

By: Anchia

H.B. No. 1593

A BILL TO BE ENTITLED

AN ACT

relating to tax credits 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.

8 (4) "Qualified community development entity" has the
9 meaning assigned by Section 45D(c), Internal Revenue Code of 1986,
10 but only if the entity has entered into an allocation agreement with
11 the Community Development Financial Institutions Fund of the United
12 States Department of the Treasury with respect to credits
13 authorized by Section 45D, Internal Revenue Code of 1986. The term
14 does not include a qualified community development entity that
15 entered into an allocation agreement solely as part of a Gulf
16 Opportunity (GO) Zone allocation.

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, 2009, 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 both this subchapter and Chapter 231, Insurance Code, in a
10 state fiscal year may not exceed \$14 million.

11 (b) The comptroller by rule shall prescribe procedures by
12 which the comptroller may allocate credits under this subchapter
13 and Chapter 231, Insurance Code. The procedures:

14 (1) must provide for allocating the credits on a pro
15 rata basis based on the investment history of the issuer;

16 (2) must provide that the maximum credit allocation a
17 taxable entity may receive is \$4 million if, before the date of the
18 allocation, the issuer of the qualified equity investment or any
19 affiliate of the issuer made a qualified equity investment in this
20 state under the federal new market tax credit program; and

21 (3) may include requiring an entity to apply for a
22 credit before the due date of the tax report on which the entity
23 will first claim the credit under this subchapter or Chapter 231,
24 Insurance Code.

25 (c) To assist the comptroller in determining the amount of
26 credits that may be claimed each year, the issuer of a qualified
27 equity investment shall certify to the comptroller the anticipated

1 dollar amount of that investment to be made in this state during the
2 first 12-month period following the initial credit allowance date.
3 If on the second credit allowance date the actual dollar amount of
4 that investment is different than the amount previously estimated,
5 the comptroller shall adjust the amount of the credits that may be
6 claimed on or after the second allowance date to account for the
7 difference.

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

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

18 Sec. 171.524. COMPUTATION OF CREDIT. (a) The amount of the
19 credit is computed using the purchase price paid to the issuer of
20 the qualified equity investment.

21 (b) The maximum amount of investment that a qualified
22 community development entity, on an aggregate basis with all of its
23 affiliates, may allocate to a single qualified active low-income
24 community business on a collective basis with all of its affiliates
25 is \$15 million.

26 Sec. 171.525. AMOUNT OF ANNUAL CREDIT. (a) Except as
27 otherwise provided by this subchapter, the amount of the tax credit

1 a taxable entity may claim on a report is equal to:

2 (1) for the first year for which the taxable entity may
3 claim the credit, zero percent of the purchase price on the
4 applicable credit allowance date;

5 (2) for each of the next three years for which the
6 taxable entity may claim the credit, six percent of the purchase
7 price on the applicable credit allowance date; and

8 (3) for the remaining three years for which the
9 taxable entity may claim the credit, seven percent of the purchase
10 price on the applicable credit allowance date.

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

15 Sec. 171.526. CARRYFORWARD. (a) If a taxable entity is
16 eligible for a credit that exceeds the limitation under Section
17 171.525(b), the taxable entity may carry the unused credit forward
18 to subsequent consecutive reports.

19 (b) A carryforward is considered the remaining portion of a
20 credit that cannot be claimed in the current year because of the tax
21 limitation under Section 171.525(b). A carryforward is added to
22 the next year's credit in determining whether the limitation is met
23 for that year. A credit carryforward from a previous report is
24 considered to be used before the current year credit.

25 Sec. 171.527. CERTIFICATION OF ELIGIBILITY. (a) For the
26 initial and each succeeding report in which a credit is claimed
27 under this subchapter, the taxable entity shall file with its

1 report, on a form provided by the comptroller, information that
2 sufficiently demonstrates that the taxable entity is eligible for
3 the credit.

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

6 Sec. 171.528. ASSIGNMENT PROHIBITED. (a) A taxable entity
7 may not convey, assign, or transfer the credit allowed under this
8 subchapter to another entity unless all of the assets of the taxable
9 entity are conveyed, assigned, or transferred in the same
10 transaction.

11 (b) Notwithstanding Subsection (a), a tax credit earned by a
12 partnership, limited liability company, S corporation, or other
13 "pass-through" entity may be allocated to the partners, members, or
14 shareholders of that entity and claimed under this subchapter in
15 accordance with the provisions of any agreement among the partners,
16 members, or shareholders.

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

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

23 (2) the issuer redeems the investment or makes any
24 principal repayment with respect to the investment before the
25 seventh anniversary of the date the investment was issued.

26 (b) The comptroller shall recapture the tax credit from the
27 taxable entity that claimed the credit. The recapture must be done

1 on a scaled proportional basis.

2 SECTION 2. Subtitle B, Title 3, Insurance Code, is amended
3 by adding Chapter 231 to read as follows:

4 CHAPTER 231. CREDIT FOR QUALIFIED LOW-INCOME COMMUNITY INVESTMENTS

5 Sec. 231.001. DEFINITIONS. In this chapter:

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

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

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

12 (2) "Long-term debt security" means a debt instrument
13 issued by a qualified community development entity, at par value or
14 a premium, with an original maturity date of at least seven years
15 from the date of its issuance, with no acceleration of repayment,
16 amortization, or prepayment features before its original maturity
17 date, and with no distribution, payment, or interest features
18 related to the profitability of the qualified community development
19 entity or the performance of the qualified community development
20 entity's investment portfolio. This subdivision does not limit the
21 ability of the holder of the debt instrument to accelerate payments
22 on the debt instrument in a situation in which the issuer has
23 defaulted on a covenant designed to ensure compliance with this
24 chapter or Section 45D, Internal Revenue Code of 1986.

25 (3) "Qualified active low-income community business"
26 has the meaning assigned by Section 45D(d)(2), Internal Revenue
27 Code of 1986.

1 (4) "Qualified community development entity" has the
2 meaning assigned by Section 45D(c), Internal Revenue Code of 1986,
3 but only if the entity has entered into an allocation agreement with
4 the Community Development Financial Institutions Fund of the United
5 States Department of the Treasury with respect to credits
6 authorized by Section 45D, Internal Revenue Code of 1986. The term
7 does not include a qualified community development entity that
8 entered into an allocation agreement solely as part of a Gulf
9 Opportunity (GO) Zone allocation.

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

13 (A) is acquired after January 1, 2009, at the
14 investment's original issuance solely in exchange for cash or that
15 was a qualified equity investment in the hands of a prior holder;

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

19 (C) is designated by the issuer as a qualified
20 equity investment under this chapter, regardless of whether it also
21 has been designated as a qualified equity investment under Section
22 45D, Internal Revenue Code of 1986.

23 (6) "Qualified low-income community investment" means
24 a capital or equity investment in, or loan to, a qualified active
25 low-income community business.

26 (7) "State premium tax liability" means any liability
27 incurred by an entity under Chapters 221 through 226.

1 Sec. 231.002. TOTAL AMOUNT OF CREDITS THAT MAY BE CLAIMED.

2 (a) Notwithstanding any other provision of this chapter, the total
3 amount of tax credits that may be claimed by entities under both
4 this chapter and Subchapter J-1, Chapter 171, Tax Code, in a state
5 fiscal year may not exceed \$14 million.

6 (b) The comptroller by rule shall prescribe procedures by
7 which the comptroller may allocate credits under this chapter and
8 Subchapter J-1, Chapter 171, Tax Code. The procedures:

9 (1) must provide for allocating the credits on a pro
10 rata basis based on the investment history of the issuer;

11 (2) must provide that the maximum credit allocation an
12 entity may receive is \$4 million if, before the date of the
13 allocation, the issuer of the qualified equity investment or any
14 affiliate of the issuer made a qualified equity investment in this
15 state under the federal new market tax credit program; and

16 (3) may include requiring an entity to apply for a
17 credit before the due date of the tax report on which the entity
18 will first claim the credit under this chapter or Subchapter J-1,
19 Chapter 171, Tax Code.

20 (c) To assist the comptroller in determining the amount of
21 credits that may be claimed each year, the issuer of a qualified
22 equity investment shall certify to the comptroller the anticipated
23 dollar amount of that investment to be made in this state during the
24 first 12-month period following the initial credit allowance date.
25 If on the second credit allowance date the actual dollar amount of
26 that investment is different than the amount previously estimated,
27 the comptroller shall adjust the amount of the credits that may be

1 claimed on or after the second allowance date to account for the
2 difference.

3 Sec. 231.003. QUALIFICATION FOR CREDIT. (a) An entity
4 qualifies for a credit against the entity's state premium tax
5 liability on a premium tax report filed under this subtitle if the
6 entity holds a qualified equity investment on a credit allowance
7 date of that investment that occurs during the period on which the
8 report is based.

9 (b) An entity that holds a qualified equity investment may
10 claim a credit against the entity's state premium tax liability for
11 not more than seven consecutive reports beginning with the report
12 based on the period during which the entity first holds the
13 investment on a credit allowance date.

14 Sec. 231.004. COMPUTATION OF CREDIT. (a) The amount of the
15 credit is computed using the purchase price paid to the issuer of
16 the qualified equity investment.

17 (b) The maximum amount of investment that a qualified
18 community development entity, on an aggregate basis with all of its
19 affiliates, may allocate to a single qualified active low-income
20 community business on a collective basis with all of its affiliates
21 is \$15 million.

22 Sec. 231.005. AMOUNT OF ANNUAL CREDIT. (a) Except as
23 otherwise provided by this chapter, the amount of the tax credit an
24 entity may claim on a premium tax report filed under this subtitle
25 is equal to:

26 (1) for the first year for which the entity may claim
27 the credit, zero percent of the purchase price on the applicable

1 credit allowance date;

2 (2) for each of the next three years for which the
3 entity may claim the credit, six percent of the purchase price on
4 the applicable credit allowance date; and

5 (3) for the remaining three years for which the entity
6 may claim the credit, seven percent of the purchase price on the
7 applicable credit allowance date.

8 (b) The total credit claimed under this chapter for a
9 premium tax report filed under this subtitle, including the amount
10 of any carryforward credit under Section 231.006, may not exceed
11 the amount of the entity's state premium tax liability in any
12 taxable year after any other applicable credits.

13 Sec. 231.006. CARRYFORWARD. (a) If an entity is eligible
14 for a credit that exceeds the limitation under Section 231.005(b),
15 the entity may carry the unused credit forward to subsequent
16 consecutive premium tax reports filed under this subtitle.

17 (b) A carryforward is considered the remaining portion of a
18 credit that cannot be claimed in the current year because of the tax
19 limitation under Section 231.005(b). A carryforward is added to
20 the next year's credit in determining whether the limitation is met
21 for that year. A credit carryforward from a previous report is
22 considered to be used before the current year credit.

23 Sec. 231.007. CERTIFICATION OF ELIGIBILITY. (a) For the
24 initial and each succeeding premium tax report filed under this
25 subtitle in which a credit is claimed under this chapter, the entity
26 shall file with its report, on a form provided by the comptroller,
27 information that sufficiently demonstrates that the entity is

1 eligible for the credit.

2 (b) The burden of establishing entitlement to and the value
3 of the credit is on the entity.

4 Sec. 231.008. ASSIGNMENT PROHIBITED. (a) An entity may not
5 convey, assign, or transfer the credit allowed under this chapter
6 to another entity unless all of the assets of the entity are
7 conveyed, assigned, or transferred in the same transaction.

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

14 Sec. 231.009. RECAPTURE OF CREDIT. (a) The comptroller
15 shall recapture a tax credit allowed under this chapter with
16 respect to a qualified equity investment if:

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

20 (2) the issuer redeems the investment or makes any
21 principal repayment with respect to the investment before the
22 seventh anniversary of the date the investment was issued.

23 (b) The comptroller shall recapture the tax credit from the
24 entity that claimed the credit. The recapture must be done on a
25 scaled proportional basis.

26 SECTION 3. This Act applies only to a report originally due
27 on or after the effective date of this Act.

1 SECTION 4. This Act takes effect January 1, 2010.