

SENATE AMENDMENTS

2nd Printing

By: Menendez, Kent, Leibowitz

H.B. No. 4275

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the application process and scoring for the low income
3 housing tax credit program.

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

5 SECTION 1. Subchapter DD, Chapter 2306, Government Code, is
6 amended by adding Section 2306.6736 to read as follows:

7 Sec. 2306.6736. LOW INCOME HOUSING TAX CREDITS FINANCED
8 UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009. (a) To the
9 extent the department receives federal funds under the American
10 Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) or any
11 subsequent law (including any extension or renewal thereof) that
12 requires the department to award the federal funds in the same
13 manner and subject to the same limitations as awards of housing tax
14 credits, the following provisions shall apply.

15 (b) Any reference in this chapter to the administration of
16 the housing tax credit program shall apply equally to the
17 administration of such federal funds, except:

18 (1) the department may establish a separate
19 application procedure for such funds, outside of the uniform
20 application cycle referred to in Section 2306.1111 and the
21 deadlines established in Section 2306.6724, and any reference
22 herein to the application period shall refer to the period
23 beginning on the date the department begins accepting applications
24 for such funds and continuing until all such available funds are

1 awarded;

2 (2) unless reauthorized, this section is repealed on
3 August 31, 2011.

4 SECTION 2. Subchapter DD, Chapter 2306, Government Code, is
5 amended by adding Section 2306.6737 to read as follows:

6 Sec. 2306.6737. ASSISTANCE FROM AMERICAN RECOVERY AND
7 REINVESTMENT ACT OF 2009. If allowed by federal law, the department
8 shall, under any federally funded program resulting from the
9 American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5),
10 secure the interests of the state through bonds, an ownership
11 interest in property, restrictive covenants filed in the real
12 property records, and/or liens filed on a property for which the
13 applicant has accepted funds until such a time as the department and
14 the State of Texas do not have liability to repay or recapture such
15 funds.

16 SECTION 3. It is the intent of the legislature that the
17 passage by the 81st Legislature, Regular Session, 2009, of another
18 bill that amends Chapter 2306, Government Code, and the amendments
19 made by this Act shall be harmonized, if possible, as provided by
20 Section 311.025(b), Government Code, so that effect may be given to
21 each. If the amendments made by this Act to Chapter 2306,
22 Government Code, and the amendments made to Chapter 2306,
23 Government Code, by any other bill are irreconcilable, it is the
24 intent of the legislature that this Act prevail, regardless of the
25 relative dates of enactment of this Act and the other bill or bills,
26 but only to the extent that any differences are irreconcilable.

27 SECTION 4. The changes in law made by this Act relating to

1 the evaluation of applications for financial assistance
2 administered by the Texas Department of Housing and Community
3 Affairs apply only to an application submitted on or after the
4 effective date of this Act. An application submitted before the
5 effective date of this Act is governed by the law in effect when the
6 application was submitted, and the former law is continued in
7 effect for that purpose.

8 SECTION 5. This Act takes effect immediately if it receives
9 a vote of two-thirds of all the members elected to each house, as
10 provided by Section 39, Article III, Texas Constitution. If this
11 Act does not receive the vote necessary for immediate effect, this
12 Act takes effect September 1, 2009.

ADOPTED

MAY 27 2009

Atty Gen
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: Roger W. N.

1 Amend H.B. No. 4275 (senate committee printing) by adding the
2 following appropriately numbered SECTIONS to the bill and
3 renumbering subsequent SECTIONS of the bill accordingly:

4 SECTION _____. Chapter 2306, Government Code, is amended by
5 adding Subchapter 00 to read as follows:

6 SUBCHAPTER 00. TEXAS SAVVY HOMEOWNER PROGRAM

7 Sec. 2306.2001. DEFINITION. In this subchapter, "program"
8 means the Texas savvy homeowner program.

9 Sec. 2306.2002. ESTABLISHMENT OF PROGRAM. (a) The
10 department shall, in coordination with the Texas State Affordable
11 Housing Corporation, the Department of Savings and Mortgage
12 Lending, the Office of Consumer Credit Commissioner, and local
13 housing finance corporations, establish the Texas savvy homeowner
14 program to make refinancing education and assistance available to
15 all individuals residing in a home for which they have received
16 mortgage loan, mortgage credit certificate, down payment, or other
17 loan assistance from the department, the Texas State Affordable
18 Housing Corporation, or a housing finance corporation, including
19 assistance through mortgage revenue bonds or through the
20 department's allocation of funds provided to the state under the
21 Cranston-Gonzalez National Affordable Housing Act (42 U.S.C.
22 Section 12701 et seq.).

23 (b) Except as provided by Subsection (c), participation in
24 the program is voluntary.

25 (c) Participation in the program is mandatory for
26 individuals receiving mortgage loan, mortgage credit certificate,
27 down payment, or other loan assistance from the department, the
28 Texas State Affordable Housing Corporation, or a housing finance
29 corporation on or after December 1, 2009. Any assistance described

1 by this subsection that is issued on or after that date shall be
2 provided to the individual with information concerning:

3 (1) the requirements and procedures of the program;
4 and

5 (2) the contact information of the program
6 administrator.

7 Sec. 2306.2003. PROGRAM DEVELOPMENT AND ADMINISTRATION.

8 (a) The department shall, in coordination with the Texas State
9 Affordable Housing Corporation, the Department of Savings and
10 Mortgage Lending, the Office of Consumer Credit Commissioner, and
11 housing finance corporations, develop:

12 (1) best practices for home refinancing; and

13 (2) a curriculum for the provision of individualized
14 counseling to program participants that includes information
15 concerning:

16 (A) mortgage refinancing options;

17 (B) home equity practices;

18 (C) predatory lending practices; and

19 (D) a comparison of any refinancing terms being
20 offered to the individual and refinancing terms otherwise available
21 to the individual.

22 (b) The department shall:

23 (1) administer the program directly; or

24 (2) prepare and issue a request for proposal and enter
25 into a contract providing for the administration of the program by a
26 nonprofit corporation that:

27 (A) is a housing counselor certified by the
28 United States Department of Housing and Urban Development or the
29 department; and

30 (B) complies with any requirements imposed on the
31 program administrator in relation to the best practices and

1 curriculum developed by the department under Subsection (a).

2 (c) If the department does not administer the program, the
3 program administrator shall submit quarterly reports to the
4 department detailing the counseling services provided and whether
5 the counseling recipients obtained refinancing.

6 Sec. 2306.2004. MODIFICATION OF LOAN TERMS. (a) As a
7 condition of receiving mortgage loan, mortgage credit certificate,
8 down payment, or other loan assistance from the department, the
9 Texas State Affordable Housing Corporation, or a local housing
10 finance corporation, a program participant must agree to notify the
11 program administrator in writing of any intent to modify the terms
12 of any loan secured by the home in which the participant resides.
13 The notice must be provided not later than the 60th day before the
14 date the loan terms are modified.

15 (b) On receipt of notice under Subsection (a), the program
16 administrator shall:

17 (1) contact the loan recipient not later than the 30th
18 day after the date of receipt of the notice; and

19 (2) on the phone or in person, provide the loan
20 recipient with an individualized counseling session based on the
21 curriculum developed by the department under Section 2306.2003(a).

22 Sec. 2306.2005. RULES. The department may adopt rules
23 necessary to implement this subchapter.

24 SECTION _____. The Texas Department of Housing and Community
25 Affairs shall adopt any rules required by Subchapter OO, Chapter
26 2306, Government Code, as added by this Act, not later than December
27 1, 2009.

ADOPTED

MAY 27 2009

Atty. Gen.
Secretary of the Senate

FLOOR AMENDMENT NO. 2

BY: Whitmore

Amend H.B. No. 4275 (senate committee report) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 2306.6710(b), Government Code, is amended to read as follows:

(b) If an application satisfies the threshold criteria, the department shall score and rank the application using a point system that:

(1) prioritizes in descending order criteria regarding:

(A) financial feasibility of the development based on the supporting financial data required in the application that will include a project underwriting pro forma from the permanent or construction lender;

(B) quantifiable community participation with respect to the development, evaluated on the basis of written statements from any neighborhood organizations on record with the state or county in which the development is to be located and whose boundaries contain the proposed development site;

(C) the income levels of tenants of the development;

(D) the size and quality of the units;

(E) the commitment of development funding by local political subdivisions;

(F) ~~[the level of community support for the application, evaluated on the basis of written statements from the state representative or the state senator that represents the district containing the proposed development site;~~

~~[(G)]~~ the rent levels of the units;

(G) ~~[(H)]~~ the cost of the development by square foot;

(H) ~~[(I)]~~ the services to be provided to tenants of the development; and

(I) ~~[(J)]~~ whether, at the time the complete application is submitted or at any time within the two-year period preceding the date of submission, the proposed development site is located in an area declared to be a disaster under Section 418.014;

(2) uses criteria imposing penalties on applicants or affiliates who have requested extensions of department deadlines relating to developments supported by housing tax credit allocations made in the application round preceding the current round or a developer or principal of the applicant that has been removed by the lender, equity provider, or limited partners for its failure to perform its obligations under the loan documents or limited partnership agreement; and

(3) encourages applicants to provide free notary public service to the residents of the developments for which the allocation of housing tax credits is requested.

SECTION ____ . Sections 2306.6710(f) and 2306.6718(b), Government Code, are repealed.

ADOPTED

MAY 27 2009

FLOOR AMENDMENT NO. 3

Atty. Gen. Saw
BY: Willis
Secretary of the Senate

Amend H.B. No. 4275 (Senate committee printing) by adding the following appropriately numbered SECTION to read as follows and renumbering subsequent SECTIONS accordingly:

SECTION _____. (a) 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 that exceeds the sum of the cash interest payments and the cumulative operating income, as defined by regulations adopted under Section 45D, Internal Revenue Code of 1986, as amended, of the qualified community development entity for that period. This subdivision does not limit the holder's ability to accelerate payments on the

its original issuance solely in exchange for cash;

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

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

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

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

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

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

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

Sec. 171.523. QUALIFICATION FOR CREDIT. (a) A taxable entity qualifies for and is entitled to a credit under this subchapter on a report if the taxable entity purchases a qualified

report, including the amount of any carryforward credit under Section 171.526, may not exceed the amount of franchise tax due after any other applicable credits.

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

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

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

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

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

Sec. 171.528. ASSIGNMENT PROHIBITED. (a) A taxable entity may not convey, assign, or transfer the credit allowed under this subchapter to another entity unless all of the assets of the taxable entity, including the taxable entity's qualified equity

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

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

(7) an economic impact analysis from an economic expert of the potential qualified equity investment and the proposed use of the proceeds, which must include:

(A) an estimate of the amount of revenue to be generated to the state as a result of the qualified equity investment and the proposed use of the proceeds;

(B) an estimate of any secondary economic benefits to be generated as a result of the qualified equity investment and the proposed use of the proceeds; and

(C) any other information required by the comptroller to make the certification required by Subsection (c).

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

(c) Within 15 days after receipt of a completed application containing the information necessary for the comptroller to certify a potential qualified equity investment, including the payment of the application fee, the comptroller shall grant or deny the application in full or in part. The comptroller may not grant an application in full or in part until the comptroller, based on an evaluation of the economic impact analysis under Subsection (a)(7), certifies that the potential qualified equity investment and the proposed use of the proceeds will have a positive impact on state revenue. If the comptroller denies any part of the application,

the cash investment within 10 business days after receipt. If the qualified community development entity does not receive the cash investment and issue the qualified equity investment within 30 days following receipt of the certification notice, the certification shall lapse and the entity may not issue the qualified equity investment without reapplying to the comptroller for certification.

A certification that lapses reverts back to the comptroller and may be reissued only in accordance with the application process prescribed by this section.

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

(g) A qualified community development entity, on a collective basis with all of its affiliated entities, may not request certification for a qualified equity investment that would allocate more than 30 percent of the total value of the tax credits that may be claimed under this subchapter.

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

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

(c) In a situation described by Subsection (a)(1), the

(b) Subtitle B, Title 3, Insurance Code, is amended by adding Chapter 231 to read as follows:

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

Sec. 231.001. DEFINITIONS. In this chapter:

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

(3) "Purchase price" means the amount of cash paid to a

initial credit allowance date; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Notwithstanding Subsection (a), a tax credit earned by a partnership, limited liability company, S corporation, or other

from the issuance of the qualified equity investment, if known; and

(7) an economic impact analysis from an economic expert of the potential qualified equity investment and the proposed use of the proceeds, which must include:

(A) an estimate of the amount of revenue to be generated to the state as a result of the qualified equity investment and the proposed use of the proceeds;

(B) an estimate of any secondary economic benefits to be generated as a result of the qualified equity investment and the proposed use of the proceeds; and

(C) any other information required by the comptroller to make the certification required by Subsection (c).

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

(c) Within 15 days after receipt of a completed application containing the information necessary for the comptroller to certify a potential qualified equity investment, including the payment of the application fee, the comptroller shall grant or deny the application in full or in part. The comptroller may not grant an application in full or in part until the comptroller, based on an evaluation of the economic impact analysis under Subsection (a)(7), certifies that the potential qualified equity investment and the proposed use of the proceeds will have a positive impact on state revenue. If the comptroller denies any part of the application, the comptroller shall inform the qualified community development entity of the grounds for the denial. If the qualified community development entity provides any additional information required by the comptroller or otherwise completes its application within 15

investment without reapplying to the comptroller for certification.

A certification that lapses reverts back to the comptroller and may be reissued only in accordance with the application process provided by this section.

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

(g) A qualified community development entity, on a collective basis with all of its affiliated entities, may not request certification for a qualified equity investment that would allocate more than 30 percent of the total value of the tax credits that may be claimed under this chapter.

(h) Notwithstanding Subsection (g), a qualified community development entity, alone or on a collective basis with all of its affiliated entities, may request certification for a qualified equity investment that would allocate more than 30 percent of the total value of the tax credits that may be claimed under this

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

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

(d) The comptroller shall provide notice to the qualified

under Subchapter J-1, Chapter 171, Tax Code, or Chapter 231, Insurance Code, as added by this section, only in relation to a qualified equity investment issued on or after the effective date of this section.

(e) Notwithstanding any other provision of this Act, this section takes effect January 1, 2010.

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION
Revision 1**

May 28, 2009

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB4275 by Menendez (Relating to the application process and scoring for the low income housing tax credit program.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB4275, As Passed 2nd House: a positive impact of \$75,000 through the biennium ending August 31, 2011.

The bill would also have a direct impact of a revenue loss to General Revenue Related Funds and the Property Tax Relief Fund beginning with the 2013 fiscal year. Any loss to the Property Tax Relief Fund would have to be made up with General Revenue of the same amount to fund property tax relief.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	\$25,000
2011	\$50,000
2012	\$25,000
2013	(\$3,475,000)
2014	(\$11,000,000)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/ (Loss) from <i>General Revenue Fund</i> 1	Probable Revenue Gain/ (Loss) from <i>Foundation School Fund</i> 193	Probable Revenue Gain/ (Loss) from <i>Property Tax Relief Fund</i> 304
2010	\$25,000	\$0	\$0
2011	\$50,000	\$0	\$0
2012	\$25,000	\$0	\$0
2013	(\$2,600,000)	(\$875,000)	(\$3,500,000)
2014	(\$8,250,000)	(\$2,750,000)	(\$11,000,000)

Fiscal Analysis

The bill would amend the Government Code relating to the establishment of the Texas savvy homeowner program. Based on the analysis of the Department of Housing and Community Affairs, the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner, duties and responsibilities associated with implementing those provisions of the bill could be accomplished by utilizing existing resources.

The bill would amend Chapter 171 of the Tax Code and add new Chapter 231 to the Insurance Code.

The bill would add language to each code providing a tax credit for business development in low-income communities. The credit provisions in the two codes would share many of the features and definitions currently utilized by the federal program known as the new markets credits, administered by the U.S. Department of Treasury's Community Development Financial Institutions Fund. The purpose of the new markets credit, shared by the bill, is to spur private investment in low-income urban and rural communities. The mechanism for achieving the investment under the bill's provisions would be the offering of tax credits to taxpayers who make qualified equity investments in qualified community development entities (CDEs). The CDEs would be required to use the proceeds from the investments to assist qualified active low-income community businesses (as defined in the bill and in federal law) in the form of equity investments or loans. The maximum investment in any one qualified active low-income community business from all CDEs would be set at \$20 million from the proceeds made available by the bill's provisions.

Investing taxpayers would earn tax credits based on the cash dollar amount of the investments made in the CDEs. The bill would set a limit to the total amount of credit that could be claimed by all taxpayers from both the franchise and insurance taxes during a fiscal year at \$40 million, not including carry forward amounts. The amount of annual credit a taxable entity could claim would be set by a schedule of percentages of the original investment covering a seven year period beginning with the date of the original investment and including the following six anniversary dates. The bill would specify the percentages as zero percent for the first two periods, 7 percent for the third period, and 8 percent for the remaining four periods. The credit could be claimed for either the franchise tax or insurance tax. The amount of credit would be limited to the tax owed on both affected taxes. Credit not used because of the limitation could be carried forward for not more than five consecutive tax reports. Assignment of the credit would be prohibited.

Prior to accepting a qualified equity investment from a taxpayer, a CDE would be required to apply to the Comptroller on a form provided by the Comptroller. The application would include, among other items, a description of the proposed amount, structure, and purchaser of the investment and information regarding the proposed use of proceeds from the investment. The application would be required to be accompanied by a nonrefundable fee of \$5,000. The Comptroller would have 15 days after receiving the application and fee to grant or deny the application in full or in part. If the application were considered complete, the Comptroller would certify the proposed qualified equity investment as eligible for tax credits subject to the overall limitation on credit.

The bill would specify conditions and procedures for the recapture of credits and would require CDEs to keep books and records that allow direct tracing of the investment proceeds into qualified low-income community investments in qualified active low-income community businesses in this state. The credit provisions would expire on December 31, 2013. The expiration would not affect a credit established prior to the expiration date.

The bill would require an economic study as part of the application process. The study would be an economic impact analysis of the qualified equity investment and the proposed use of the proceeds, any secondary effects, and estimates of the amount of revenue generated to the state. The Comptroller could not grant an application until certifying, based on an evaluation of the economic study, that the potential qualified investment and the proposed use of the proceeds would have a positive impact on state revenue.

The bill would take effect on January 1, 2010, and apply to reports due on or after that date.

Methodology

By the provisions of the bill, no credits could be claimed in 2010 through 2012, because the credit percentage for the first two years of a qualified equity investment is zero. The first positive credit earned on an investment made in 2010 would occur in 2012 and be claimed on a report due in 2013. The fiscal impact after 2012 assumes that \$100 million in qualified equity investments are made in 2010, \$200 million in 2011, and \$100 million in both 2012 and 2013 when the provisions expire. Certification of those investment amounts would be consistent with the \$40 million per year limit on credits contained in the bill. The estimate also assumes that application fees are collected on five applications per year in 2010, 2012, and 2013 and ten applications in 2011 with the revenue credited

to General Revenue Fund 0001. For illustration purposes half of the credits taken are assumed to be from the franchise tax and half from the insurance premium tax.

The fiscal implications in the tables above (that is, credits to be paid from franchise and insurance premium taxes) imply approved applications. The bill's language only mentions the qualified investment and proposed use of proceeds. If the value of credits were to be taken into account during an evaluation, it could potentially affect the evaluation such that the application would be approved but with a lesser positive impact or the application might be denied as there would not be a positive impact on state revenue.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts, 332 Department of Housing and Community Affairs, 450 Department of Savings and Mortgage Lending, 454 Department of Insurance, 466 Office of Consumer Credit Commissioner

LBB Staff: JOB, DB, SD, SM, MN, JRO, NV

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 28, 2009

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB4275 by Menendez (Relating to the application process and scoring for the low income housing tax credit program.), **As Passed 2nd House**

The fiscal implications of the bill cannot be determined at this time.

Local Government Impact

The fiscal implications of the bill cannot be determined at this time.

Source Agencies:

LBB Staff: JOB, DB

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 11, 2009

TO: Honorable Royce West, Chair, Senate Committee on Intergovernmental Relations

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB4275 by Menendez (Relating to the application process and scoring for the low income housing tax credit program.), As Engrossed

No fiscal implication to the State is anticipated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 332 Department of Housing and Community Affairs, 352 Bond Review Board

LBB Staff: JOB, DB, NV

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LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 21, 2009

TO: Honorable Yvonne Davis, Chair, House Committee on Urban Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB4275 by Menendez (Relating to the application process and scoring for the low income housing tax credit program.), **As Introduced**

No fiscal implication to the State is anticipated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 332 Department of Housing and Community Affairs, 352 Bond Review Board

LBB Staff: JOB, DB, NV

