BILL ANALYSIS

S.B. 1429
By: Williams
Ways & Means
Committee Report (Unamended)

BACKGROUND AND PURPOSE

It is very difficult to establish new business in low-income areas and to create jobs for low-income Texans.

This legislation encourages job creation through economic stimulus in rural and emerging urban markets throughout the state. This legislation creates a tax credit incentive program by combining the existing federal tax credit program with a new state incentive program. By granting a tax credit on the state franchise tax beginning in the third year after the credit was granted, the bill ensures that the new business has already created tax revenue for the state and local taxing entities along with ensuring that the company has matured enough to create jobs to justify the grant of a state franchise tax credit.

S.B. 1429 provides for a state matching program for community development entities already approved by and receiving a tax credit through the federal New Markets Tax Credit Program for qualified equity investments in designated low-income Texas communities.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts in SECTIONS 1 and 2 of this bill.

ANALYSIS

S.B. 1429 amends the Tax Code and the Insurance Code to add temporary provisions, set to expire on December 31, 2013, relating to franchise tax and insurance premium tax credits for business development in low-income communities and limits to $40 million the maximum total amount of tax credits that all entities may claim under the bill's provisions in a state fiscal year, not including any carryforward amounts. The bill requires the comptroller of public accounts to prescribe by rule procedures by which the comptroller may allocate such tax credits under the temporary provisions of the two codes. The bill specifies that a taxable entity qualifies for and is entitled to a credit on a tax report if the entity purchases a qualified equity investment from a qualified community development entity and holds the qualified equity investment on a credit allowance date that occurs during the period on which the report is based. The bill provides that such an entity may claim a credit for not more than seven consecutive reports beginning with the report based on the period during which the taxable entity first holds the investment on a credit allowance date.

S.B. 1429 specifies that, with respect to any one qualified active low-income community business, the maximum amount of qualified low-income community investments that may be made in the business, on a collective basis with all of its affiliates, with the proceeds of qualified equity investments that have been certified by the comptroller, is $20 million whether made by one or several qualified community development entities. The bill establishes the method of calculating the amount of the tax credit a taxable entity may claim on one report, and prohibits the total credit claimed for a report, including the amount of any carryforward credit, from exceeding the amount of tax due after any other applicable credits. The bill authorizes an entity, if it is eligible for a tax credit that exceeds such a limitation, to carry the unused credit forward for not more than five consecutive reports. The bill specifies that a carryforward is considered to be the remaining portion of a credit that cannot be claimed in the current year because of such a limitation, and that a carryforward is added to the next year's credit in determining whether the limitation is met for that year. The bill specifies that a credit carryforward from a previous report is considered to be used before the current year credit, and prohibits a carryforward from being added to any subsequent year's credit for the purpose of determining a limitation.

S.B. 1429 requires the entity, for the initial and each succeeding report in which a credit is claimed, to file with its report, on a form provided by the comptroller, information that sufficiently demonstrates that the taxable entity is eligible for the credit. The bill specifies that the burden of establishing entitlement to and the value of the credit is on the entity. The bill prohibits an entity from conveying, assigning, or transferring a tax credit to another entity unless all of the assets, including the entity's qualified equity investment to which the credit relates, are conveyed, assigned, or transferred in the same transaction. The bill provides that a tax credit earned by a partnership, limited liability company, S corporation, or other "pass-through" entity may be allocated to the partners, members, or shareholders of that entity and claimed in accordance with the provisions of any agreement among the partners, members, or shareholders.

S.B. 1429 requires a qualified community development entity that seeks to have an equity investment or long-term debt security certified as a qualified equity investment and eligible for tax credits to apply to the comptroller. The bill requires the qualified community development entity to submit an application on a form provided by the comptroller, and prescribes the required contents of the form. The bill requires the application to be accompanied by a nonrefundable application fee of $5,000 and to be paid to the comptroller and provides that the fee is required for each application submitted. The bill requires the comptroller to grant or deny the application in full or in part within 15 days after the receipt of a completed application containing the information necessary for the comptroller to certify a potential qualified equity investment, including the payment of the application fee. The bill prohibits the comptroller from granting an application in full or in part until the comptroller, based on an evaluation of the economic impact analysis required by the bill's provisions, certifies that the potential qualified equity investment and the proposed use of the proceeds will have a positive impact on state revenue. The bill requires the comptroller, if the comptroller denies any part of the application, to inform the qualified community development entity of the grounds for the denial. The bill requires the application be considered completed as of the original date of submission if the qualified community development entity provides any additional information required by the comptroller or otherwise completes its application within 15 days of the notice of denial. The bill requires the application to remain denied and to be resubmitted in full with a new submission date if the qualified community development entity fails to provide the information or complete its application within the 15-day period. The bill requires the comptroller, if the application is considered complete, to certify the proposed equity investment or long-term debt security as a qualified equity investment and eligible for tax credits, subject to the limitations provided by the bill. The bill requires the comptroller to provide written notice of the certification to the qualified community development entity, and requires the notice to include the names of those taxable entities who are eligible to claim the credits, if known, and their respective credit amounts. The bill requires the qualified community development entity to notify the comptroller if the names of the taxable entities identified as eligible to claim the credits change due to transfer of a qualified equity investment or a change in an allocation.

S.B. 1429 requires the qualified community development entity, within 30 days after receiving notice of certification, to issue a qualified equity investment and receive cash in the amount of the certified purchase price. The bill requires the qualified community development entity to provide the comptroller with evidence of the receipt of the cash investment within 10 business days after receipt. The bill requires that the certification lapse if the qualified community development entity does not receive the cash investment and issue the qualified equity investment within 30 days, and in such a case, prohibits the entity from issuing the qualified equity investment without reapplying to the comptroller for certification. The bill provides that a certification that lapses reverts back to the comptroller and may be reissued only in accordance with the prescribed application process. The bill requires the comptroller to certify the qualified equity investments in the order applications are received by the comptroller. The bill prescribes procedures for accepting the applications based on the order of receipt, and procedures for handling applications received on the same day. The bill requires the comptroller, if a pending request cannot be fully certified because of the $40 million limitation, to certify the portion that may be certified, unless the qualified community development entity elects to withdraw its request, rather than receive partial credit.

S.B. 1429 prohibits a qualified community development entity, on a collective basis with all of its affiliated entities listed in its allocation agreement with the Community Development Financial Institutions Fund of the United States Department of the Treasury or subsidiaries of those entities, from requesting certification for a qualified equity investment that would entitle the purchaser of the qualified equity investment to have allocated to the purchaser at any time more than 30 percent of the total value of the tax credits that may be claimed under the bill's provisions. The bill prescribes conditions under which such a qualified community development entity, alone or on a collective basis with all of its affiliated entities, is authorized to request certification for a qualified equity investment that would entitle the purchaser of the qualified equity investment to have allocated to the purchaser at any time more than 30 percent of the total value of the tax credits that may be claimed under the bill's provisions.

S.B. 1429 authorizes the comptroller to recapture a portion of a tax credit if certain specified conditions apply. The bill requires the qualified community development entity to keep sufficiently detailed books and records with respect to the investments made with the proceeds of the qualified equity investments to allow the direct tracing of the proceeds into qualified low-income community businesses in Texas. The bill requires an investment, for purposes of calculating the amount of qualified low-income community investments held by a qualified community development entity, to be considered held by the qualified community development entity even if the investment has been sold or repaid, provided that the qualified community development entity reinvests an amount equal to the capital returned to or recovered from the original investment, exclusive of any profits realized, in another qualified active low-income community business in Texas within 12 months of the receipt of the capital. The bill prohibits a qualified community development entity from being required to reinvest capital returned from qualified low-income community investments after the sixth anniversary of the issuance of the qualified equity investment, the proceeds of which were used to make the qualified low-income community investment, and provides that the qualified low-income community investment shall be considered held by the issuer through the qualified equity investment’s final credit allowance date. The bill includes provisions relating to the comptroller's proportionate recapture of a tax credit in certain situations. The bill requires the comptroller to provide notice to the qualified community development entity of any proposed recapture of tax credits. The bill requires that the entity have 90 days to cure any deficiency indicated in the comptroller's original recapture notice and thereby avoid the recapture. The bill requires the comptroller, if the entity fails or is unable to cure the deficiency within the 90-day period, to provide the entity and the taxpayer from whom the credit is to be recaptured with a final order of recapture. The bill requires that any tax credit for which a final recapture order has been issued be recaptured by the comptroller from the taxpayer who claimed the tax credit on a tax return.

S.B. 1429 defines, in the Tax Code and the Insurance Code, "credit allowance date," "long-term debt security," "purchase price," "qualified active low-income community business," "qualified community development entity," "qualified equity investment," and "qualified low-income community investment." The bill defines "state premium tax liability" in the Insurance Code.

S.B. 1429 provides that the expiration of its provisions does not affect a credit that was established due to the purchase of a qualified equity investment that was made before the date of expiration. The bill authorizes a taxable entity that has any unused credits established under its provisions, including any carryforward credits, to continue to apply those credits on or with each consecutive report until the date the credit would have expired if the bill's provisions had not expired. The bill adds a provision to the Insurance Code clarifying that an entity claiming a credit under the bill's provisions is not required to pay any additional retaliatory tax levied as a result of claiming that credit.

EFFECTIVE DATE

January 1, 2010.