

By: Murphy

H.B. No. 2061

A BILL TO BE ENTITLED

AN ACT

relating to a tax credit for investment in certain communities;
authorizing a fee.

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

SECTION 1. Subtitle B, Title 3, Insurance Code, is amended
by adding Chapter 231 to read as follows:

CHAPTER 231. TAX CREDIT FOR INVESTMENT IN CERTAIN COMMUNITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 231.001. GENERAL DEFINITIONS. In this chapter:

(1) "Administrator" means the Texas Economic
Development and Tourism Office in the office of the governor.

(2) "Applicable percentage" means zero percent for the
first two credit allowance dates, seven percent for the third
credit allowance date, and eight percent for the next four credit
allowance dates.

(3) "Comptroller" means the comptroller of public
accounts.

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

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

(B) the anniversary of that date in each of the
six years immediately following that date.

(5) "Purchase price" means the amount paid to the

1 issuer of a qualified equity investment for the qualified equity
2 investment.

3 (6) "State premium tax liability" means any tax
4 liability incurred by an entity under this subtitle.

5 Sec. 231.002. DEFINITION: LONG-TERM DEBT SECURITY. (a) In
6 this chapter, "long-term debt security" means a debt instrument
7 issued by a qualified community development entity, at par value or
8 a premium, with an original maturity date not earlier than the
9 seventh year after the date on which the debt instrument is issued,
10 with no acceleration of repayment, amortization, or prepayment
11 features before its original maturity date.

12 (b) The qualified community development entity that issues
13 the debt instrument may not make cash interest payments on the debt
14 instrument during the period beginning on the date on which the debt
15 instrument is issued and ending on the final credit allowance date
16 in an amount that exceeds the cumulative operating income, as
17 defined by regulations adopted under Section 45D, Internal Revenue
18 Code of 1986, of the qualified community development entity for
19 that period before giving effect to the expense of the cash interest
20 payments.

21 (c) This section does not limit the holder's ability to
22 accelerate payments on the debt instrument in situations where the
23 issuer has defaulted on covenants designed to ensure compliance
24 with this chapter or Section 45D, Internal Revenue Code of 1986.

25 Sec. 231.003. DEFINITION: QUALIFIED ACTIVE LOW-INCOME
26 COMMUNITY BUSINESS. (a) In this chapter, "qualified active
27 low-income community business" has the meaning assigned by Section

1 45D, Internal Revenue Code of 1986, and 26 C.F.R. Section 1.45D-1,
2 except that the term is limited to those businesses meeting the
3 Small Business Administration size eligibility standards
4 established by 13 C.F.R. Sections 121.101-121.201 at the time the
5 qualified low-income community investment is made.

6 (b) A business is considered a qualified active low-income
7 community business for the duration of the qualified community
8 development entity's investment in, or loan to, the business if the
9 entity reasonably expects, at the time it makes the investment or
10 loan, that the business will continue to satisfy the requirements
11 for being a qualified active low-income community business, other
12 than the Small Business Administration size standards, throughout
13 the entire period of the investment or loan.

14 (c) A business that derives or projects to derive 15 percent
15 or more of its annual revenue from the rental or sale of real estate
16 is not a qualified active low-income community business for
17 purposes of this chapter. This exclusion does not apply to a
18 business that is controlled by, or under common control with, an
19 affiliated entity if the affiliated entity:

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

23 (B) is the primary tenant of the real estate
24 leased from the business.

25 Sec. 231.004. DEFINITION: QUALIFIED COMMUNITY DEVELOPMENT
26 ENTITY. In this chapter, "qualified community development entity"
27 has the meaning assigned by Section 45D, Internal Revenue Code of

1 1986, provided that the entity has entered into, for the current
2 year or any prior year, an allocation agreement with the community
3 development financial institutions fund of the U.S. Treasury
4 Department with respect to credits authorized by Section 45D,
5 Internal Revenue Code of 1986, which includes this state in the
6 service area set forth in the allocation agreement. The term
7 includes a subsidiary qualified community development entity of a
8 qualified community development entity.

9 Sec. 231.005. DEFINITION: QUALIFIED EQUITY INVESTMENT. (a)
10 An investment or security is a "qualified equity investment" for
11 purposes of this chapter if:

12 (1) the investment or security is an equity investment
13 in, or long-term debt security issued by, a qualified community
14 development entity;

15 (2) the investment or security is acquired on or after
16 October 1, 2013, at its original issuance solely in exchange for
17 cash;

18 (3) not later than the first anniversary of the
19 initial credit allowance date at least one hundred percent of the
20 investment's or security's cash purchase price is used by the issuer
21 to make qualified low-income community investments in qualified
22 active low-income community businesses located in this state; and

23 (4) the investment or security is designated by the
24 issuer as a qualified equity investment under this section and is
25 certified by the administrator as not exceeding the limitation
26 provided by Section 231.104.

27 (b) Qualified equity investment includes an investment or

1 security that does not satisfy the requirements of Subsection (a)
2 if the investment or security was a qualified equity investment in
3 the hands of a prior holder.

4 Sec. 231.006. DEFINITION: QUALIFIED LOW-INCOME COMMUNITY
5 INVESTMENT. In this chapter, "qualified low-income community
6 investment" means a capital or equity investment in, or loan to, a
7 qualified active low-income community business with respect to
8 which a federal qualified low-income community investment of some
9 amount is made concurrently with the investment or loan.

10 Sec. 231.007. NEW MARKETS PERFORMANCE GUARANTEE ACCOUNT.
11 The new markets performance guarantee account is established as a
12 special account outside the state treasury. The comptroller shall
13 administer the account, and shall deposit a refundable performance
14 fee received from a qualified community development entity under
15 Subchapter E into the account.

16 SUBCHAPTER B. TAX CREDIT

17 Sec. 231.051. CREDIT ESTABLISHED. (a) An entity that makes
18 a qualified equity investment earns a vested right to credit
19 against the entity's state premium tax liability on a premium tax
20 report filed under this subtitle that may be claimed as provided by
21 this section.

22 (b) On each credit allowance date of a qualified equity
23 investment, the entity, or a subsequent holder of the qualified
24 equity investment, may claim a portion of the credit during the tax
25 year of that credit allowance date.

26 (c) The credit amount is equal to the applicable percentage
27 for the credit allowance date multiplied by the purchase price paid

1 to the issuer of the qualified equity investment.

2 (d) The amount of the credit claimed by an entity may not
3 exceed the amount of the entity's state premium tax liability for
4 the tax year for which the credit is claimed. Any amount of tax
5 credit that the entity is prohibited from claiming in a tax year as
6 a result of this subsection may be carried forward for use in a
7 subsequent tax year.

8 Sec. 231.052. TRANSFERABILITY. (a) A tax credit claimed
9 under this chapter is not refundable or saleable.

10 (b) A tax credit earned by a partnership, limited liability
11 company, S corporation, or other pass-through entity may be
12 allocated to the partners, members, or shareholders of the entity
13 for their direct use in accordance with an agreement among the
14 partners, members, or shareholders. An allocation under this
15 subsection does not constitute a sale for purposes of this chapter.

16 Sec. 231.053. RETALIATORY TAX. (a) An entity claiming a
17 credit under this chapter is not required to pay any additional
18 retaliatory tax levied under Chapter 281 as a result of claiming
19 that credit.

20 (b) In addition to the exclusion provided by Subsection (a),
21 an entity claiming a credit under this chapter is not required to
22 pay any additional tax that may arise as a result of claiming that
23 credit.

24 SUBCHAPTER C. CERTIFICATION OF QUALIFIED EQUITY INVESTMENTS

25 Sec. 231.101. CERTIFICATION OF QUALIFIED EQUITY
26 INVESTMENTS. (a) A qualified community development entity that
27 seeks to have an equity investment or long-term debt security

1 certified as a qualified equity investment eligible for tax credits
2 under this chapter must apply to the administrator as provided by
3 this section.

4 (b) An application under this section must include the
5 following:

6 (1) evidence of the applicant's certification as a
7 qualified community development entity, including evidence of the
8 service area of the entity that includes this state;

9 (2) a copy of an allocation agreement executed by the
10 applicant, or its controlling entity, and the community development
11 financial institutions fund;

12 (3) a certificate executed by an executive officer of
13 the applicant attesting that the allocation agreement remains in
14 effect and has not been revoked or canceled by the community
15 development financial institutions fund;

16 (4) a description of the proposed amount and
17 structure, and of the purchaser, of the qualified equity
18 investment;

19 (5) identifying information for an entity that will
20 earn tax credits as a result of the issuance of the qualified equity
21 investment;

22 (6) examples of the types of qualified active
23 low-income community businesses in which the applicant, its
24 controlling entity, or affiliates of its controlling entity have
25 invested under the federal New Markets Tax Credit Program, except
26 that an applicant is not required to disclose the identity of a
27 specific qualified active low-income community business in which

1 the applicant intends to invest;

2 (7) a nonrefundable application fee of \$5,000 to be
3 paid to the administrator; and

4 (8) the refundable performance fee of \$500,000
5 required by Subchapter E.

6 Sec. 231.102. ACTION ON APPLICATION. (a) Not later than
7 the 30th day after the date an application under Section 231.101 is
8 received, the administrator shall grant or deny the application in
9 full or in part.

10 (b) If the administrator denies part of the application, the
11 administrator shall inform the applicant of the grounds for denial.

12 (c) If the applicant provides additional information
13 required by the administrator or otherwise completes the
14 application not later than the 15th day after the date of the notice
15 of denial, the application is considered completed as of the date on
16 which it was originally submitted. If the qualified community
17 development entity fails to provide the information or complete its
18 application before that date, the application is denied and must be
19 resubmitted in full and has a new submission date.

20 Sec. 231.103. CERTIFICATION OF QUALIFIED EQUITY
21 INVESTMENT. (a) If an application under Section 231.102 is
22 approved, the administrator shall certify the proposed equity
23 investment or long-term debt security as a qualified equity
24 investment that is eligible for tax credits under this chapter,
25 subject to Section 231.104.

26 (b) The administrator shall provide written notice of the
27 certification to the qualified community development entity and to

1 the comptroller.

2 (c) The notice must include the names of those entities who
3 earned the credits and their respective credit amounts. If the
4 names of the entities that are eligible to claim the credits change
5 due to a transfer of a qualified equity investment or an allocation
6 under Section 231.052, the qualified community development entity
7 shall notify the administrator of the change, and on receipt of the
8 notice, the administrator shall notify the comptroller.

9 (d) The administrator shall certify qualified equity
10 investments in the order in which applications are received by the
11 administrator. Applications received on the same day are considered
12 to have been received simultaneously. For applications that are
13 complete and received on the same day, the administrator shall
14 certify, consistent with remaining qualified equity investment
15 capacity, the qualified equity investments in proportionate
16 percentages based on the proportion that the amount of qualified
17 equity investment requested in an application bears to the total
18 amount of qualified equity investments requested in all
19 applications received on the same day.

20 Sec. 231.104. LIMIT ON CERTIFIED INVESTMENTS. Not more
21 than \$750 million in qualified equity investments may be certified
22 under Section 231.103 at any time. If a pending request cannot be
23 fully certified due to this limit, the administrator shall certify
24 the portion that can be certified unless the qualified community
25 development entity elects to withdraw the request rather than
26 receive partial certification.

27 Sec. 231.105. TRANSFER OF INVESTMENT AUTHORITY. An

1 approved applicant may transfer all or a portion of its certified
2 qualified equity investment authority to its controlling entity or
3 a subsidiary qualified community development entity of the
4 controlling entity, if the applicant:

5 (1) provides the information required in the
6 application with respect to the recipient of the transfer; and

7 (2) notifies the administrator of the transfer not
8 later than the 30th day after the date of the transfer.

9 Sec. 231.106. ISSUANCE OF QUALIFIED EQUITY INVESTMENT. (a)
10 Not later than the 30th day after the date the applicant receives
11 notice of certification, the qualified community development
12 entity or a recipient of a transfer under Section 231.105 shall
13 issue the qualified equity investment and receive cash in the
14 amount certified.

15 (b) The qualified community development entity or a
16 recipient of a transfer under Section 231.105 must provide the
17 administrator with evidence of the receipt of the cash investment
18 not later than the 10th business day after the date the cash
19 investment is received.

20 Sec. 231.107. LAPSE OF CERTIFICATION. (a) If the qualified
21 community development entity or a recipient of a transfer under
22 Section 231.105 does not receive the cash investment and issue the
23 qualified equity investment before the 30th day after the date the
24 certification notice is received as required by Section 231.106,
25 the certification lapses and the entity may not issue the qualified
26 equity investment without reapplying to the administrator for
27 certification.

1 (b) If a certification lapses under this section, the
2 administrator shall reissue the certified amount, giving
3 preference to an applicant whose allocation was reduced under
4 Section 231.104. If more than one applicant had its allocation
5 reduced, the administrator shall reissue the certified amount on a
6 pro rata basis. After the allocation to applicants whose allocation
7 was reduced under Section 231.104, the administrator shall reissue
8 any certified amount that remains in accordance with the
9 application process.

10 SUBCHAPTER D. RECAPTURE OF PREMIUM TAX CREDIT

11 Sec. 231.151. RECAPTURE. (a) Subject to Section 231.152,
12 the comptroller shall recapture the amount of a tax credit claimed
13 on a premium tax report filed under this subtitle from the entity
14 that claims the credit if:

15 (1) any amount of a federal tax credit available with
16 respect to a qualified equity investment that is eligible for a
17 credit under this chapter is recaptured under Section 45D, Internal
18 Revenue Code of 1986, in which case the comptroller's recapture
19 must be proportionate to the federal recapture with respect to the
20 qualified equity investment;

21 (2) the issuer redeems or makes principal repayment
22 with respect to a qualified equity investment before the seventh
23 anniversary of the date the qualified equity investment is issued,
24 in which case the comptroller's recapture must be proportionate to
25 the amount of the redemption or repayment with respect to the
26 qualified equity investment;

27 (3) the issuer fails to invest an amount equal to 100

1 percent of the purchase price of the qualified equity investment in
2 qualified low-income community investments in this state during the
3 12-month period immediately following the date the qualified equity
4 investment is issued or to maintain at least 100 percent of that
5 level of investment in qualified low-income community investments
6 in this state until the last credit allowance date for the qualified
7 equity investment; or

8 (4) at any time before the final credit allowance date
9 of a qualified equity investment, the issuer uses the cash proceeds
10 of the qualified equity investment to make qualified low-income
11 community investments in any one qualified active low-income
12 community business, including affiliated qualified active
13 low-income community businesses, exclusive of reinvestments of
14 capital returned or repaid with respect to earlier investments in
15 the qualified active low-income community business and its
16 affiliates, in excess of 25 percent of the cash proceeds.

17 (b) For purposes of this chapter, an investment is
18 considered held by an issuer even if the investment has been sold or
19 repaid if the issuer reinvests an amount equal to the capital
20 returned to or recovered by the issuer from the original
21 investment, exclusive of any profits realized, in another qualified
22 low-income community investment not later than the 12th month after
23 the date the issuer receives the capital.

24 (c) An issuer is not required to reinvest capital returned
25 from a qualified low-income community investment after the sixth
26 anniversary of the date the qualified equity investment is issued,
27 the proceeds of which were used to make the qualified low-income

1 community investment, and the qualified low-income community
2 investment is considered held by the issuer through the seventh
3 anniversary of the date the qualified equity investment was issued.

4 Sec. 231.152. NOTICE OF NONCOMPLIANCE. (a) The comptroller
5 shall notify an entity that has claimed a tax credit on a premium
6 tax report if the credit is subject to recapture under Section
7 231.151.

8 (b) The comptroller may not recapture a tax credit under
9 this subchapter if the qualified community development entity cures
10 the noncompliance described by Section 231.151 before the 180th day
11 after the date the entity receives notice under Subsection (a).

12 SUBCHAPTER E. PERFORMANCE FEE

13 Sec. 231.201. PERFORMANCE FEE REQUIRED. A qualified
14 community development entity that seeks to have an equity
15 investment or long-term debt security certified as a qualified
16 equity investment eligible for tax credits under this chapter must
17 pay a fee in the amount of \$500,000 to the comptroller for deposit
18 in the new markets performance guarantee account.

19 Sec. 231.202. FORFEITURE OF FEE. (a) A qualified community
20 development entity that pays a performance fee under Section
21 231.201 shall forfeit the fee in its entirety if:

22 (1) the entity and its subsidiary qualified community
23 development entities fail to issue the total amount of qualified
24 equity investments certified by the administrator and receive cash
25 in the total amount certified under Section 231.103; or

26 (2) the entity or a subsidiary qualified community
27 development entity that issues a qualified equity investment

1 certified under Section 231.103 fails to meet the investment
2 requirement under Section 231.151(a)(3) by the second credit
3 allowance date of the qualified equity investment.

4 (b) The comptroller shall notify an entity that has paid a
5 fee under Section 231.201 if the fee is subject to forfeiture under
6 this section.

7 (c) A fee is not subject to forfeiture under Subsection
8 (a)(2) if the entity cures the noncompliance before the 180th day
9 after the date the entity receives notice under Subsection (b).

10 Sec. 231.203. NEW MARKETS PERFORMANCE GUARANTEE
11 ACCOUNT. (a) The fee required by Section 231.201 shall be paid to
12 the comptroller and held in the new markets performance guarantee
13 account until the comptroller finds that the qualified community
14 development entity has complied with the provisions of this
15 chapter.

16 (b) The qualified community development entity may request
17 a refund of the fee from the comptroller before the 30th day after
18 the date the entity pays the fee.

19 (c) The comptroller shall refund the fee or, if applicable,
20 give notice of noncompliance, not later than the 30th day after the
21 date of receiving a request that complies with Subsection (b).

22 SUBCHAPTER F. LETTER RULING

23 Sec. 231.251. REQUEST FOR LETTER RULING. At the request of
24 an applicant or entity, the administrator or the comptroller shall,
25 with respect to the tax credit program authorized under this
26 chapter, issue a written letter ruling interpreting the law as it
27 applies to a specific set of facts provided by the applicant or

1 entity requesting the interpretation.

2 Sec. 231.252. RESPONSE TO REQUEST. (a) The administrator
3 or comptroller shall respond to a request under Section 231.251 not
4 later than the 60th day after the date the request is received.

5 (b) The applicant or entity may provide a draft letter
6 ruling for the administrator's or comptroller's consideration.

7 (c) The applicant or entity may withdraw the request for a
8 letter ruling, in writing, before the issuance of the letter
9 ruling.

10 (d) The administrator or comptroller may refuse to issue a
11 letter ruling for good cause, but must list the specific reasons for
12 refusing to issue the letter ruling. Good cause for refusing to
13 issue a letter ruling under this subsection includes any of the
14 following:

15 (1) the applicant or entity requests the administrator
16 or comptroller to determine whether a statute is constitutional or
17 a rule complies with law;

18 (2) the request involves a hypothetical situation or
19 alternative scenarios;

20 (3) the facts or issues presented in the request are
21 unclear, overbroad, insufficient, or otherwise inappropriate as a
22 basis on which to issue a letter ruling; or

23 (4) the issue is currently being considered in a
24 rulemaking procedure, contested case, or other agency or judicial
25 proceeding that may definitely resolve the issue.

26 Sec. 231.253. EFFECT OF LETTER RULING. (a) A letter ruling
27 binds the administrator or comptroller, as applicable, to the

1 determination reached in the letter ruling with respect to the
2 applicant or entity that requested the letter ruling, until the
3 applicant or entity or the applicant's or entity's shareholders,
4 members, or partners, as applicable, claim all credits issued to
5 the applicant or entity, if any, on a premium tax report filed under
6 this subtitle, subject to the terms and conditions set forth in
7 properly published regulations.

8 (b) A letter ruling applies only to the applicant or entity
9 that requests the letter ruling.

10 Sec. 231.254. CONSIDERATION OF INTERNAL REVENUE CODE. In
11 issuing a letter ruling and making other determinations under this
12 chapter, the administrator or comptroller shall consider Section
13 45D, Internal Revenue Code of 1986, and the rules and regulations
14 issued under that code, to the extent that those provisions are
15 applicable.

16 SECTION 2. (a) As soon as practicable after the effective
17 date of this Act, the comptroller of public accounts shall adopt
18 rules necessary to implement the provisions of Chapter 231,
19 Insurance Code, as added by this Act, that apply to the comptroller
20 of public accounts.

21 (b) The Texas Economic Development and Tourism Office in the
22 office of the governor shall accept applications for certification
23 of qualified equity investments as required by Chapter 231,
24 Insurance Code, as added by this Act, beginning not later than
25 October 2, 2013.

26 SECTION 3. This Act takes effect September 1, 2013.