

By: Solomons

H.B. No. 2459

A BILL TO BE ENTITLED

AN ACT

relating to tax credits for business development in low-income communities.

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 BUSINESS DEVELOPMENT IN LOW-INCOME COMMUNITIES

Sec. 171.521. DEFINITIONS. In this subchapter:

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

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

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

(2) "Long-term debt security" means any 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. The qualified community development entity that issues the debt instrument may not make cash interest payments on the debt instrument during the period beginning on the date of 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. The term excludes any business that derives or projects to
23 derive 15 percent or more of its annual revenue from the rental or
24 sale of real estate. This exclusion does not apply to a business
25 that is controlled by, or under common control with, another
26 business if the second business:

27 (A) does not derive or project to derive 15

1 percent or more of its annual revenue from the rental or sale of
2 real estate; and

3 (B) is the primary tenant of the real estate
4 leased from the first business.

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

14 (6) "Qualified equity investment" means:

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

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

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

24 (iii) is designated by the issuer as a
25 qualified equity investment under this subdivision and is certified
26 by the comptroller as not exceeding the limitation contained in
27 Section 171.522(a); and

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

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

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

8 (a) Notwithstanding any other provision of this subchapter, the
9 total amount of tax credits that may be claimed by a taxable entity
10 under both this subchapter and Chapter 231, Insurance Code, in a
11 state fiscal year may not exceed \$40 million, not including any
12 carryforward amounts authorized by Section 171.526 or by Section
13 231.006, Insurance Code.

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

17 Sec. 171.523. QUALIFICATION FOR CREDIT. (a) A taxable
18 entity qualifies for and is entitled to a credit under this
19 subchapter on a report if the taxable entity holds a qualified
20 equity investment on a credit allowance date that occurs during the
21 period on which the report is based.

22 (b) A taxable entity that holds a qualified equity
23 investment may claim a credit under this subchapter for not more
24 than seven consecutive reports beginning with the report based on
25 the period during which the taxable entity first holds the
26 investment on a credit allowance date.

27 Sec. 171.524. MAXIMUM INVESTMENT PER QUALIFIED ACTIVE

1 LOW-INCOME COMMUNITY BUSINESS. With respect to any one qualified
2 active low-income community business, the maximum amount of
3 qualified low-income community investments that may be made in the
4 business, on a collective basis with all of its affiliates, with the
5 proceeds of qualified equity investments that have been certified
6 under this subchapter, is \$10 million whether made by one or several
7 qualified community development entities.

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

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

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

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

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

24 Sec. 171.526. CARRYFORWARD. (a) Notwithstanding the
25 limitation provided by Section 171.522(a), if a taxable entity is
26 eligible for a credit that exceeds the limitation under Section
27 171.525(b), the taxable entity may carry the unused credit forward

1 for not more than five consecutive reports.

2 (b) A carryforward is considered the remaining portion of a
3 credit that cannot be claimed in the current year because of the tax
4 limitation under Section 171.525(b). A carryforward is added to the
5 next year's credit in determining whether the limitation is met for
6 that year. A credit carryforward from a previous report is
7 considered to be used before the current year credit.

8 (c) A carryforward may not be added to any subsequent year's
9 credit for the purpose of determining the limitation in Section
10 171.522(a).

11 Sec. 171.527. CERTIFICATION OF ELIGIBILITY. (a) For the
12 initial and each succeeding report in which a credit is claimed
13 under this subchapter, the taxable entity shall file with its
14 report, on a form provided by the comptroller, information that
15 sufficiently demonstrates that the taxable entity is eligible for
16 the credit.

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

19 Sec. 171.528. ASSIGNMENT PROHIBITED. (a) A taxable entity
20 may not convey, assign, or transfer the credit allowed under this
21 subchapter to another entity unless all of the assets of the taxable
22 entity are conveyed, assigned, or transferred in the same
23 transaction.

24 (b) Notwithstanding Subsection (a), a tax credit earned by a
25 partnership, limited liability company, S corporation, or other
26 "pass-through" entity may be allocated to the partners, members, or
27 shareholders of that entity and claimed under this subchapter in

1 accordance with the provisions of any agreement among the partners,
2 members, or shareholders.

3 Sec. 171.529. APPLICATION AND CERTIFICATION PROCEDURE. (a)
4 A qualified community development entity that seeks to have an
5 equity investment or long-term debt security certified as a
6 qualified equity investment and eligible for tax credits shall
7 apply to the comptroller. The qualified community development
8 entity must submit an application on a form provided by the
9 comptroller that includes:

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

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

17 (3) a certificate executed by an executive officer of
18 the entity attesting that the allocation agreement remains in
19 effect and has not been revoked or cancelled by the Community
20 Development Financial Institutions Fund of the United States
21 Treasury;

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

24 (5) the name and tax identification number of any
25 person or entity eligible to use tax credits earned as a result of
26 the issuance of the qualified equity investment, if known; and

27 (6) information regarding the proposed use of proceeds

1 from the issuance of the qualified equity investment, if known.

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

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

20 (d) If the application is considered complete, the
21 comptroller shall certify the proposed equity investment or
22 long-term debt security as a qualified equity investment and
23 eligible for tax credits under this section, subject to the
24 limitations provided by Section 171.522(a). The comptroller shall
25 provide written notice of the certification to the qualified
26 community development entity. The notice shall include the names of
27 those taxpayers who are eligible to use the credits and their

1 respective credit amounts. If the names of the persons or entities
2 that are eligible to use the credits change due to a transfer of a
3 qualified equity investment or a change in an allocation under
4 Section 171.528(b), the qualified community development entity
5 shall notify the comptroller of the change.

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

20 (f) The comptroller shall certify qualified equity
21 investments in the order applications are received by the
22 comptroller. Applications received on the same day shall be
23 considered to have been received simultaneously. For applications
24 received on the same day and considered complete, the comptroller
25 shall certify, consistent with remaining tax credit capacity,
26 qualified equity investments in proportionate percentages based on
27 the ratio of the amount of qualified equity investment requested in

1 an application to the total amount of qualified equity investments
2 requested in all applications received on the same day. If a pending
3 request cannot be fully certified because of the limitations
4 prescribed by Section 171.522(a), the comptroller shall certify the
5 portion that may be certified unless the qualified community
6 development entity elects to withdraw its request rather than
7 receive partial credit.

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

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

14 (2) the qualified community development entity
15 redeems or makes a principal repayment with respect to the
16 qualified equity investment that generated the tax credit before
17 the final credit allowance date of the qualified equity investment;
18 or

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

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

23 (c) In a situation described by Subsection (a)(1), the
24 comptroller's recapture shall be proportionate to the federal
25 recapture with respect to the qualified equity investment. In a
26 situation described by Subsection (a)(2), the comptroller's
27 recapture shall be proportionate to the amount of the redemption or

1 repayment with respect to the qualified equity investment.

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

13 Sec. 171.531. EXPIRATION. (a) This subchapter expires
14 December 31, 2013.

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

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

1 CHAPTER 231. CREDIT FOR BUSINESS DEVELOPMENT IN LOW-INCOME

2 COMMUNITIES

3 Sec. 231.001. DEFINITIONS. In this chapter:

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

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

8 (B) each of the six anniversary dates of that
9 date.

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

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

4 (4) "Qualified active low-income community business"
5 has the meaning assigned by Section 45D(d)(2), Internal Revenue
6 Code of 1986, as amended. A business shall be considered a
7 qualified active low-income community business for the duration of
8 the qualified community development entity's investment in, or loan
9 to, the business if the entity reasonably expects, at the time it
10 makes the investment or loan, that the business will continue to
11 satisfy the requirements for being a qualified active low-income
12 community business throughout the entire period of the investment
13 or loan. The term excludes any business that derives or projects to
14 derive 15 percent or more of its annual revenue from the rental or
15 sale of real estate. This exclusion does not apply to a business
16 that is controlled by, or under common control with, another
17 business if the second business:

18 (A) does not derive or project to derive 15
19 percent or more of its annual revenue from the rental or sale of
20 real estate; and

21 (B) is the primary tenant of the real estate
22 leased from the first business.

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 231.002(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. 231.002. TOTAL AMOUNT OF CREDITS THAT MAY BE CLAIMED.

26 (a) Notwithstanding any other provision of this chapter, the total
27 amount of tax credits that may be claimed by an entity under both

1 this chapter and Chapter 171, Tax Code, in a state fiscal year may
2 not exceed \$40 million, not including any carryforward amounts
3 authorized by Section 171.526, Tax Code, or by Section 231.006 of
4 this code.

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

8 Sec. 231.003. QUALIFICATION FOR CREDIT. (a) An entity
9 qualifies for and is entitled to a credit under this chapter on a
10 report if the entity holds a qualified equity investment on a credit
11 allowance date that occurs during the period on which the report is
12 based.

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

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

26 Sec. 231.005. AMOUNT OF ANNUAL CREDIT. (a) Except as
27 otherwise provided by this chapter, the amount of the tax credit an

1 entity may claim on a report is equal to:

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

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

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

11 (b) The total credit claimed under this chapter for a
12 report, including the amount of any carryforward credit under
13 Section 231.006, may not exceed the amount of tax due after any
14 other applicable credits.

15 Sec. 231.006. CARRYFORWARD. (a) Notwithstanding the
16 limitation provided by Section 231.002(a), if an entity is eligible
17 for a credit that exceeds the limitation under Section 231.005(b),
18 the entity may carry the unused credit forward for not more than
19 five consecutive reports.

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

26 (c) A carryforward may not be added to any subsequent
27 year's credit for the purpose of determining the limitation in

1 Section 231.002(a).

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

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

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

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

19 Sec. 231.009. APPLICATION AND CERTIFICATION PROCEDURE. (a)
20 A qualified community development entity that seeks to have an
21 equity investment or long-term debt security certified as a
22 qualified equity investment and eligible for tax credits shall
23 apply to the comptroller. The qualified community development
24 entity must submit an application on a form provided by the
25 comptroller that includes:

26 (1) the entity's name, address, tax identification
27 number, and evidence of its certification as a qualified community

1 development entity;

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

6 (3) a certificate executed by an executive officer of
7 the entity attesting that the allocation agreement remains in
8 effect and has not been revoked or cancelled by the Community
9 Development Financial Institutions Fund of the United States
10 Treasury;

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

13 (5) the name and tax identification number of any
14 person or entity eligible to use tax credits earned as a result of
15 the issuance of the qualified equity investment, if known; and

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

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

21 (c) Within 15 days after receipt of a completed application
22 containing the information necessary for the comptroller to certify
23 a potential qualified equity investment, including the payment of
24 the application fee, the comptroller shall grant or deny the
25 application in full or in part. If the comptroller denies any part
26 of the application, the comptroller shall inform the qualified
27 community development entity of the grounds for the denial. If the

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

9 (d) If the application is considered complete, the
10 comptroller shall certify the proposed equity investment or
11 long-term debt security as a qualified equity investment and
12 eligible for tax credits under this chapter, subject to the
13 limitations provided by Section 231.002(a). The comptroller shall
14 provide written notice of the certification to the qualified
15 community development entity. The notice shall include the names of
16 those taxpayers who are eligible to use the credits and their
17 respective credit amounts. If the names of the persons or entities
18 that are eligible to use the credits change due to a transfer of a
19 qualified equity investment or a change in an allocation under
20 Section 231.008(b), the qualified community development entity
21 shall notify the comptroller of the change.

22 (e) Within 30 days after receiving notice of certification,
23 the qualified community development entity shall issue the
24 qualified equity investment and receive cash in the amount of the
25 certified purchase price. The qualified community development
26 entity must provide the comptroller with evidence of the receipt of
27 the cash investment within 10 business days after receipt. If the

1 qualified community development entity does not receive the cash
2 investment and issue the qualified equity investment within 30 days
3 following receipt of the certification notice, the certification
4 shall lapse and the entity may not issue the qualified equity
5 investment without reapplying to the comptroller for
6 certification. A certification that lapses reverts back to the
7 comptroller and may be reissued only in accordance with the
8 application process provided by this section.

9 (f) The comptroller shall certify qualified equity
10 investments in the order applications are received by the
11 comptroller. Applications received on the same day shall be
12 considered to have been received simultaneously. For applications
13 received on the same day and considered complete, the comptroller
14 shall certify, consistent with remaining tax credit capacity,
15 qualified equity investments in proportionate percentages based on
16 the ratio of the amount of qualified equity investment requested in
17 an application to the total amount of qualified equity investments
18 requested in all applications received on the same day. If a pending
19 request cannot be fully certified because of the limitations
20 provided by Section 231.002(a), the comptroller shall certify the
21 portion that may be certified unless the qualified community
22 development entity elects to withdraw its request rather than
23 receive partial credit.

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

26 (1) any amount of federal tax credit that might be
27 available with respect to the qualified equity investment that

1 generated the tax credit under this section is recaptured under
2 Section 45D, Internal Revenue Code of 1986, as amended;

3 (2) the qualified community development entity
4 redeems or makes a principal repayment with respect to the
5 qualified equity investment that generated the tax credit before
6 the final credit allowance date of such qualified equity
7 investment; or

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

17 (b) The qualified community development entity shall keep
18 sufficiently detailed books and records with respect to the
19 investments made with the proceeds of the qualified equity
20 investments to allow the direct tracing of the proceeds into
21 qualified low-income community investments in qualified active
22 low-income community businesses in this state. For purposes of
23 calculating the amount of qualified low-income community
24 investments held by a qualified community development entity, an
25 investment shall be considered held by the qualified community
26 development entity even if the investment has been sold or repaid,
27 provided that the qualified community development entity reinvests

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

12 (c) In a situation described by Subsection (a)(1), the
13 comptroller's recapture shall be proportionate to the federal
14 recapture with respect to the qualified equity investment. In a
15 situation described by Subsection (a)(2), the comptroller's
16 recapture shall be proportionate to the amount of the redemption or
17 repayment with respect to the qualified equity investment.

18 (d) The comptroller shall provide notice to the qualified
19 community development entity of any proposed recapture of tax
20 credits under this section. The entity shall have 90 days to cure
21 any deficiency indicated in the comptroller's original recapture
22 notice and avoid the recapture. If the entity fails or is unable to
23 cure the deficiency within the 90-day period, the comptroller shall
24 provide the entity and the taxpayer from whom the credit is to be
25 recaptured with a final order of recapture. Any tax credit for
26 which a final recapture order has been issued shall be recaptured by
27 the comptroller from the taxpayer who claimed the tax credit on a

1 tax return.

2 Sec. 231.011. EXPIRATION. (a) This chapter expires
3 December 31, 2013.

4 (b) The expiration of this chapter does not affect a credit
5 that was established under this chapter due to a qualified equity
6 investment that was made before the date this chapter expires. An
7 entity that has any unused credits established under this chapter,
8 including any carryforward credits, may continue to apply those
9 credits on or with each consecutive report until the date the credit
10 would have expired under this chapter had this chapter not expired,
11 and this chapter is continued in effect for the purposes of
12 determining the amount of the credit the entity may claim and the
13 manner in which the entity may claim the credit.

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

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

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