allowance date.

1 If on the second credit allowance date the actual dollar amount of  
2 that investment is different than the amount previously estimated,  
3 the comptroller shall adjust the amount of the credits that may be  
4 claimed on the second allowance date to account for the difference.

5 Sec. 171.523. QUALIFICATION FOR CREDIT. (a) A taxable  
6 entity qualifies for a credit under this subchapter on a report if  
7 the taxable entity holds a qualified equity investment on a credit  
8 allowance date of that investment that occurs during the period on  
9 which the report is based.

10 (b) A taxable entity that holds a qualified equity  
11 investment may claim a credit under this subchapter for not more  
12 than seven consecutive reports beginning with the report based on  
13 the period during which the taxable entity first holds the  
14 investment on a credit allowance date.

15 Sec. 171.524. COMPUTATION OF CREDIT. (a) The amount of the  
16 credit is equal to the adjusted purchase price paid to the issuer of  
17 the qualified equity investment multiplied by the percentage  
18 prescribed by Section 171.525. For purposes of this section, the  
19 adjusted purchase price is equal to the product of:

20 (1) the amount paid to the issuer of the qualified  
21 equity investment for the qualified equity investment; and

22 (2) the following fraction:

23 (A) the numerator of which is the dollar amount  
24 of qualified low-income community investments held by the issuer in  
25 this state on the credit allowance date during the period on which  
26 the report is based; and

27 (B) the denominator of which is the total dollar

1 amount of qualified low-income community investments held by the  
2 issuer on the credit allowance date during the period on which the  
3 report is based.

4 (b) For purposes of computing the amount of qualified  
5 low-income community investments held by an issuer under Subsection  
6 (a), an investment is considered held by an issuer regardless of  
7 whether the investment has been sold or repaid if the issuer  
8 reinvests an amount equal to the capital returned to or recovered by  
9 the issuer from the original investment, exclusive of any profits  
10 realized, in another qualified low-income community investment not  
11 later than the first anniversary of the date the issuer receives the  
12 capital. An issuer is not required to reinvest capital returned  
13 from a qualified low-income community investment after the sixth  
14 anniversary of the date the investment was issued and the proceeds  
15 were used to make the qualified low-income community investment,  
16 and the qualified low-income community investment is considered  
17 held by the issuer through the seventh anniversary of the issuance  
18 of the investment.

19 (c) With respect to one qualified active low-income  
20 community business, on a collective basis with all of its  
21 affiliates, the maximum amount of investment that a qualified  
22 community development entity, on an aggregate basis with all of its  
23 affiliates, may use for the computation of the numerator under  
24 Subsection (a) is \$10 million.

25 Sec. 171.525. AMOUNT OF ANNUAL CREDIT. (a) Except as  
26 otherwise provided by this subchapter, the amount of the tax credit  
27 a taxable entity may claim on a report is equal to:

1           (1) for each of the first three years for which the  
2 taxable entity may claim the credit, five percent of the adjusted  
3 purchase price on the applicable credit allowance date; and

4           (2) for the remaining four years for which the taxable  
5 entity may claim the credit, six percent of the adjusted purchase  
6 price on the applicable credit allowance date.

7           (b) The total credit claimed under this subchapter for a  
8 report, including the amount of any carryforward credit under  
9 Section 171.526, may not exceed the amount of franchise tax due  
10 after any other applicable credits.

11           Sec. 171.526. CARRYFORWARD. (a) If a taxable entity is  
12 eligible for a credit that exceeds the limitation under Section  
13 171.525(b), the taxable entity may carry the unused credit forward  
14 to subsequent consecutive reports.

15           (b) A carryforward is considered the remaining portion of a  
16 credit that cannot be claimed in the current year because of the tax  
17 limitation under Section 171.525. A carryforward is added to the  
18 next year's credit in determining the tax limitation for that year.

19           Sec. 171.527. CERTIFICATION OF ELIGIBILITY. (a) For the  
20 initial and each succeeding report in which a credit is claimed  
21 under this subchapter, the taxable entity shall file with its  
22 report, on a form provided by the comptroller, information that  
23 sufficiently demonstrates that the taxable entity is eligible for  
24 the credit.

25           (b) The burden of establishing entitlement to and the value  
26 of the credit is on the taxable entity.

27           Sec. 171.528. ASSIGNMENT PROHIBITED. (a) A taxable entity

1 may not convey, assign, or transfer the credit allowed under this  
2 subchapter to another entity unless all of the assets of the taxable  
3 entity are conveyed, assigned, or transferred in the same  
4 transaction.

5 (b) Notwithstanding Subsection (a), a tax credit earned by a  
6 partnership, limited liability company, S corporation, or other  
7 "pass-through" entity may be allocated to the partners, members, or  
8 shareholders of that entity and claimed under this subchapter in  
9 accordance with the provisions of any agreement among the partners,  
10 members, or shareholders.

11 Sec. 171.529. RECAPTURE OF CREDIT. (a) The comptroller  
12 shall recapture a tax credit allowed under this subchapter with  
13 respect to a qualified equity investment if:

14 (1) any amount of the federal tax credit available  
15 with respect to the qualified equity investment is recaptured under  
16 Section 45D, Internal Revenue Code of 1986; or

17 (2) the issuer redeems the investment or makes any  
18 principal repayment with respect to the investment before the  
19 seventh anniversary of the date the investment was issued.

20 (b) The comptroller shall recapture the tax credit from the  
21 taxable entity that claimed the credit. The recapture must be done  
22 on a scaled proportional basis.

23 SECTION 2. (a) This Act applies only to a report originally  
24 due on or after the effective date of this Act.

25 (b) A taxable entity may claim the credit under Subchapter  
26 J-1, Chapter 171, Tax Code, as added by this Act, only in relation  
27 to a qualified equity investment issued on or after the effective

1 date of this Act.

2 SECTION 3. This Act takes effect January 1, 2008.