

1-1 By: Williams S.B. No. 1429
1-2 (In the Senate - Filed March 6, 2009; March 17, 2009, read
1-3 first time and referred to Committee on Economic Development;
1-4 April 30, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 5, Nays 0; April 30, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1429 By: Eltife

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to tax credits for business development in low-income
1-11 communities.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Chapter 171, Tax Code, is amended by adding
1-14 Subchapter J-1 to read as follows:

1-15 SUBCHAPTER J-1. CREDIT FOR BUSINESS DEVELOPMENT IN LOW-INCOME
1-16 COMMUNITIES

1-17 Sec. 171.521. DEFINITIONS. In this subchapter:

1-18 (1) "Credit allowance date" means with respect to any
1-19 qualified equity investment:

1-20 (A) the date on which the investment is initially
1-21 made; and

1-22 (B) each of the six anniversary dates of that
1-23 date.

1-24 (2) "Long-term debt security" means any debt
1-25 instrument issued by a qualified community development entity, at
1-26 par value or a premium, with an original maturity date of at least
1-27 seven years from the date of its issuance, with no acceleration of
1-28 repayment, amortization, or prepayment features before its
1-29 original maturity date. The qualified community development entity
1-30 that issues the debt instrument may not make cash interest payments
1-31 on the debt instrument during the period beginning on the date of
1-32 issuance and ending on the final credit allowance date in an amount
1-33 that exceeds the sum of the cash interest payments and the
1-34 cumulative operating income, as defined by regulations adopted
1-35 under Section 45D, Internal Revenue Code of 1986, as amended, of the
1-36 qualified community development entity for that period. This
1-37 subdivision does not limit the holder's ability to accelerate
1-38 payments on the debt instrument in situations in which the
1-39 qualified community development entity has defaulted on covenants
1-40 designed to ensure compliance with this subchapter or Section 45D,
1-41 Internal Revenue Code of 1986, as amended.

1-42 (3) "Purchase price" means the amount of cash paid to a
1-43 qualified community development entity that issues a qualified
1-44 equity investment for the qualified equity investment.

1-45 (4) "Qualified active low-income community business"
1-46 has the meaning assigned by Section 45D(d)(2), Internal Revenue
1-47 Code of 1986, as amended. A business shall be considered a
1-48 qualified active low-income community business for the duration of
1-49 the qualified community development entity's investment in, or loan
1-50 to, the business if the entity reasonably expects, at the time it
1-51 makes the investment or loan, that the business will continue to
1-52 satisfy the requirements for being a qualified active low-income
1-53 community business throughout the entire period of the investment
1-54 or loan.

1-55 (5) "Qualified community development entity" has the
1-56 meaning assigned by Section 45D(c), Internal Revenue Code of 1986,
1-57 as amended, provided that the entity has entered into, or is
1-58 controlled by an entity that has entered into, an allocation
1-59 agreement with the Community Development Financial Institutions
1-60 Fund of the United States Department of the Treasury with respect to
1-61 credits authorized by Section 45D, Internal Revenue Code of 1986,
1-62 as amended, that includes this state within the service area
1-63 provided in the allocation agreement.

2-1 (6) "Qualified equity investment" means:
 2-2 (A) any equity investment in, or long-term debt
 2-3 security issued by, a qualified community development entity that:
 2-4 (i) is acquired after September 1, 2009, at
 2-5 its original issuance solely in exchange for cash;
 2-6 (ii) has at least 85 percent of its cash
 2-7 purchase price used by the issuer to make qualified low-income
 2-8 community investments in qualified active low-income community
 2-9 businesses located in this state by the first anniversary of the
 2-10 initial credit allowance date; and
 2-11 (iii) is designated by the issuer as a
 2-12 qualified equity investment under this subdivision and is certified
 2-13 by the comptroller as not exceeding the limitation contained in
 2-14 Section 171.522(a); and

2-15 (B) any qualified equity investment that does not
 2-16 meet the requirements of Paragraph (A) if the investment was a
 2-17 qualified equity investment in the hands of a prior holder.

2-18 (7) "Qualified low-income community investment" means
 2-19 any capital or equity investment in, or loan to, any qualified
 2-20 active low-income community business made after September 1, 2009.

2-21 Sec. 171.522. TOTAL AMOUNT OF CREDITS THAT MAY BE CLAIMED.

2-22 (a) Notwithstanding any other provision of this subchapter, the
 2-23 total amount of tax credits that may be claimed by all entities
 2-24 under both this subchapter and Chapter 231, Insurance Code, in a
 2-25 state fiscal year may not exceed \$40 million, not including any
 2-26 carryforward amounts authorized by Section 171.526 or by Section
 2-27 231.006, Insurance Code.

2-28 (b) The comptroller by rule shall prescribe procedures by
 2-29 which the comptroller may allocate credits under this subchapter
 2-30 and Chapter 231, Insurance Code.

2-31 Sec. 171.523. QUALIFICATION FOR CREDIT. (a) A taxable
 2-32 entity qualifies for and is entitled to a credit under this
 2-33 subchapter on a report if the taxable entity purchases a qualified
 2-34 equity investment from a qualified community development entity and
 2-35 holds the qualified equity investment on a credit allowance date
 2-36 that occurs during the period on which the report is based.

2-37 (b) A taxable entity described by Subsection (a) may claim a
 2-38 credit under this subchapter for not more than seven consecutive
 2-39 reports beginning with the report based on the period during which
 2-40 the taxable entity first holds the investment on a credit allowance
 2-41 date.

2-42 Sec. 171.524. MAXIMUM INVESTMENT PER QUALIFIED ACTIVE
 2-43 LOW-INCOME COMMUNITY BUSINESS. With respect to any one qualified
 2-44 active low-income community business, the maximum amount of
 2-45 qualified low-income community investments that may be made in the
 2-46 business, on a collective basis with all of its affiliates, with the
 2-47 proceeds of qualified equity investments that have been certified
 2-48 under this subchapter, is \$20 million whether made by one or several
 2-49 qualified community development entities.

2-50 Sec. 171.525. AMOUNT OF ANNUAL CREDIT. (a) Except as
 2-51 otherwise provided by this subchapter, the amount of the tax credit
 2-52 a taxable entity may claim on a report is equal to:

2-53 (1) for each of the first two years for which the
 2-54 taxable entity may claim the credit, zero percent of the purchase
 2-55 price on the applicable credit allowance date;

2-56 (2) for the third year for which the taxable entity may
 2-57 claim the credit, seven percent of the purchase price on the
 2-58 applicable credit allowance date; and

2-59 (3) for the remaining four years for which the taxable
 2-60 entity may claim the credit, eight percent of the purchase price on
 2-61 the applicable credit allowance date.

2-62 (b) The total credit claimed under this subchapter for a
 2-63 report, including the amount of any carryforward credit under
 2-64 Section 171.526, may not exceed the amount of franchise tax due
 2-65 after any other applicable credits.

2-66 Sec. 171.526. CARRYFORWARD. (a) Notwithstanding the
 2-67 limitation provided by Section 171.522(a), if a taxable entity is
 2-68 eligible for a credit that exceeds the limitation under Section
 2-69 171.525(b), the taxable entity may carry the unused credit forward

3-1 for not more than five consecutive reports.

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

3-8 (c) A carryforward may not be added to any subsequent year's
 3-9 credit for the purpose of determining the limitation in Section
 3-10 171.522(a).

3-11 Sec. 171.527. CERTIFICATION OF ELIGIBILITY. (a) For the
 3-12 initial and each succeeding report in which a credit is claimed
 3-13 under this subchapter, the taxable entity shall file with its
 3-14 report, on a form provided by the comptroller, information that
 3-15 sufficiently demonstrates that the taxable entity is eligible for
 3-16 the credit.

3-17 (b) The burden of establishing entitlement to and the value
 3-18 of the credit is on the taxable entity.

3-19 Sec. 171.528. ASSIGNMENT PROHIBITED. (a) A taxable entity
 3-20 may not convey, assign, or transfer the credit allowed under this
 3-21 subchapter to another entity unless all of the assets of the taxable
 3-22 entity, including the taxable entity's qualified equity investment
 3-23 to which the credit relates, are conveyed, assigned, or transferred
 3-24 in the same transaction.

3-25 (b) Notwithstanding Subsection (a), a tax credit earned by a
 3-26 partnership, limited liability company, S corporation, or other
 3-27 "pass-through" entity may be allocated to the partners, members, or
 3-28 shareholders of that entity and claimed under this subchapter in
 3-29 accordance with the provisions of any agreement among the partners,
 3-30 members, or shareholders.

3-31 Sec. 171.529. APPLICATION AND CERTIFICATION PROCEDURE.
 3-32 (a) A qualified community development entity that seeks to have an
 3-33 equity investment or long-term debt security certified as a
 3-34 qualified equity investment and eligible for tax credits shall
 3-35 apply to the comptroller. The qualified community development
 3-36 entity must submit an application on a form provided by the
 3-37 comptroller that includes:

3-38 (1) the entity's name, address, tax identification
 3-39 number, and evidence of its certification as a qualified community
 3-40 development entity;

3-41 (2) a copy of an allocation agreement executed by the
 3-42 entity, or its controlling entity, and the Community Development
 3-43 Financial Institutions Fund of the United States Treasury that
 3-44 includes this state in its service area;

3-45 (3) a certificate executed by an executive officer of
 3-46 the entity attesting that the allocation agreement remains in
 3-47 effect and has not been revoked or canceled by the Community
 3-48 Development Financial Institutions Fund of the United States
 3-49 Department of the Treasury;

3-50 (4) a description of the proposed amount, structure,
 3-51 and purchaser of the equity investment or long-term debt security;

3-52 (5) the name and tax identification number of any
 3-53 entity eligible to claim tax credits as a result of the purchase of
 3-54 the qualified equity investment, if known; and

3-55 (6) information regarding the proposed use of proceeds
 3-56 from the issuance of the qualified equity investment, if known.

3-57 (b) The application must be accompanied by a nonrefundable
 3-58 application fee of \$5,000. The fee shall be paid to the comptroller
 3-59 and shall be required for each application submitted.

3-60 (c) Within 15 days after receipt of a completed application
 3-61 containing the information necessary for the comptroller to certify
 3-62 a potential qualified equity investment, including the payment of
 3-63 the application fee, the comptroller shall grant or deny the
 3-64 application in full or in part. If the comptroller denies any part
 3-65 of the application, the comptroller shall inform the qualified
 3-66 community development entity of the grounds for the denial. If the
 3-67 qualified community development entity provides any additional
 3-68 information required by the comptroller or otherwise completes its
 3-69 application within 15 days of the notice of denial, the application

4-1 shall be considered completed as of the original date of
4-2 submission. If the qualified community development entity fails to
4-3 provide the information or complete its application within the
4-4 15-day period, the application remains denied and must be
4-5 resubmitted in full with a new submission date.

4-6 (d) If the application is considered complete, the
4-7 comptroller shall certify the proposed equity investment or
4-8 long-term debt security as a qualified equity investment and
4-9 eligible for tax credits under this section, subject to the
4-10 limitations provided by this subchapter. The comptroller shall
4-11 provide written notice of the certification to the qualified
4-12 community development entity. The notice shall include the names
4-13 of those taxable entities who are eligible to claim the credits, if
4-14 known, and their respective credit amounts. If the names of the
4-15 taxable entities identified as eligible to claim the credits change
4-16 due to a transfer of a qualified equity investment under Section
4-17 171.528(a) or a change in an allocation under Section 171.528(b),
4-18 the qualified community development entity shall notify the
4-19 comptroller of the change.

4-20 (e) Within 30 days after receiving notice of certification,
4-21 the qualified community development entity shall issue the
4-22 qualified equity investment and receive cash in the amount of the
4-23 certified purchase price. The qualified community development
4-24 entity must provide the comptroller with evidence of the receipt of
4-25 the cash investment within 10 business days after receipt. If the
4-26 qualified community development entity does not receive the cash
4-27 investment and issue the qualified equity investment within 30 days
4-28 following receipt of the certification notice, the certification
4-29 shall lapse and the entity may not issue the qualified equity
4-30 investment without reapplying to the comptroller for
4-31 certification. A certification that lapses reverts back to the
4-32 comptroller and may be reissued only in accordance with the
4-33 application process prescribed by this section.

4-34 (f) The comptroller shall certify qualified equity
4-35 investments in the order applications are received by the
4-36 comptroller. Applications received on the same day shall be
4-37 considered to have been received simultaneously. For applications
4-38 received on the same day and considered complete, the comptroller
4-39 shall certify, consistent with remaining tax credit capacity,
4-40 qualified equity investments in proportionate percentages based on
4-41 the ratio of the amount of qualified equity investment requested in
4-42 an application to the total amount of qualified equity investments
4-43 requested in all applications received on the same day. If a
4-44 pending request cannot be fully certified because of the
4-45 limitations prescribed by Section 171.522(a), the comptroller
4-46 shall certify the portion that may be certified unless the
4-47 qualified community development entity elects to withdraw its
4-48 request rather than receive partial credit.

4-49 (g) A qualified community development entity, on a
4-50 collective basis with all of its affiliated entities listed in its
4-51 allocation agreement with the Community Development Financial
4-52 Institutions Fund of the United States Department of the Treasury
4-53 or subsidiaries of those entities, may not request certification
4-54 for a qualified equity investment that would entitle the purchaser
4-55 of the qualified equity investment to have allocated to the
4-56 purchaser at any time more than 30 percent of the total value of the
4-57 tax credits that may be claimed under this subchapter.

4-58 (h) Notwithstanding Subsection (g), a qualified community
4-59 development entity, alone or on a collective basis with all of its
4-60 affiliated entities listed in its allocation agreement with the
4-61 Community Development Financial Institutions Fund of the United
4-62 States Department of the Treasury or subsidiaries of those
4-63 entities, may request certification for a qualified equity
4-64 investment that would entitle the purchaser of the qualified equity
4-65 investment to have allocated to the purchaser at any time more than
4-66 30 percent of the total value of the tax credits that may be claimed
4-67 under this subchapter if:

4-68 (1) it has been at least 180 days since the date the
4-69 comptroller certified the qualified community development entity's

5-1 most recent request under this subchapter; or

5-2 (2) it has been less than 180 days since the date the
 5-3 comptroller certified the qualified community development entity's
 5-4 most recent request under this subchapter, and the entity
 5-5 demonstrates that the entity has invested substantially all of the
 5-6 purchase price of the qualified equity investments that have been
 5-7 previously certified under this subchapter.

5-8 Sec. 171.530. RECAPTURE OF CREDIT. (a) The comptroller
 5-9 may recapture a portion of a tax credit allowed under this
 5-10 subchapter if:

5-11 (1) any amount of federal tax credit that might be
 5-12 available with respect to the qualified equity investment that
 5-13 generated the tax credit under this subchapter is recaptured under
 5-14 Section 45D, Internal Revenue Code of 1986, as amended;

5-15 (2) the qualified community development entity
 5-16 redeems or makes a principal repayment with respect to the
 5-17 qualified equity investment that generated the tax credit before
 5-18 the final credit allowance date of the qualified equity investment;
 5-19 or

5-20 (3) the qualified community development entity fails
 5-21 to invest at least 85 percent of the purchase price of the qualified
 5-22 equity investment in qualified low-income community investments in
 5-23 qualified active low-income community businesses located in this
 5-24 state within 12 months of the issuance of the qualified equity
 5-25 investment and maintain that level of investment in qualified
 5-26 low-income community investments in qualified active low-income
 5-27 community businesses located in this state until the last credit
 5-28 allowance date for the qualified equity investment.

5-29 (b) The qualified community development entity shall keep
 5-30 sufficiently detailed books and records with respect to the
 5-31 investments made with the proceeds of the qualified equity
 5-32 investments to allow the direct tracing of the proceeds into
 5-33 qualified low-income community investments in qualified active
 5-34 low-income community businesses in this state. For purposes of
 5-35 calculating the amount of qualified low-income community
 5-36 investments held by a qualified community development entity, an
 5-37 investment shall be considered held by the qualified community
 5-38 development entity even if the investment has been sold or repaid,
 5-39 provided that the qualified community development entity reinvests
 5-40 an amount equal to the capital returned to or recovered from the
 5-41 original investment, exclusive of any profits realized, in another
 5-42 qualified active low-income community business in this state within
 5-43 12 months of the receipt of the capital. A qualified community
 5-44 development entity may not be required to reinvest capital returned
 5-45 from qualified low-income community investments after the sixth
 5-46 anniversary of the issuance of the qualified equity investment, the
 5-47 proceeds of which were used to make the qualified low-income
 5-48 community investment, and the qualified low-income community
 5-49 investment shall be considered held by the issuer through the
 5-50 qualified equity investment's final credit allowance date.

5-51 (c) In a situation described by Subsection (a)(1), the
 5-52 comptroller's recapture shall be proportionate to the federal
 5-53 recapture with respect to the qualified equity investment. In a
 5-54 situation described by Subsection (a)(2), the comptroller's
 5-55 recapture shall be proportionate to the amount of the redemption or
 5-56 repayment with respect to the qualified equity investment.

5-57 (d) The comptroller shall provide notice to the qualified
 5-58 community development entity of any proposed recapture of tax
 5-59 credits under this section. The entity shall have 90 days to cure
 5-60 any deficiency indicated in the comptroller's original recapture
 5-61 notice and avoid the recapture. If the entity fails or is unable to
 5-62 cure the deficiency within the 90-day period, the comptroller shall
 5-63 provide the entity and the taxpayer from whom the credit is to be
 5-64 recaptured with a final order of recapture. Any tax credit for
 5-65 which a final recapture order has been issued shall be recaptured by
 5-66 the comptroller from the taxpayer who claimed the tax credit on a
 5-67 tax return.

5-68 Sec. 171.531. EXPIRATION. (a) This subchapter expires
 5-69 December 31, 2013.

6-1 (b) The expiration of this subchapter does not affect a
 6-2 credit that was established under this subchapter due to the
 6-3 purchase of a qualified equity investment that was made before the
 6-4 date this subchapter expires. A taxable entity that has any unused
 6-5 credits established under this subchapter, including any
 6-6 carryforward credits, may continue to apply those credits on or
 6-7 with each consecutive report until the date the credit would have
 6-8 expired under this subchapter had this subchapter not expired, and
 6-9 this subchapter is continued in effect for the purposes of
 6-10 determining the amount of the credit the taxable entity may claim
 6-11 and the manner in which the taxable entity may claim the credit.

6-12 SECTION 2. Subtitle B, Title 3, Insurance Code, is amended
 6-13 by adding Chapter 231 to read as follows:

6-14 CHAPTER 231. CREDIT FOR BUSINESS DEVELOPMENT IN LOW-INCOME
 6-15 COMMUNITIES

6-16 Sec. 231.001. DEFINITIONS. In this chapter:

6-17 (1) "Credit allowance date" means, with respect to any
 6-18 qualified equity investment:

6-19 (A) the date on which the investment is initially
 6-20 made; and

6-21 (B) each of the six anniversary dates of that
 6-22 date.

6-23 (2) "Long-term debt security" means any debt
 6-24 instrument issued by a qualified community development entity, at
 6-25 par value or a premium, with an original maturity date of at least
 6-26 seven years from the date of its issuance, with no acceleration of
 6-27 repayment, amortization, or prepayment features before its
 6-28 original maturity date. The qualified community development entity
 6-29 that issues the debt instrument may not make cash interest payments
 6-30 on the debt instrument during the period beginning on the date of
 6-31 issuance and ending on the final credit allowance date in an amount
 6-32 that exceeds the sum of the cash interest payments and the
 6-33 cumulative operating income, as defined by regulations adopted
 6-34 under Section 45D, Internal Revenue Code of 1986, as amended, of the
 6-35 qualified community development entity for that period. This
 6-36 subdivision does not limit the holder's ability to accelerate
 6-37 payments on the debt instrument in situations in which the
 6-38 qualified community development entity has defaulted on covenants
 6-39 designed to ensure compliance with this chapter or Section 45D,
 6-40 Internal Revenue Code of 1986, as amended.

6-41 (3) "Purchase price" means the amount of cash paid to a
 6-42 qualified community development entity that issues a qualified
 6-43 equity investment for the qualified equity investment.

6-44 (4) "Qualified active low-income community business"
 6-45 has the meaning assigned by Section 45D(d)(2), Internal Revenue
 6-46 Code of 1986, as amended. A business shall be considered a
 6-47 qualified active low-income community business for the duration of
 6-48 the qualified community development entity's investment in, or loan
 6-49 to, the business if the entity reasonably expects, at the time it
 6-50 makes the investment or loan, that the business will continue to
 6-51 satisfy the requirements for being a qualified active low-income
 6-52 community business throughout the entire period of the investment
 6-53 or loan.

6-54 (5) "Qualified community development entity" has the
 6-55 meaning assigned by Section 45D(c), Internal Revenue Code of 1986,
 6-56 as amended, provided that the entity has entered into, or is
 6-57 controlled by an entity that has entered into, an allocation
 6-58 agreement with the Community Development Financial Institutions
 6-59 Fund of the United States Department of the Treasury with respect to
 6-60 credits authorized by Section 45D, Internal Revenue Code of 1986,
 6-61 as amended, that includes this state within the service area
 6-62 provided in the allocation agreement.

6-63 (6) "Qualified equity investment" means:

6-64 (A) any equity investment in, or long-term debt
 6-65 security issued by, a qualified community development entity that:

6-66 (i) is acquired after September 1, 2009, at
 6-67 its original issuance solely in exchange for cash;

6-68 (ii) has at least 85 percent of its cash
 6-69 purchase price used by the issuer to make qualified low-income

7-1 community investments in qualified active low-income community
 7-2 businesses located in this state by the first anniversary of the
 7-3 initial credit allowance date; and

7-4 (iii) is designated by the issuer as a
 7-5 qualified equity investment under this subdivision and is certified
 7-6 by the comptroller as not exceeding the limitation contained in
 7-7 Section 231.002(a); and

7-8 (B) any qualified equity investment that does not
 7-9 meet the requirements of Paragraph (A) if the investment was a
 7-10 qualified equity investment in the hands of a prior holder.

7-11 (7) "Qualified low-income community investment" means
 7-12 any capital or equity investment in, or loan to, any qualified
 7-13 active low-income community business made after September 1, 2009.

7-14 (8) "State premium tax liability" means any liability
 7-15 incurred by an entity under Chapters 221 through 226.

7-16 Sec. 231.002. TOTAL AMOUNT OF CREDITS THAT MAY BE CLAIMED.

7-17 (a) Notwithstanding any other provision of this chapter, the total
 7-18 amount of tax credits that may be claimed by all entities under both
 7-19 this chapter and Chapter 171, Tax Code, in a state fiscal year may
 7-20 not exceed \$40 million, not including any carryforward amounts
 7-21 authorized by Section 171.526, Tax Code, or by Section 231.006 of
 7-22 this code.

7-23 (b) The comptroller by rule shall prescribe procedures by
 7-24 which the comptroller may allocate credits under this chapter and
 7-25 Subchapter J-1, Chapter 171, Tax Code.

7-26 Sec. 231.003. QUALIFICATION FOR CREDIT. (a) An entity
 7-27 qualifies for and is entitled to a credit against the entity's state
 7-28 premium tax liability on a premium tax report filed under this
 7-29 subtitle if the entity purchases a qualified equity investment from
 7-30 a qualified community development entity and holds the qualified
 7-31 equity investment on a credit allowance date that occurs during the
 7-32 period on which the report is based.

7-33 (b) An entity described by Subsection (a) may claim a credit
 7-34 under this chapter for not more than seven consecutive reports
 7-35 beginning with the report based on the period during which the
 7-36 entity first holds the investment on a credit allowance date.

7-37 Sec. 231.004. MAXIMUM INVESTMENT PER QUALIFIED ACTIVE
 7-38 LOW-INCOME COMMUNITY BUSINESS. With respect to any one qualified
 7-39 active low-income community business, the maximum amount of
 7-40 qualified low-income community investments that may be made in the
 7-41 business, on a collective basis with all of its affiliates, with the
 7-42 proceeds of qualified equity investments that have been certified
 7-43 under this chapter, is \$20 million whether made by one or several
 7-44 qualified community development entities.

7-45 Sec. 231.005. AMOUNT OF ANNUAL CREDIT. (a) Except as
 7-46 otherwise provided by this chapter, the amount of the tax credit an
 7-47 entity may claim on a report is equal to:

7-48 (1) for each of the first two years for which the
 7-49 entity may claim the credit, zero percent of the purchase price on
 7-50 the applicable credit allowance date;

7-51 (2) for the third year for which the entity may claim
 7-52 the credit, seven percent of the purchase price on the applicable
 7-53 credit allowance date; and

7-54 (3) for the remaining four years for which the entity
 7-55 may claim the credit, eight percent of the purchase price on the
 7-56 applicable credit allowance date.

7-57 (b) The total credit claimed under this chapter for a
 7-58 report, including the amount of any carryforward credit under
 7-59 Section 231.006, may not exceed the amount of tax due after any
 7-60 other applicable credits.

7-61 Sec. 231.006. CARRYFORWARD. (a) Notwithstanding the
 7-62 limitation provided by Section 231.002(a), if an entity is eligible
 7-63 for a credit that exceeds the limitation under Section 231.005(b),
 7-64 the entity may carry the unused credit forward for not more than
 7-65 five consecutive reports.

7-66 (b) A carryforward is considered the remaining portion of a
 7-67 credit that cannot be claimed in the current year because of the tax
 7-68 limitation under Section 231.005(b). A carryforward is added to
 7-69 the next year's credit in determining whether the limitation is met

8-1 for that year. A credit carryforward from a previous report is
8-2 considered to be used before the current year credit.

8-3 (c) A carryforward may not be added to any subsequent year's
8-4 credit for the purpose of determining the limitation in Section
8-5 231.002(a).

8-6 Sec. 231.007. CERTIFICATION OF ELIGIBILITY. (a) For the
8-7 initial and each succeeding report in which a credit is claimed
8-8 under this chapter, the entity shall file with its report, on a form
8-9 provided by the comptroller, information that sufficiently
8-10 demonstrates that the entity is eligible for the credit.

8-11 (b) The burden of establishing entitlement to and the value
8-12 of the credit is on the entity.

8-13 Sec. 231.008. ASSIGNMENT PROHIBITED. (a) An entity may
8-14 not convey, assign, or transfer the credit allowed under this
8-15 chapter to another entity unless all of the assets of the entity,
8-16 including the entity's qualified equity investment to which the
8-17 credit relates, are conveyed, assigned, or transferred in the same
8-18 transaction.

8-19 (b) Notwithstanding Subsection (a), a tax credit earned by a
8-20 partnership, limited liability company, S corporation, or other
8-21 "pass-through" entity may be allocated to the partners, members, or
8-22 shareholders of that entity and claimed under this chapter in
8-23 accordance with the provisions of any agreement among the partners,
8-24 members, or shareholders.

8-25 Sec. 231.009. APPLICATION AND CERTIFICATION PROCEDURE.

8-26 (a) A qualified community development entity that seeks to have an
8-27 equity investment or long-term debt security certified as a
8-28 qualified equity investment and eligible for tax credits shall
8-29 apply to the comptroller. The qualified community development
8-30 entity must submit an application on a form provided by the
8-31 comptroller that includes:

8-32 (1) the entity's name, address, tax identification
8-33 number, and evidence of its certification as a qualified community
8-34 development entity;

8-35 (2) a copy of an allocation agreement executed by the
8-36 entity, or its controlling entity, and the Community Development
8-37 Financial Institutions Fund of the United States Department of the
8-38 Treasury that includes this state in its service area;

8-39 (3) a certificate executed by an executive officer of
8-40 the entity attesting that the allocation agreement remains in
8-41 effect and has not been revoked or canceled by the Community
8-42 Development Financial Institutions Fund of the United States
8-43 Treasury;

8-44 (4) a description of the proposed amount, structure,
8-45 and purchaser of the equity investment or long-term debt security;

8-46 (5) the name and tax identification number of any
8-47 entity eligible to claim tax credits earned as a result of the
8-48 purchase of the qualified equity investment, if known; and

8-49 (6) information regarding the proposed use of proceeds
8-50 from the issuance of the qualified equity investment, if known.

8-51 (b) The application must be accompanied by a nonrefundable
8-52 application fee of \$5,000. The fee shall be paid to the comptroller
8-53 and shall be required for each application submitted.

8-54 (c) Within 15 days after receipt of a completed application
8-55 containing the information necessary for the comptroller to certify
8-56 a potential qualified equity investment, including the payment of
8-57 the application fee, the comptroller shall grant or deny the
8-58 application in full or in part. If the comptroller denies any part
8-59 of the application, the comptroller shall inform the qualified
8-60 community development entity of the grounds for the denial. If the
8-61 qualified community development entity provides any additional
8-62 information required by the comptroller or otherwise completes its
8-63 application within 15 days of the notice of denial, the application
8-64 shall be considered completed as of the original date of
8-65 submission. If the qualified community development entity fails to
8-66 provide the information or complete its application within the
8-67 15-day period, the application remains denied and must be
8-68 resubmitted in full with a new submission date.

8-69 (d) If the application is considered complete, the

9-1 comptroller shall certify the proposed equity investment or
 9-2 long-term debt security as a qualified equity investment and
 9-3 eligible for tax credits under this chapter, subject to the
 9-4 limitations provided by this chapter. The comptroller shall
 9-5 provide written notice of the certification to the qualified
 9-6 community development entity. The notice shall include the names
 9-7 of those entities who are eligible to claim the credits, if known,
 9-8 and their respective credit amounts. If the names of the entities
 9-9 that are eligible to claim the credits change due to a transfer of a
 9-10 qualified equity investment under Section 231.008(a) or a change in
 9-11 an allocation under Section 231.008(b), the qualified community
 9-12 development entity shall notify the comptroller of the change.

9-13 (e) Within 30 days after receiving notice of certification,
 9-14 the qualified community development entity shall issue the
 9-15 qualified equity investment and receive cash in the amount of the
 9-16 certified purchase price. The qualified community development
 9-17 entity must provide the comptroller with evidence of the receipt of
 9-18 the cash investment within 10 business days after receipt. If the
 9-19 qualified community development entity does not receive the cash
 9-20 investment and issue the qualified equity investment within 30 days
 9-21 following receipt of the certification notice, the certification
 9-22 shall lapse and the entity may not issue the qualified equity
 9-23 investment without reapplying to the comptroller for
 9-24 certification. A certification that lapses reverts back to the
 9-25 comptroller and may be reissued only in accordance with the
 9-26 application process provided by this section.

9-27 (f) The comptroller shall certify qualified equity
 9-28 investments in the order applications are received by the
 9-29 comptroller. Applications received on the same day shall be
 9-30 considered to have been received simultaneously. For applications
 9-31 received on the same day and considered complete, the comptroller
 9-32 shall certify, consistent with remaining tax credit capacity,
 9-33 qualified equity investments in proportionate percentages based on
 9-34 the ratio of the amount of qualified equity investment requested in
 9-35 an application to the total amount of qualified equity investments
 9-36 requested in all applications received on the same day. If a
 9-37 pending request cannot be fully certified because of the
 9-38 limitations provided by Section 231.002(a), the comptroller shall
 9-39 certify the portion that may be certified unless the qualified
 9-40 community development entity elects to withdraw its request rather
 9-41 than receive partial credit.

9-42 (g) A qualified community development entity, on a
 9-43 collective basis with all of its affiliated entities listed in its
 9-44 allocation agreement with the Community Development Financial
 9-45 Institutions Fund of the United States Department of the Treasury
 9-46 or subsidiaries of those entities, may not request certification
 9-47 for a qualified equity investment that would entitle the purchaser
 9-48 of the qualified equity investment to have allocated to the
 9-49 purchaser at any time more than 30 percent of the total value of the
 9-50 tax credits that may be claimed under this chapter.

9-51 (h) Notwithstanding Subsection (g), a qualified community
 9-52 development entity, alone or on a collective basis with all of its
 9-53 affiliated entities listed in its allocation agreement with the
 9-54 Community Development Financial Institutions Fund of the United
 9-55 States Department of the Treasury or subsidiaries of those
 9-56 entities, may request certification for a qualified equity
 9-57 investment that would entitle the purchaser of the qualified equity
 9-58 investment to have allocated to the purchaser at any time more than
 9-59 30 percent of the total value of the tax credits that may be claimed
 9-60 under this chapter if:

9-61 (1) it has been at least 180 days since the date the
 9-62 comptroller certified the qualified community development entity's
 9-63 most recent request under this chapter; or

9-64 (2) it has been less than 180 days since the date the
 9-65 comptroller certified the qualified community development entity's
 9-66 most recent request under this chapter, and the entity demonstrates
 9-67 that the entity has invested substantially all of the purchase
 9-68 price of the qualified equity investments that have been previously
 9-69 certified under this chapter.

10-1 Sec. 231.010. RECAPTURE OF CREDIT. (a) The comptroller
 10-2 may recapture a portion of a tax credit allowed under this chapter
 10-3 if:

10-4 (1) any amount of federal tax credit that might be
 10-5 available with respect to the qualified equity investment that
 10-6 generated the tax credit under this chapter is recaptured under
 10-7 Section 45D, Internal Revenue Code of 1986, as amended;

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

10-13 (3) the qualified community development entity fails
 10-14 to invest at least 85 percent of the purchase price of the qualified
 10-15 equity investment in qualified low-income community investments in
 10-16 qualified active low-income community businesses located in this
 10-17 state within 12 months of the issuance of the qualified equity
 10-18 investment and maintain that level of investment in qualified
 10-19 low-income community investments in qualified active low-income
 10-20 community businesses located in this state until the last credit
 10-21 allowance date for the qualified equity investment.

10-22 (b) The qualified community development entity shall keep
 10-23 sufficiently detailed books and records with respect to the
 10-24 investments made with the proceeds of the qualified equity
 10-25 investments to allow the direct tracing of the proceeds into
 10-26 qualified low-income community investments in qualified active
 10-27 low-income community businesses in this state. For purposes of
 10-28 calculating the amount of qualified low-income community
 10-29 investments held by a qualified community development entity, an
 10-30 investment shall be considered held by the qualified community
 10-31 development entity even if the investment has been sold or repaid,
 10-32 provided that the qualified community development entity reinvests
 10-33 an amount equal to the capital returned to or recovered from the
 10-34 original investment, exclusive of any profits realized, in another
 10-35 qualified active low-income community business in this state within
 10-36 12 months of the receipt of the capital. A qualified community
 10-37 development entity may not be required to reinvest capital returned
 10-38 from qualified low-income community investments after the sixth
 10-39 anniversary of the issuance of the qualified equity investment, the
 10-40 proceeds of which were used to make the qualified low-income
 10-41 community investment, and the qualified low-income community
 10-42 investment shall be considered held by the issuer through the
 10-43 qualified equity investment's final credit allowance date.

10-44 (c) In a situation described by Subsection (a)(1), the
 10-45 comptroller's recapture shall be proportionate to the federal
 10-46 recapture with respect to the qualified equity investment. In a
 10-47 situation described by Subsection (a)(2), the comptroller's
 10-48 recapture shall be proportionate to the amount of the redemption or
 10-49 repayment with respect to the qualified equity investment.

10-50 (d) The comptroller shall provide notice to the qualified
 10-51 community development entity of any proposed recapture of tax
 10-52 credits under this section. The entity shall have 90 days to cure
 10-53 any deficiency indicated in the comptroller's original recapture
 10-54 notice and avoid the recapture. If the entity fails or is unable to
 10-55 cure the deficiency within the 90-day period, the comptroller shall
 10-56 provide the entity and the taxpayer from whom the credit is to be
 10-57 recaptured with a final order of recapture. Any tax credit for
 10-58 which a final recapture order has been issued shall be recaptured by
 10-59 the comptroller from the taxpayer who claimed the tax credit on a
 10-60 tax return.

10-61 Sec. 231.011. RETALIATORY TAX. An entity claiming a credit
 10-62 under this chapter is not required to pay any additional
 10-63 retaliatory tax levied under Chapter 281 as a result of claiming
 10-64 that credit.

10-65 Sec. 231.012. EXPIRATION. (a) This chapter expires
 10-66 December 31, 2013.

10-67 (b) The expiration of this chapter does not affect a credit
 10-68 that was established under this chapter due to the purchase of a
 10-69 qualified equity investment that was made before the date this

11-1 chapter expires. An entity that has any unused credits established
11-2 under this chapter, including any carryforward credits, may
11-3 continue to apply those credits on or with each consecutive report
11-4 until the date the credit would have expired under this chapter had
11-5 this chapter not expired, and this chapter is continued in effect
11-6 for the purposes of determining the amount of the credit the entity
11-7 may claim and the manner in which the entity may claim the credit.

11-8 SECTION 3. (a) This Act applies only to a report
11-9 originally due on or after the effective date of this Act.

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

11-15 SECTION 4. This Act takes effect January 1, 2010.

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