

By: Solomons, Oliveira, Eiland

H.B. No. 2459

Substitute the following for H.B. No. 2459:

By: Oliveira

C.S.H.B. No. 2459

A BILL TO BE ENTITLED

1 AN ACT
2 relating to tax credits for business development in low-income
3 communities.

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

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

7 SUBCHAPTER J-1. CREDIT FOR BUSINESS DEVELOPMENT IN LOW-INCOME
8 COMMUNITIES

9 Sec. 171.521. DEFINITIONS. In this subchapter:

10 (1) "Credit allowance date" means with respect to any
11 qualified equity investment:

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

14 (B) each of the six anniversary dates of that
15 date.

16 (2) "Long-term debt security" means any debt
17 instrument issued by a qualified community development entity, at
18 par value or a premium, with an original maturity date of at least
19 seven years from the date of its issuance, with no acceleration of
20 repayment, amortization, or prepayment features before its
21 original maturity date. The qualified community development entity
22 that issues the debt instrument may not make cash interest payments
23 on the debt instrument during the period beginning on the date of
24 issuance and ending on the final credit allowance date in an amount

1 that exceeds the sum of the cash interest payments and the
2 cumulative operating income, as defined by regulations adopted
3 under Section 45D, Internal Revenue Code of 1986, as amended, of the
4 qualified community development entity for that period. This
5 subdivision does not limit the holder's ability to accelerate
6 payments on the debt instrument in situations in which the
7 qualified community development entity has defaulted on covenants
8 designed to ensure compliance with this subchapter or Section 45D,
9 Internal Revenue Code of 1986, as amended.

10 (3) "Purchase price" means the amount of cash paid to a
11 qualified community development entity that issues a qualified
12 equity investment for the qualified equity investment.

13 (4) "Qualified active low-income community business"
14 has the meaning assigned by Section 45D(d)(2), Internal Revenue
15 Code of 1986, as amended. A business shall be considered a
16 qualified active low-income community business for the duration of
17 the qualified community development entity's investment in, or loan
18 to, the business if the entity reasonably expects, at the time it
19 makes the investment or loan, that the business will continue to
20 satisfy the requirements for being a qualified active low-income
21 community business throughout the entire period of the investment
22 or loan.

23 (5) "Qualified community development entity" has the
24 meaning assigned by Section 45D(c), Internal Revenue Code of 1986,
25 as amended, provided that the entity has entered into, or is
26 controlled by an entity that has entered into, an allocation
27 agreement with the Community Development Financial Institutions

1 Fund of the United States Treasury with respect to credits
2 authorized by Section 45D, Internal Revenue Code of 1986, as
3 amended, that includes this state within the service area provided
4 in the allocation agreement.

5 (6) "Qualified equity investment" means:

6 (A) any equity investment in, or long-term debt
7 security issued by, a qualified community development entity that:

8 (i) is acquired after September 1, 2009, at
9 its original issuance solely in exchange for cash;

10 (ii) has at least 85 percent of its cash
11 purchase price used by the issuer to make qualified low-income
12 community investments in qualified active low-income community
13 businesses located in this state by the first anniversary of the
14 initial credit allowance date; and

15 (iii) is designated by the issuer as a
16 qualified equity investment under this subdivision and is certified
17 by the comptroller as not exceeding the limitation contained in
18 Section 171.522(a); and

19 (B) any qualified equity investment that does not
20 meet the requirements of Paragraph (A) if the investment was a
21 qualified equity investment in the hands of a prior holder.

22 (7) "Qualified low-income community investment" means
23 any capital or equity investment in, or loan to, any qualified
24 active low-income community business made after September 1, 2009.

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

26 (a) Notwithstanding any other provision of this subchapter, the
27 total amount of tax credits that may be claimed by all entities

1 under both this subchapter and Chapter 231, Insurance Code, in a
2 state fiscal year may not exceed \$40 million, not including any
3 carryforward amounts authorized by Section 171.526 or by Section
4 231.006, Insurance Code.

5 (b) The comptroller by rule shall prescribe procedures by
6 which the comptroller may allocate credits under this subchapter
7 and Chapter 231, Insurance Code.

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

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

19 Sec. 171.524. MAXIMUM INVESTMENT PER QUALIFIED ACTIVE
20 LOW-INCOME COMMUNITY BUSINESS. With respect to any one qualified
21 active low-income community business, the maximum amount of
22 qualified low-income community investments that may be made in the
23 business, on a collective basis with all of its affiliates, with the
24 proceeds of qualified equity investments that have been certified
25 under this subchapter, is \$20 million whether made by one or several
26 qualified community development entities.

27 Sec. 171.525. AMOUNT OF ANNUAL CREDIT. (a) Except as

1 otherwise provided by this subchapter, the amount of the tax credit
2 a taxable entity may claim on a report is equal to:

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

6 (2) for the third year for which the taxable entity may
7 claim the credit, seven percent of the purchase price on the
8 applicable credit allowance date; and

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

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

16 Sec. 171.526. CARRYFORWARD. (a) Notwithstanding the
17 limitation provided by Section 171.522(a), if a taxable entity is
18 eligible for a credit that exceeds the limitation under Section
19 171.525(b), the taxable entity may carry the unused credit forward
20 for not more than five consecutive reports.

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

27 (c) A carryforward may not be added to any subsequent year's

1 credit for the purpose of determining the limitation in Section
2 171.522(a).

3 Sec. 171.527. CERTIFICATION OF ELIGIBILITY. (a) For the
4 initial and each succeeding report in which a credit is claimed
5 under this subchapter, the taxable entity shall file with its
6 report, on a form provided by the comptroller, information that
7 sufficiently demonstrates that the taxable entity is eligible for
8 the credit.

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

11 Sec. 171.528. ASSIGNMENT PROHIBITED. (a) A taxable entity
12 may not convey, assign, or transfer the credit allowed under this
13 subchapter to another entity unless all of the assets of the taxable
14 entity, including the taxable entity's qualified equity investment
15 to which the credit relates, are conveyed, assigned, or transferred
16 in the same transaction.

17 (b) Notwithstanding Subsection (a), a tax credit earned by a
18 partnership, limited liability company, S corporation, or other
19 "pass-through" entity may be allocated to the partners, members, or
20 shareholders of that entity and claimed under this subchapter in
21 accordance with the provisions of any agreement among the partners,
22 members, or shareholders.

23 Sec. 171.529. APPLICATION AND CERTIFICATION PROCEDURE. (a)
24 A qualified community development entity that seeks to have an
25 equity investment or long-term debt security certified as a
26 qualified equity investment and eligible for tax credits shall
27 apply to the comptroller. The qualified community development

1 entity must submit an application on a form provided by the
2 comptroller that includes:

3 (1) the entity's name, address, tax identification
4 number, and evidence of its certification as a qualified community
5 development entity;

6 (2) a copy of an allocation agreement executed by the
7 entity, or its controlling entity, and the Community Development
8 Financial Institutions Fund of the United States Treasury that
9 includes this state in its service area;

10 (3) a certificate executed by an executive officer of
11 the entity attesting that the allocation agreement remains in
12 effect and has not been revoked or canceled by the Community
13 Development Financial Institutions Fund of the United States
14 Treasury;

15 (4) a description of the proposed amount, structure,
16 and purchaser of the equity investment or long-term debt security;

17 (5) the name and tax identification number of any
18 entity eligible to claim tax credits as a result of the purchase of
19 the qualified equity investment, if known; and

20 (6) information regarding the proposed use of proceeds
21 from the issuance of the qualified equity investment, if known.

22 (b) The application must be accompanied by a nonrefundable
23 application fee of \$5,000. The fee shall be paid to the comptroller
24 and shall be required for each application submitted.

25 (c) Within 15 days after receipt of a completed application
26 containing the information necessary for the comptroller to certify
27 a potential qualified equity investment, including the payment of

1 the application fee, the comptroller shall grant or deny the
2 application in full or in part. If the comptroller denies any part
3 of the application, the comptroller shall inform the qualified
4 community development entity of the grounds for the denial. If the
5 qualified community development entity provides any additional
6 information required by the comptroller or otherwise completes its
7 application within 15 days of the notice of denial, the application
8 shall be considered completed as of the original date of
9 submission. If the qualified community development entity fails to
10 provide the information or complete its application within the
11 15-day period, the application remains denied and must be
12 resubmitted in full with a new submission date.

13 (d) If the application is considered complete, the
14 comptroller shall certify the proposed equity investment or
15 long-term debt security as a qualified equity investment and
16 eligible for tax credits under this section, subject to the
17 limitations provided by this subchapter. The comptroller shall
18 provide written notice of the certification to the qualified
19 community development entity. The notice shall include the names
20 of those taxable entities who are eligible to claim the credits, if
21 known, and their respective credit amounts. If the names of the
22 taxable entities identified as eligible to claim the credits change
23 due to a transfer of a qualified equity investment under Section
24 171.528(a) or a change in an allocation under Section 171.528(b),
25 the qualified community development entity shall notify the
26 comptroller of the change.

27 (e) Within 30 days after receiving notice of certification,

1 the qualified community development entity shall issue the
2 qualified equity investment and receive cash in the amount of the
3 certified purchase price. The qualified community development
4 entity must provide the comptroller with evidence of the receipt of
5 the cash investment within 10 business days after receipt. If the
6 qualified community development entity does not receive the cash
7 investment and issue the qualified equity investment within 30 days
8 following receipt of the certification notice, the certification
9 shall lapse and the entity may not issue the qualified equity
10 investment without reapplying to the comptroller for
11 certification. A certification that lapses reverts back to the
12 comptroller and may be reissued only in accordance with the
13 application process prescribed by this section.

14 (f) The comptroller shall certify qualified equity
15 investments in the order applications are received by the
16 comptroller. Applications received on the same day shall be
17 considered to have been received simultaneously. For applications
18 received on the same day and considered complete, the comptroller
19 shall certify, consistent with remaining tax credit capacity,
20 qualified equity investments in proportionate percentages based on
21 the ratio of the amount of qualified equity investment requested in
22 an application to the total amount of qualified equity investments
23 requested in all applications received on the same day. If a
24 pending request cannot be fully certified because of the
25 limitations prescribed by Section 171.522(a), the comptroller
26 shall certify the portion that may be certified unless the
27 qualified community development entity elects to withdraw its

1 request rather than receive partial credit.

2 (g) A qualified community development entity, on a
3 collective basis with all of its affiliated entities listed in its
4 allocation agreement with the Community Development Financial
5 Institutions Fund of the United States Treasury or subsidiaries of
6 those entities, may not request certification for a qualified
7 equity investment that would entitle the purchaser of the qualified
8 equity investment to have allocated to the purchaser at any time
9 more than 30 percent of the total value of the tax credits that may
10 be claimed under this subchapter.

11 (h) Notwithstanding Subsection (g), a qualified community
12 development entity, alone or on a collective basis with all of its
13 affiliated entities listed in its allocation agreement with the
14 Community Development Financial Institutions Fund of the United
15 States Treasury or subsidiaries of those entities, may request
16 certification for a qualified equity investment that would entitle
17 the purchaser of the qualified equity investment to have allocated
18 to the purchaser at any time more than 30 percent of the total value
19 of the tax credits that may be claimed under this subchapter if:

20 (1) it has been at least 180 days since the date the
21 comptroller certified the qualified community development entity's
22 most recent request under this subchapter; or

23 (2) it has been less than 180 days since the date the
24 comptroller certified the qualified community development entity's
25 most recent request under this subchapter, and the entity
26 demonstrates that the entity has invested substantially all of the
27 purchase price of the qualified equity investments that have been

1 previously certified under this subchapter.

2 Sec. 171.530. RECAPTURE OF CREDIT. (a) The comptroller may
3 recapture a portion of a tax credit allowed under this section if:

4 (1) any amount of federal tax credit that might be
5 available with respect to the qualified equity investment that
6 generated the tax credit under this section is recaptured under
7 Section 45D, Internal Revenue Code of 1986, as amended;

8 (2) the qualified community development entity
9 redeems or makes a principal repayment with respect to the
10 qualified equity investment that generated the tax credit before
11 the final credit allowance date of the qualified equity investment;
12 or

13 (3) the qualified community development entity fails
14 to invest at least 85 percent of the purchase price of the qualified
15 equity investment in qualified low-income community investments in
16 qualified active low-income community businesses located in this
17 state within 12 months of the issuance of the qualified equity
18 investment and maintain that level of investment in qualified
19 low-income community investments in qualified active low-income
20 community businesses located in this state until the last credit
21 allowance date for the qualified equity investment.

22 (b) The qualified community development entity shall keep
23 sufficiently detailed books and records with respect to the
24 investments made with the proceeds of the qualified equity
25 investments to allow the direct tracing of the proceeds into
26 qualified low-income community investments in qualified active
27 low-income community businesses in this state. For purposes of

1 calculating the amount of qualified low-income community
2 investments held by a qualified community development entity, an
3 investment shall be considered held by the qualified community
4 development entity even if the investment has been sold or repaid,
5 provided that the qualified community development entity reinvests
6 an amount equal to the capital returned to or recovered from the
7 original investment, exclusive of any profits realized, in another
8 qualified active low-income community business in this state within
9 12 months of the receipt of the capital. A qualified community
10 development entity may not be required to reinvest capital returned
11 from qualified low-income community investments after the sixth
12 anniversary of the issuance of the qualified equity investment, the
13 proceeds of which were used to make the qualified low-income
14 community investment, and the qualified low-income community
15 investment shall be considered held by the issuer through the
16 qualified equity investment's final credit allowance date.

17 (c) In a situation described by Subsection (a)(1), the
18 comptroller's recapture shall be proportionate to the federal
19 recapture with respect to the qualified equity investment. In a
20 situation described by Subsection (a)(2), the comptroller's
21 recapture shall be proportionate to the amount of the redemption or
22 repayment with respect to the qualified equity investment.

23 (d) The comptroller shall provide notice to the qualified
24 community development entity of any proposed recapture of tax
25 credits under this section. The entity shall have 90 days to cure
26 any deficiency indicated in the comptroller's original recapture
27 notice and avoid the recapture. If the entity fails or is unable to

1 cure the deficiency within the 90-day period, the comptroller shall
2 provide the entity and the taxpayer from whom the credit is to be
3 recaptured with a final order of recapture. Any tax credit for
4 which a final recapture order has been issued shall be recaptured by
5 the comptroller from the taxpayer who claimed the tax credit on a
6 tax return.

7 Sec. 171.531. EXPIRATION. (a) This subchapter expires
8 December 31, 2013.

9 (b) The expiration of this subchapter does not affect a
10 credit that was established under this subchapter due to the
11 purchase of a qualified equity investment that was made before the
12 date this subchapter expires. A taxable entity that has any unused
13 credits established under this subchapter, including any
14 carryforward credits, may continue to apply those credits on or
15 with each consecutive report until the date the credit would have
16 expired under this subchapter had this subchapter not expired, and
17 this subchapter is continued in effect for the purposes of
18 determining the amount of the credit the taxable entity may claim
19 and the manner in which the taxable entity may claim the credit.

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

22 CHAPTER 231. CREDIT FOR BUSINESS DEVELOPMENT IN LOW-INCOME
23 COMMUNITIES

24 Sec. 231.001. DEFINITIONS. In this chapter:

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

27 (A) the date on which the investment is initially

1 made; and

2 (B) each of the six anniversary dates of that
3 date.

4 (2) "Long-term debt security" means any debt
5 instrument issued by a qualified community development entity, at
6 par value or a premium, with an original maturity date of at least
7 seven years from the date of its issuance, with no acceleration of
8 repayment, amortization, or prepayment features before its
9 original maturity date. The qualified community development entity
10 that issues the debt instrument may not make cash interest payments
11 on the debt instrument during the period beginning on the date of
12 issuance and ending on the final credit allowance date in an amount
13 that exceeds the sum of the cash interest payments and the
14 cumulative operating income, as defined by regulations adopted
15 under Section 45D, Internal Revenue Code of 1986, as amended, of the
16 qualified community development entity for that period. This
17 subdivision does not limit the holder's ability to accelerate
18 payments on the debt instrument in situations in which the
19 qualified community development entity has defaulted on covenants
20 designed to ensure compliance with this section or Section 45D,
21 Internal Revenue Code of 1986, as amended.

22 (3) "Purchase price" means the amount of cash paid to a
23 qualified community development entity that issues a qualified
24 equity investment for the qualified equity investment.

25 (4) "Qualified active low-income community business"
26 has the meaning assigned by Section 45D(d)(2), Internal Revenue
27 Code of 1986, as amended. A business shall be considered a

1 qualified active low-income community business for the duration of
2 the qualified community development entity's investment in, or loan
3 to, the business if the entity reasonably expects, at the time it
4 makes the investment or loan, that the business will continue to
5 satisfy the requirements for being a qualified active low-income
6 community business throughout the entire period of the investment
7 or loan.

8 (5) "Qualified community development entity" has the
9 meaning assigned by Section 45D(c), Internal Revenue Code of 1986,
10 as amended, provided that the entity has entered into, or is
11 controlled by an entity that has entered into, an allocation
12 agreement with the Community Development Financial Institutions
13 Fund of the United States Treasury with respect to credits
14 authorized by Section 45D, Internal Revenue Code of 1986, as
15 amended, that includes this state within the service area provided
16 in the allocation agreement.

17 (6) "Qualified equity investment" means:

18 (A) any equity investment in, or long-term debt
19 security issued by, a qualified community development entity that:

20 (i) is acquired after September 1, 2009, at
21 its original issuance solely in exchange for cash;

22 (ii) has at least 85 percent of its cash
23 purchase price used by the issuer to make qualified low-income
24 community investments in qualified active low-income community
25 businesses located in this state by the first anniversary of the
26 initial credit allowance date; and

27 (iii) is designated by the issuer as a

1 qualified equity investment under this subdivision and is certified
2 by the comptroller as not exceeding the limitation contained in
3 Section 231.002(a); and

4 (B) any qualified equity investment that does not
5 meet the requirements of Paragraph (A) if the investment was a
6 qualified equity investment in the hands of a prior holder.

7 (7) "Qualified low-income community investment" means
8 any capital or equity investment in, or loan to, any qualified
9 active low-income community business made after September 1, 2009.

10 (8) "State premium tax liability" means any liability
11 incurred by an entity under Chapters 221 through 226.

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

13 (a) Notwithstanding any other provision of this chapter, the total
14 amount of tax credits that may be claimed by all entities under both
15 this chapter and Chapter 171, Tax Code, in a state fiscal year may
16 not exceed \$40 million, not including any carryforward amounts
17 authorized by Section 171.526, Tax Code, or by Section 231.006 of
18 this code.

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

22 Sec. 231.003. QUALIFICATION FOR CREDIT. (a) An entity
23 qualifies for and is entitled to a credit against the entity's state
24 premium tax liability on a premium tax report filed under this
25 subtitle if the entity purchases a qualified equity investment from
26 a qualified community development entity and holds the qualified
27 equity investment on a credit allowance date that occurs during the

1 period on which the report is based.

2 (b) An entity described by Subsection (a) may claim a credit
3 under this chapter for not more than seven consecutive reports
4 beginning with the report based on the period during which the
5 entity first holds the investment on a credit allowance date.

6 Sec. 231.004. MAXIMUM INVESTMENT PER QUALIFIED ACTIVE
7 LOW-INCOME COMMUNITY BUSINESS. With respect to any one qualified
8 active low-income community business, the maximum amount of
9 qualified low-income community investments that may be made in the
10 business, on a collective basis with all of its affiliates, with the
11 proceeds of qualified equity investments that have been certified
12 under this chapter, is \$20 million whether made by one or several
13 qualified community development entities.

14 Sec. 231.005. AMOUNT OF ANNUAL CREDIT. (a) Except as
15 otherwise provided by this chapter, the amount of the tax credit an
16 entity may claim on a report is equal to:

17 (1) for each of the first two years for which the
18 entity may claim the credit, zero percent of the purchase price on
19 the applicable credit allowance date;

20 (2) for the third year for which the entity may claim
21 the credit, seven percent of the purchase price on the applicable
22 credit allowance date; and

23 (3) for the remaining four years for which the entity
24 may claim the credit, eight percent of the purchase price on the
25 applicable credit allowance date.

26 (b) The total credit claimed under this chapter for a
27 report, including the amount of any carryforward credit under

1 Section 231.006, may not exceed the amount of tax due after any
2 other applicable credits.

3 Sec. 231.006. CARRYFORWARD. (a) Notwithstanding the
4 limitation provided by Section 231.002(a), if an entity is eligible
5 for a credit that exceeds the limitation under Section 231.005(b),
6 the entity may carry the unused credit forward for not more than
7 five consecutive reports.

8 (b) A carryforward is considered the remaining portion of a
9 credit that cannot be claimed in the current year because of the tax
10 limitation under Section 231.005(b). A carryforward is added to
11 the next year's credit in determining whether the limitation is met
12 for that year. A credit carryforward from a previous report is
13 considered to be used before the current year credit.

14 (c) A carryforward may not be added to any subsequent year's
15 credit for the purpose of determining the limitation in Section
16 231.002(a).

17 Sec. 231.007. CERTIFICATION OF ELIGIBILITY. (a) For the
18 initial and each succeeding report in which a credit is claimed
19 under this chapter, the entity shall file with its report, on a form
20 provided by the comptroller, information that sufficiently
21 demonstrates that the entity is eligible for the credit.

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

24 Sec. 231.008. ASSIGNMENT PROHIBITED. (a) An entity may not
25 convey, assign, or transfer the credit allowed under this chapter
26 to another entity unless all of the assets of the entity, including
27 the entity's qualified equity investment to which the credit

1 relates, are conveyed, assigned, or transferred in the same
2 transaction.

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

9 Sec. 231.009. APPLICATION AND CERTIFICATION PROCEDURE. (a)
10 A qualified community development entity that seeks to have an
11 equity investment or long-term debt security certified as a
12 qualified equity investment and eligible for tax credits shall
13 apply to the comptroller. The qualified community development
14 entity must submit an application on a form provided by the
15 comptroller that includes:

16 (1) the entity's name, address, tax identification
17 number, and evidence of its certification as a qualified community
18 development entity;

19 (2) a copy of an allocation agreement executed by the
20 entity, or its controlling entity, and the Community Development
21 Financial Institutions Fund of the United States Treasury that
22 includes this state in its service area;

23 (3) a certificate executed by an executive officer of
24 the entity attesting that the allocation agreement remains in
25 effect and has not been revoked or canceled by the Community
26 Development Financial Institutions Fund of the United States
27 Treasury;

1 (4) a description of the proposed amount, structure,
2 and purchaser of the equity investment or long-term debt security;

3 (5) the name and tax identification number of any
4 entity eligible to claim tax credits earned as a result of the
5 purchase of the qualified equity investment, if known; and

6 (6) information regarding the proposed use of proceeds
7 from the issuance of the qualified equity investment, if known.

8 (b) The application must be accompanied by a nonrefundable
9 application fee of \$5,000. The fee shall be paid to the comptroller
10 and shall be required for each application submitted.

11 (c) Within 15 days after receipt of a completed application
12 containing the information necessary for the comptroller to certify
13 a potential qualified equity investment, including the payment of
14 the application fee, the comptroller shall grant or deny the
15 application in full or in part. If the comptroller denies any part
16 of the application, the comptroller shall inform the qualified
17 community development entity of the grounds for the denial. If the
18 qualified community development entity provides any additional
19 information required by the comptroller or otherwise completes its
20 application within 15 days of the notice of denial, the application
21 shall be considered completed as of the original date of
22 submission. If the qualified community development entity fails to
23 provide the information or complete its application within the
24 15-day period, the application remains denied and must be
25 resubmitted in full with a new submission date.

26 (d) If the application is considered complete, the
27 comptroller shall certify the proposed equity investment or

1 long-term debt security as a qualified equity investment and
2 eligible for tax credits under this chapter, subject to the
3 limitations provided by this chapter. The comptroller shall
4 provide written notice of the certification to the qualified
5 community development entity. The notice shall include the names
6 of those entities who are eligible to claim the credits, if known,
7 and their respective credit amounts. If the names of the entities
8 that are eligible to claim the credits change due to a transfer of a
9 qualified equity investment under Section 231.008(a) or a change in
10 an allocation under Section 231.008(b), the qualified community
11 development entity shall notify the comptroller of the change.

12 (e) Within 30 days after receiving notice of certification,
13 the qualified community development entity shall issue the
14 qualified equity investment and receive cash in the amount of the
15 certified purchase price. The qualified community development
16 entity must provide the comptroller with evidence of the receipt of
17 the cash investment within 10 business days after receipt. If the
18 qualified community development entity does not receive the cash
19 investment and issue the qualified equity investment within 30 days
20 following receipt of the certification notice, the certification
21 shall lapse and the entity may not issue the qualified equity
22 investment without reapplying to the comptroller for
23 certification. A certification that lapses reverts back to the
24 comptroller and may be reissued only in accordance with the
25 application process provided by this section.

26 (f) The comptroller shall certify qualified equity
27 investments in the order applications are received by the

1 comptroller. Applications received on the same day shall be
2 considered to have been received simultaneously. For applications
3 received on the same day and considered complete, the comptroller
4 shall certify, consistent with remaining tax credit capacity,
5 qualified equity investments in proportionate percentages based on
6 the ratio of the amount of qualified equity investment requested in
7 an application to the total amount of qualified equity investments
8 requested in all applications received on the same day. If a pending
9 request cannot be fully certified because of the limitations
10 provided by Section 231.002(a), the comptroller shall certify the
11 portion that may be certified unless the qualified community
12 development entity elects to withdraw its request rather than
13 receive partial credit.

14 (g) A qualified community development entity, on a
15 collective basis with all of its affiliated entities listed in its
16 allocation agreement with the Community Development Financial
17 Institutions Fund of the United States Treasury or subsidiaries of
18 those entities, may not request certification for a qualified
19 equity investment that would entitle the purchaser of the qualified
20 equity investment to have allocated to the purchaser at any time
21 more than 30 percent of the total value of the tax credits that may
22 be claimed under this chapter.

23 (h) Notwithstanding Subsection (g), a qualified community
24 development entity, alone or on a collective basis with all of its
25 affiliated entities listed in its allocation agreement with the
26 Community Development Financial Institutions Fund of the United
27 States Treasury or subsidiaries of those entities, may request

1 certification for a qualified equity investment that would entitle
2 the purchaser of the qualified equity investment to have allocated
3 to the purchaser at any time more than 30 percent of the total value
4 of the tax credits that may be claimed under this chapter if:

5 (1) it has been at least 180 days since the date the
6 comptroller certified the qualified community development entity's
7 most recent request under this chapter; or

8 (2) it has been less than 180 days since the date the
9 comptroller certified the qualified community development entity's
10 most recent request under this chapter, and the entity demonstrates
11 that the entity has invested substantially all of the purchase
12 price of the qualified equity investments that have been previously
13 certified under this chapter.

14 Sec. 231.010. RECAPTURE OF CREDIT. (a) The comptroller may
15 recapture a portion of a tax credit allowed under this section if:

16 (1) any amount of federal tax credit that might be
17 available with respect to the qualified equity investment that
18 generated the tax credit under this section is recaptured under
19 Section 45D, Internal Revenue Code of 1986, as amended;

20 (2) the qualified community development entity
21 redeems or makes a principal repayment with respect to the
22 qualified equity investment that generated the tax credit before
23 the final credit allowance date of such qualified equity
24 investment; or

25 (3) the qualified community development entity fails
26 to invest at least 85 percent of the purchase price of the qualified
27 equity investment in qualified low-income community investments in

1 qualified active low-income community businesses located in this
2 state within 12 months of the issuance of the qualified equity
3 investment and maintain that level of investment in qualified
4 low-income community investments in qualified active low-income
5 community businesses located in this state until the last credit
6 allowance date for the qualified equity investment.

7 **(b)** The qualified community development entity shall keep
8 sufficiently detailed books and records with respect to the
9 investments made with the proceeds of the qualified equity
10 investments to allow the direct tracing of the proceeds into
11 qualified low-income community investments in qualified active
12 low-income community businesses in this state. For purposes of
13 calculating the amount of qualified low-income community
14 investments held by a qualified community development entity, an
15 investment shall be considered held by the qualified community
16 development entity even if the investment has been sold or repaid,
17 provided that the qualified community development entity reinvests
18 an amount equal to the capital returned to or recovered from the
19 original investment, exclusive of any profits realized, in another
20 qualified active low-income community business in this state within
21 12 months of the receipt of the capital. A qualified community
22 development entity may not be required to reinvest capital returned
23 from qualified low-income community investments after the sixth
24 anniversary of the issuance of the qualified equity investment, the
25 proceeds of which were used to make the qualified low-income
26 community investment, and the qualified low-income community
27 investment shall be considered held by the issuer through the

1 qualified equity investment's final credit allowance date.

2 (c) In a situation described by Subsection (a)(1), the
3 comptroller's recapture shall be proportionate to the federal
4 recapture with respect to the qualified equity investment. In a
5 situation described by Subsection (a)(2), the comptroller's
6 recapture shall be proportionate to the amount of the redemption or
7 repayment with respect to the qualified equity investment.

8 (d) The comptroller shall provide notice to the qualified
9 community development entity of any proposed recapture of tax
10 credits under this section. The entity shall have 90 days to cure
11 any deficiency indicated in the comptroller's original recapture
12 notice and avoid the recapture. If the entity fails or is unable to
13 cure the deficiency within the 90-day period, the comptroller shall
14 provide the entity and the taxpayer from whom the credit is to be
15 recaptured with a final order of recapture. Any tax credit for
16 which a final recapture order has been issued shall be recaptured by
17 the comptroller from the taxpayer who claimed the tax credit on a
18 tax return.

19 Sec. 231.011. RETALIATORY TAX. An entity claiming a credit
20 under this chapter is not required to pay any additional
21 retaliatory tax levied under Chapter 281 as a result of claiming
22 that credit.

23 Sec. 231.012. EXPIRATION. (a) This chapter expires
24 December 31, 2013.

25 (b) The expiration of this chapter does not affect a credit
26 that was established under this chapter due to the purchase of a
27 qualified equity investment that was made before the date this

1 chapter expires. An entity that has any unused credits established
2 under this chapter, including any carryforward credits, may
3 continue to apply those credits on or with each consecutive report
4 until the date the credit would have expired under this chapter had
5 this chapter not expired, and this chapter is continued in effect
6 for the purposes of determining the amount of the credit the entity
7 may claim and the manner in which the entity may claim the credit.

8 SECTION 3. (a) This Act applies only to a report originally
9 due on or after the effective date of this Act.

10 (b) A taxable entity or other entity may claim the credit
11 under Subchapter J-1, Chapter 171, Tax Code, or Chapter 231,
12 Insurance Code, as added by this Act, only in relation to a
13 qualified equity investment issued on or after the effective date
14 of this Act.

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