

By: Lucio

S.B. No. 1295

A BILL TO BE ENTITLED

AN ACT

1
2 relating to an insurance premium tax credit for investment in
3 certain communities; imposing a monetary penalty; authorizing
4 fees.

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

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

8 CHAPTER 231. PREMIUM TAX CREDIT FOR INVESTMENT IN CERTAIN

9 COMMUNITIES

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Sec. 231.001. GENERAL DEFINITIONS. In this chapter:

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

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

18 (A) the date on which the qualified equity
19 investment is initially made; and

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

22 (3) "Federal tax regulations" means regulations
23 adopted under the Internal Revenue Code of 1986 that are applicable
24 to the tax year to which the provisions of the code in effect on

1 September 1, 2017, applied.

2 (4) "Internal Revenue Code" means the Internal Revenue
3 Code of 1986 in effect on September 1, 2017, excluding any changes
4 made by federal law after that date, but including any regulations
5 adopted under that code that are applicable to the tax year to which
6 the provisions of the code in effect on that date applied.

7 (5) "Investing entity" means an entity, including an
8 entity that incurs state premium tax liability, that makes or holds
9 a qualified equity investment.

10 (6) "Issuer" means a qualified community development
11 entity, or a subsidiary or affiliate of a qualified community
12 development entity, that issues a qualified equity investment.

13 (7) "Low-income community" has the meaning assigned by
14 Section 45D, Internal Revenue Code.

15 (8) "Metropolitan statistical area" means a core base
16 statistical area associated with at least one urbanized area that
17 has a population of at least 90,000. A metropolitan statistical
18 area comprises the central county or counties containing the core,
19 plus adjacent outlying counties having a high degree of social and
20 economic integration with the central county or counties as
21 measured through commuting.

22 (9) "Purchase price" means the amount paid to the
23 issuer for a qualified equity investment.

24 (10) "Report" means a premium tax report or a report
25 under Subchapter G, as applicable.

26 (11) "Rural allocation" means the allocation
27 described by Section 231.104(c)(1).

1 (12) "Rural area" means a county in this state with a
2 population less than 90,000.

3 (13) "State premium tax liability" means any premium
4 tax liability incurred under Chapter 221, 222, 223, 223A, or 224.

5 (14) "Statewide low-income community allocation"
6 means the allocation described by Section 231.104(c)(4).

7 (15) "Texas education allocation" means the
8 allocation described by Section 231.104(c)(2).

9 (16) "Texas seaport allocation" means the allocation
10 described by Section 231.104(c)(3).

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

18 (b) The qualified community development entity that issues
19 a long-term debt security may not make cash interest payments on the
20 security during the period beginning on the date on which the
21 security is issued and ending on the final credit allowance date in
22 an amount that exceeds the cumulative operating income, as defined
23 by federal tax regulations adopted under Section 45D, Internal
24 Revenue Code, of the qualified community development entity for
25 that period before giving effect to the interest expense of the
26 long-term debt security.

27 (c) This section does not limit the holder's ability to

1 accelerate payments on a long-term debt security in situations in
2 which the issuer has defaulted on covenants designed to ensure
3 compliance with this chapter or Section 45D, Internal Revenue Code.

4 Sec. 231.003. DEFINITION: QUALIFIED ACTIVE LOW-INCOME
5 COMMUNITY BUSINESS. (a) In this chapter, "qualified active
6 low-income community business" has the meaning assigned by Section
7 45D, Internal Revenue Code, and Section 1.45D-1 of the federal tax
8 regulations.

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

16 Sec. 231.004. DEFINITION: QUALIFIED COMMUNITY DEVELOPMENT
17 ENTITY. In this chapter, "qualified community development entity"
18 has the meaning assigned by Section 45D, Internal Revenue Code,
19 provided that the entity has entered into, for the current year or a
20 prior year with an allocation effective date on or after July 1,
21 2016, an allocation agreement with the Community Development
22 Financial Institutions Fund of the United States Department of the
23 Treasury with respect to credits authorized by Section 45D,
24 Internal Revenue Code, that includes this state in the service area
25 specified in the allocation agreement. The term includes a
26 subsidiary or affiliate of a qualified community development entity
27 and any other qualified community development entity that is

1 controlled by or under common control with a qualified community
2 development entity.

3 Sec. 231.005. DEFINITION: QUALIFIED EQUITY INVESTMENT. (a)
4 An investment is a "qualified equity investment" for purposes of
5 this chapter if:

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

9 (2) the investment is acquired on or after October 1,
10 2017, at its original issuance solely in exchange for cash, except
11 as provided by Subsection (b);

12 (3) not later than the 20th month after the date of
13 issuance at least 85 percent of the investment's purchase price is
14 used by the issuer to make qualified low-income community
15 investments in this state; and

16 (4) the investment is designated by the issuer as a
17 qualified equity investment under this section and is certified by
18 the comptroller as not exceeding the limitations provided by
19 Section 231.104.

20 (b) A qualified equity investment includes an investment
21 that does not satisfy the requirements of Subsection (a)(2) if the
22 investment was a qualified equity investment in the hands of a prior
23 holder.

24 Sec. 231.006. DEFINITION: QUALIFIED LOW-INCOME COMMUNITY
25 INVESTMENT. In this chapter, "qualified low-income community
26 investment" means an equity investment in, or loan to, a qualified
27 active low-income community business made by a qualified community

1 development entity.

2 Sec. 231.007. DEFINITION: RURAL COMMUNITY DEVELOPMENT
3 ENTITY. In this chapter, "rural community development entity" means
4 a qualified community development entity:

5 (1) whose allocation agreement with the Community
6 Development Financial Institutions Fund of the United States
7 Department of the Treasury requires the entity to invest at least 25
8 percent of that allocation in rural areas; or

9 (2) that demonstrates to the comptroller in writing
10 that the entity or its affiliates invested at least 25 percent of
11 the entity's most recent federal allocation outside the boundaries
12 of a metropolitan statistical area.

13 Sec. 231.008. RULES. The comptroller shall adopt rules
14 necessary to implement this chapter.

15 Sec. 231.009. REVIEW BY COMPTROLLER. The comptroller shall
16 review the qualified low-income community investments of a
17 qualified community development entity not later than the sixth
18 month after each anniversary of the investment. In conducting the
19 review, the comptroller shall ensure that the qualified community
20 development entity has made and maintained the qualified low-income
21 community investments required under Sections 231.151(a)(3) and
22 (4) to avoid recapture of a credit claimed in connection with a
23 qualified equity investment.

24 SUBCHAPTER B. PREMIUM TAX CREDIT

25 Sec. 231.051. ELIGIBILITY FOR CREDIT. An investing entity
26 is eligible for a credit against the entity's state premium tax
27 liability in the amount provided by this subchapter and under the

1 conditions and limitations provided by this chapter.

2 Sec. 231.052. QUALIFICATION. An investing entity is
3 eligible for a credit if the investing entity holds a qualified
4 equity investment on a credit allowance date.

5 Sec. 231.053. AMOUNT OF CREDIT; LIMITATION. (a) The amount
6 of credit for a tax year is equal to the credit accrued, as
7 determined under Subsection (b), on each credit allowance date:

8 (1) that occurs during the tax year; and

9 (2) on which the investing entity holds the qualified
10 equity investment.

11 (b) The amount of credit accrued on a credit allowance date
12 equals the applicable percentage for the credit allowance date
13 multiplied by the purchase price paid to the issuer of the qualified
14 equity investment.

15 (c) The total credit claimed for a tax year, including the
16 amount of any carryforward under Section 231.054, may not exceed
17 the amount of state premium tax liability due for the tax year after
18 applying all other applicable tax credits.

19 (d) Credits may be applied to the investing entity's
20 estimated or final tax payments for the tax year.

21 Sec. 231.054. CARRYFORWARD. If an investing entity is
22 eligible for a credit that exceeds the limitation under Section
23 231.053(c), the investing entity may carry the unused credit
24 forward for not more than 20 consecutive tax reports. Credits,
25 including credit carryforwards, are considered to be used in the
26 following order:

27 (1) a credit carryforward under this subchapter; and

1 (2) a current year credit.

2 Sec. 231.055. ASSIGNMENT PROHIBITED. (a) Except as
3 provided by Subsection (b), an investing entity may not convey,
4 assign, or transfer the credit allowed under this subchapter to
5 another entity.

6 (b) A partnership, limited liability company, S
7 corporation, or other pass-through entity for federal income tax
8 purposes may allocate the credit to the entity's partners, members,
9 or shareholders for their direct use in accordance with an
10 agreement between the partners, members, or shareholders.

11 Sec. 231.056. RETALIATORY TAX. (a) An entity claiming a
12 credit under this subchapter is not required to pay any additional
13 retaliatory tax levied under Chapter 281 as a result of claiming
14 that credit.

15 (b) In addition to the exclusion provided by Subsection (a),
16 an entity claiming a credit under this subchapter is not required to
17 pay any additional tax that may arise as a result of claiming that
18 credit.

19 SUBCHAPTER C. CERTIFICATION AS QUALIFIED EQUITY INVESTMENT

20 Sec. 231.101. APPLICATION FOR CERTIFICATION AS QUALIFIED
21 EQUITY INVESTMENT. (a) A qualified community development entity
22 that seeks to have an equity investment or long-term debt security
23 certified as a qualified equity investment eligible for credits
24 under this chapter must apply to the comptroller as provided by this
25 section.

26 (b) The comptroller shall provide an application date each
27 year for applications under Subsection (a). The date may not be

1 later than October 2. The comptroller shall consider all
2 applications received on or before the application date to be
3 received simultaneously on the application date.

4 (c) 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 of the United States Department of the
12 Treasury;

13 (3) a certificate executed by an executive officer of
14 the applicant attesting that the allocation agreement remains in
15 effect and has not been revoked or canceled by the Community
16 Development Financial Institutions Fund;

17 (4) a description of the amount and structure of the
18 equity investment or long-term debt security proposed to be
19 certified;

20 (5) examples of the types of qualified active
21 low-income community businesses in which the applicant, its
22 controlling entity, or affiliates of its controlling entity have
23 invested under the federal New Markets Tax Credit Program or a state
24 new markets tax credit program, including written proof that the
25 applicant or an affiliate has made at least one qualified
26 low-income community investment or a similar loan to a business in a
27 low-income census tract in this state;

1 (6) evidence that:

2 (A) the entity qualifies as a rural community
3 development entity, if the entity is applying for a rural
4 allocation;

5 (B) the entity or the entity's affiliate has
6 previously made at least one qualified low-income community
7 investment that would meet the investment requirements for a Texas
8 education allocation, if the entity is applying for a Texas
9 education allocation; or

10 (C) the entity or the entity's affiliate has
11 previously made at least one qualified low-income community
12 investment that would meet the investment requirements for a Texas
13 seaport allocation, if the entity is applying for a Texas seaport
14 allocation;

15 (7) a nonrefundable application fee of \$5,000 to be
16 paid to the comptroller; and

17 (8) the refundable performance deposit required by
18 Subchapter E.

19 Sec. 231.102. ACTION ON APPLICATION. (a) Not later than
20 the 30th day after the date an application under Section 231.101 is
21 received, the comptroller shall grant or deny the application in
22 full or part.

23 (b) If the comptroller denies the application, the
24 comptroller shall inform the applicant of the denial.

25 (c) If the comptroller denies an application because the
26 application is incomplete, the applicant may, not later than the
27 15th day after the date the applicant receives notice under

1 Subsection (b), provide additional information required by the
2 comptroller to complete the application. The comptroller shall
3 consider an application completed under this subsection to be
4 completed on the date the application was initially submitted.

5 (d) If an applicant does not complete an application in the
6 time required under Subsection (c), the application is finally
7 denied and the applicant must submit a new application if the
8 applicant wishes to reapply. The comptroller shall determine the
9 application date for the new application without regard to the
10 previously denied application.

11 Sec. 231.103. CERTIFICATION OF QUALIFIED EQUITY
12 INVESTMENT. (a) If an application under Section 231.101 is
13 granted, the comptroller shall certify the proposed equity
14 investment or long-term debt security as a qualified equity
15 investment that is eligible for credits under this chapter, subject
16 to Section 231.104.

17 (b) The comptroller shall provide written notice of the
18 certification to the qualified community development entity.

19 (c) The certification of a qualified equity investment is
20 effective on the date the comptroller provides notice under
21 Subsection (b).

22 Sec. 231.104. LIMIT ON CERTIFIED INVESTMENTS. (a) Subject
23 to Subsections (b) and (c), the comptroller shall limit the amount
24 of qualified equity investments that may be certified under Section
25 231.103 to an amount the comptroller estimates will result in not
26 more than:

27 (1) \$60 million in credits being claimed under this

1 chapter in any state fiscal year; and

2 (2) \$300 million in total credits being claimed under
3 this chapter.

4 (b) The comptroller shall estimate the amounts under
5 Subsection (a) without regard to the carryforward provision under
6 Section 231.054.

7 (c) The comptroller shall allocate 25 percent, or as nearly
8 as possible to 25 percent, of the amount available under Subsection
9 (a) for each of the following:

10 (1) a rural allocation, which may be used only by
11 rural community development entities to make qualified low-income
12 community investments in rural areas;

13 (2) a Texas education allocation, which may be used
14 only to make qualified low-income community investments in
15 nonprofit or for-profit entities offering primary, secondary, or
16 higher education in low-income communities in this state;

17 (3) a Texas seaport allocation, which may be used only
18 to make qualified low-income community investments in businesses
19 operating at a port, harbor, or municipality:

20 (A) accessible to seagoing ships that are limited
21 to 35 miles from the coastline; and

22 (B) located in a low-income community in this
23 state; and

24 (4) a statewide low-income community allocation,
25 which may be used to make qualified low-income community
26 investments in any low-income community in this state.

27 (d) A qualified community development entity may apply in a

1 single application for and receive certification of qualified
2 equity investments in more than one allocation category under
3 Subsection (c).

4 (e) Subject to Subsection (f), if a pending application
5 cannot be fully certified due to the limit specified by Subsection
6 (a) or (c), the comptroller shall certify the portion that can be
7 certified.

8 (f) The comptroller shall certify qualified equity
9 investments in the order in which applications are received by the
10 comptroller. Applications received on or before the application
11 date provided under Section 231.101(b) are considered to have been
12 received simultaneously on the application date. For applications
13 that are complete and received on or before the application date
14 provided under Section 231.101(b) and for which the total amounts
15 requested cannot be certified because of the limit specified by
16 Subsection (a) or (c), the comptroller shall certify qualified
17 equity investments in each allocation category under Subsection (c)
18 on a pro rata basis based on the ratio of the amount of qualified
19 equity investments available in an allocation category to the total
20 amount of qualified equity investments requested in that allocation
21 category.

22 Sec. 231.105. TRANSFER OF INVESTMENT AUTHORITY. A
23 qualified community development entity whose application for
24 certification of a qualified equity investment is approved under
25 this subchapter may transfer all or a portion of its certified
26 qualified equity investment authority to its controlling entity or
27 to a qualified community development entity controlled by or under

1 common control with the transferring entity, if the transferring
2 entity:

3 (1) provides the information required in the
4 application under Section 231.101(c) with respect to the recipient
5 of the transfer; and

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

8 Sec. 231.106. ISSUANCE OF QUALIFIED EQUITY INVESTMENT; FEE.

9 (a) Not later than the 20th month after the date the qualified
10 community development entity receives notice of certification, the
11 entity or a recipient of a transfer under Section 231.105 shall
12 issue the qualified equity investment and receive cash in the
13 amount certified.

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

19 (c) At the time the qualified community development entity
20 or a recipient of a transfer under Section 231.105 issues the
21 qualified equity investment, the qualified community development
22 entity or transfer recipient shall pay to the comptroller a fee
23 equal to 20 basis points, or 0.2 percent, of the amount issued.
24 Fees collected under this subsection may be appropriated only to
25 pay the cost of preparing a report under Section 231.302.

26 Sec. 231.107. LAPSE OF CERTIFICATION. (a) If the qualified
27 community development entity or a recipient of a transfer under

1 Section 231.105 does not issue the qualified equity investment and
2 receive the cash investment before the 20th month after the date the
3 certification notice is received as required by Section 231.106,
4 the certification lapses and the qualified community development
5 entity or recipient of the transfer may not accept an equity
6 investment or issue a long-term debt security as a qualified equity
7 investment without reapplying to the comptroller for
8 certification.

9 (b) If a certification lapses under this section, the
10 comptroller shall reissue the previously certified amount, giving
11 preference to an applicant for reissuance of certification whose
12 proposed amount for certification was previously certified in a
13 reduced amount under Section 231.104. If more than one applicant
14 for reissuance of certification had its proposed amount reduced,
15 the comptroller shall reissue the certified amount to those
16 applicants on a pro rata basis, subject to the limits specified by
17 Section 231.104.

18 (c) After reissuing certifications under Subsection (b),
19 the comptroller shall reissue any certified amounts remaining to
20 applicants in amounts determined by the comptroller, subject to the
21 limits specified by Section 231.104.

22 SUBCHAPTER D. RECAPTURE OF CREDIT

23 Sec. 231.151. RECAPTURE. (a) Subject to Section 231.152,
24 the comptroller shall recapture the amount of a credit claimed on a
25 premium tax report filed under Chapter 221, 222, 223, 223A, or 224
26 from the investing entity if:

27 (1) any amount of a federal tax credit available with

1 respect to a qualified equity investment that is eligible for a
2 credit under this chapter is recaptured under Section 45D, Internal
3 Revenue Code, in which case the comptroller's recapture must be
4 proportionate to the federal recapture with respect to the
5 qualified equity investment;

6 (2) the issuer redeems or makes principal repayment
7 with respect to a qualified equity investment before the seventh
8 anniversary of the date the qualified equity investment is issued,
9 in which case the comptroller's recapture must be proportionate to
10 the amount of the redemption or repayment with respect to the
11 qualified equity investment;

12 (3) the issuer fails to invest an amount equal to 85
13 percent of the purchase price of the qualified equity investment in
14 qualified low-income community investments in this state not later
15 than the 20th month after the date the qualified equity investment
16 is issued, in which case the comptroller's recapture may not exceed
17 the amount of tax credits associated with the portion of the
18 purchase price received but not invested on the date of the
19 recapture; or

20 (4) the issuer fails to maintain an amount of
21 investment equal to 85 percent of the purchase price of the
22 qualified equity investment in qualified low-income community
23 investments in this state until the last credit allowance date for
24 the qualified equity investment, in which case the comptroller's
25 recapture may not exceed the amount of tax credits associated with
26 the portion of the purchase price received but not maintained in
27 qualified low-income community investments on the date of

1 recapture.

2 (b) For purposes of this chapter, a qualified low-income
3 community investment is considered held by an issuer even if the
4 investment has been sold or repaid if the issuer reinvests an amount
5 equal to the capital returned to or recovered by the issuer from the
6 original investment, exclusive of any profits realized, in another
7 qualified low-income community investment not later than the 12th
8 month after the date the issuer receives the capital.

9 (c) An issuer is not required to reinvest capital returned
10 from a qualified low-income community investment after the sixth
11 anniversary of the date the qualified equity investment whose
12 proceeds were used to make the qualified low-income community
13 investment was issued. The qualified low-income community
14 investment is considered held by the issuer through the seventh
15 anniversary of the date the qualified equity investment was issued.

16 (d) Periodic amounts received during a calendar year as
17 repayment of principal on a loan that is a qualified low-income
18 community investment shall be treated as continuously invested in a
19 qualified low-income community investment if the amounts are
20 reinvested in one or more qualified low-income community
21 investments not later than the last day of the following calendar
22 year.

23 (e) After the seventh anniversary of the date a qualified
24 equity investment is issued, the qualified community development
25 entity may request that the comptroller certify that tax credits
26 associated with the qualified equity investment are not subject to
27 recapture under this section.

1 (f) Not later than the 60th day after the date the
2 comptroller receives a request under Subsection (e), the
3 comptroller shall:

4 (1) certify in writing to the qualified community
5 development entity that tax credits associated with the qualified
6 equity investment are not subject to recapture and that the
7 qualified community development entity has satisfied all the
8 requirements of this chapter; or

9 (2) notify the qualified community development entity
10 that tax credits associated with the qualified equity investment
11 are subject to recapture and that the qualified community
12 development entity has not satisfied the requirements of this
13 chapter and shall provide a written explanation of the reason for
14 that determination.

15 (g) After the comptroller certifies under Subsection (f)(1)
16 that tax credits associated with a qualified equity investment are
17 not subject to recapture:

18 (1) the comptroller may not recapture any tax credits
19 associated with that qualified equity investment; and

20 (2) the qualified community development entity is not
21 subject to regulation by the comptroller or to the reporting
22 requirements under Section 231.301 in connection with that
23 qualified equity investment.

24 Sec. 231.152. NOTICE OF NONCOMPLIANCE. (a) The
25 comptroller shall notify a qualified community development entity
26 and an investing entity that has claimed a credit on a report if the
27 credit is subject to recapture under Section 231.151.

1 (b) The comptroller may not recapture a credit under this
2 subchapter if the qualified community development entity cures the
3 noncompliance described by Section 231.151 before the 90th day
4 after the date the qualified community development entity receives
5 notice under Subsection (a).

6 SUBCHAPTER E. SECURITY FOR PERFORMANCE

7 Sec. 231.201. SECURITY REQUIRED. (a) Not later than the
8 14th day after the date a qualified equity investment is certified
9 under Subchapter C, the qualified community development entity that
10 received investment authority for the qualified equity investment
11 must deposit \$500,000 with the comptroller as a refundable
12 performance deposit to be deposited as required by Section 231.204.

13 (b) This section applies regardless of whether the
14 investment authority is for a rural allocation, a Texas education
15 allocation, a Texas seaport allocation, or a statewide low-income
16 community allocation.

17 Sec. 231.202. FAILURE TO PROVIDE SECURITY: LOSS OF
18 CERTIFICATION. The comptroller shall revoke the certification of
19 the qualified equity investment of a qualified community
20 development entity that fails to make a deposit under Section
21 231.201.

22 Sec. 231.203. FORFEITURE OF SECURITY. (a) A qualified
23 community development entity that makes a performance deposit under
24 Section 231.201 forfeits the deposit in its entirety if:

25 (1) the qualified community development entity or any
26 qualified community development entity to which a transfer is made
27 under Section 231.105 fails to issue the total amount of qualified

1 equity investments certified by the comptroller and receive cash in
2 the amount certified under Section 231.103 not later than the date
3 specified by Section 231.106; or

4 (2) subject to Subsection (b), the qualified community
5 development entity or a qualified community development entity to
6 which a transfer is made under Section 231.105 that issues a
7 qualified equity investment certified under Section 231.103 fails
8 to make or maintain the investment required under Sections
9 231.151(a)(3) and (4) to avoid recapture of a credit claimed in
10 connection with the qualified equity investment.

11 (b) A deposit is not subject to forfeiture under Subsection
12 (a)(2) if the qualified community development entity cures the
13 noncompliance before the 90th day after the date the qualified
14 community development entity receives notice under Subsection (c).

15 (c) The comptroller shall notify a qualified community
16 development entity that made a deposit under Section 231.201 in
17 writing if the deposit is subject to forfeiture under this section.

18 Sec. 231.204. NEW MARKETS PERFORMANCE GUARANTEE FUND. (a)
19 The new markets performance guarantee fund is an interest-bearing
20 fund outside the state treasury with the comptroller. The fund
21 consists of money the comptroller deposits under Subsection (b).
22 The comptroller shall administer the fund.

23 (b) The comptroller shall deposit a performance deposit
24 made under Section 231.201 to the credit of the new markets
25 performance guarantee fund. The deposit must remain on deposit with
26 the fund until the comptroller determines that:

27 (1) the qualified community development entity has

1 complied with the provisions of this chapter; or

2 (2) the deposit has been forfeited and will be
3 deposited in accordance with Section 231.206.

4 Sec. 231.205. RELEASE OF SECURITY. (a) Not earlier than
5 the 30th day after the date the requirements that must be satisfied
6 to avoid forfeiture of a deposit as described by Section 231.203 are
7 satisfied, a qualified community development entity that made the
8 deposit may request a refund of the deposit from the comptroller.

9 (b) The comptroller shall refund the deposit or, if
10 applicable, give notice of noncompliance as described by Section
11 231.203 not later than the 30th day after the date of receiving a
12 request under Subsection (a).

13 Sec. 231.206. DEPOSIT OF FORFEITED SECURITY. The
14 comptroller shall deposit in the general revenue fund a deposit
15 forfeited under Section 231.203.

16 SUBCHAPTER F. EVALUATION OF BUSINESS BY COMPTROLLER

17 Sec. 231.251. EVALUATION REQUIRED. (a) Except as provided
18 by Subsection (c), a qualified community development entity or a
19 recipient of a transfer under Section 231.105 must, before making
20 an investment in a business, request a written opinion from the
21 comptroller as to whether:

22 (1) the business in which the qualified community
23 development entity proposes to invest would qualify as a qualified
24 active low-income community business under Section 231.003; and

25 (2) the location where the qualified community
26 development entity proposes to invest would meet the location
27 requirements for a rural allocation, a Texas education allocation,

1 or a Texas seaport allocation, as applicable.

2 (b) Not later than the 10th business day after the date of
3 the receipt of a request under Subsection (a), the comptroller
4 shall make the requested determinations and issue the written
5 opinion, including explanations for the determinations.

6 (c) A qualified community development entity or a recipient
7 of a transfer under Section 231.105 may, but is not required to,
8 request a written opinion under Subsection (a) before making an
9 investment in a business if the qualified community development
10 entity or transfer recipient concurrently makes a federal qualified
11 low-income community investment in the business.

12 Sec. 231.252. CONSIDERATION OF FEDERAL TAX LAWS. In
13 issuing a written opinion and making other determinations under
14 this chapter, the comptroller shall consider Section 45D, Internal
15 Revenue Code, and the federal tax regulations issued under that
16 code, to the extent that those provisions are applicable.

17 SUBCHAPTER G. REPORTING

18 Sec. 231.301. REPORT TO COMPTROLLER. (a) Except as
19 provided by this subsection, a qualified community development
20 entity that issues a qualified equity investment under Section
21 231.106 shall submit an annual report to the comptroller not later
22 than the fifth business day after the anniversary of a credit
23 allowance date applicable to the investment. The qualified
24 community development entity is not required to submit any report
25 under this subsection after the annual report following the final
26 credit allowance date.

27 (b) The report must:

1 (1) provide evidence that the qualified community
2 development entity has made and maintained the investment required
3 under Sections 231.151(a)(3) and (4) to avoid recapture of a credit
4 claimed in connection with the qualified equity investment;

5 (2) include one or more bank statements for the
6 qualified community development entity that reflect each qualified
7 low-income community investment made by the qualified community
8 development entity in connection with the qualified equity
9 investment;

10 (3) state the name, location, and industry code of
11 each qualified active low-income community business receiving a
12 qualified low-income community investment in connection with the
13 qualified equity investment;

14 (4) state the number of employment positions created
15 and retained as a result of each qualified low-income community
16 investment made in connection with the qualified equity investment;

17 (5) state whether the qualified community development
18 entity has been subject to a recapture of any amount of a federal
19 tax credit available under Section 45D, Internal Revenue Code, with
20 respect to the qualified equity investment; and

21 (6) include a copy of the most recent annual report
22 submitted by the qualified community development entity to the
23 United States Department of the Treasury regarding Section 45D,
24 Internal Revenue Code.

25 (c) A qualified community development entity that fails to
26 submit a report to the comptroller within the time prescribed by
27 Subsection (a) shall pay to the comptroller a penalty equal to the

1 sum of:

2 (1) \$25,000; and

3 (2) \$5,000 for each day the report is not submitted
4 after the date the report is due under Subsection (a).

5 Sec. 231.302. COMPTROLLER'S REPORT TO LEGISLATURE. (a)

6 The comptroller shall contract with an independent researcher at a
7 center for education research established under Section 1.005,
8 Education Code, to prepare a biennial report with respect to the
9 implementation of this chapter.

10 (b) The report must include:

11 (1) the number of qualified community development
12 entities holding certified qualified equity investments;

13 (2) the amount of qualified equity investments of each
14 qualified community development entity;

15 (3) the investments each qualified community
16 development entity has made in qualified active low-income
17 community businesses as of the most recent annual report submitted
18 to the comptroller by the qualified community development entity;

19 (4) the total amount of credits earned under this
20 chapter;

21 (5) the performance of each qualified community
22 development entity with respect to reporting requirements imposed
23 by this chapter;

24 (6) with respect to each qualified active low-income
25 community business in which a qualified community development
26 entity has invested:

27 (A) the classification of the qualified active

1 low-income community business according to the industrial sector
2 and the size of the business;

3 (B) the total number of jobs created by the
4 qualified low-income community investment and the average wages
5 paid for the jobs; and

6 (C) the total number of jobs retained as a result
7 of the qualified low-income community investment and the average
8 wages paid for the jobs; and

9 (7) an analysis of the effect implementation of this
10 chapter has had during the period covered by the report on:

11 (A) economic activity in this state; and

12 (B) state tax revenue.

13 (c) The comptroller shall file the report with the governor,
14 the lieutenant governor, and the speaker of the house of
15 representatives not later than December 15 of each even-numbered
16 year.

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

21 (b) The comptroller of public accounts shall provide an
22 initial application date under Section 231.101(b), Insurance Code,
23 as added by this Act, of October 2, 2017.

24 SECTION 3. Subchapter B, Chapter 231, Insurance Code, as
25 added by this Act, applies only to a tax report originally due on or
26 after January 1, 2018.

27 SECTION 4. This Act takes effect September 1, 2017.