86R13174 BEF-F

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A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1.  Chapter 171, Tax Code, is amended by adding Subchapter O to read as follows:

SUBCHAPTER O. TEXAS NEW MARKETS DEVELOPMENT PILOT PROGRAM

Sec. 171.751.  PILOT PROGRAM. The comptroller shall implement the Texas New Markets Development Pilot Program to encourage capital investment and job creation and retention in redevelopment communities by allowing taxable entities to earn franchise tax credits in connection with those investments.

Sec. 171.752.  DEFINITIONS. In this subchapter:

(1)  "Credit allowance date" means, with respect to a qualified investment, the first, second, third, fourth, fifth, sixth, or seventh anniversary of the date the qualified investment was issued.

(2)  "Long-term debt security" means a debt instrument issued by a qualified community development entity at par value or a premium with a maturity date at least seven years after the date of issuance and no acceleration of repayment, amortization, or prepayment features before the original maturity date except in instances of default.

(3)  "Purchase price" means the amount of cash paid to a qualified community development entity in exchange for a qualified investment.

(4)  "Qualified community development entity" means an entity that:

(A)  is certified by the United States secretary of the treasury under 26 U.S.C. Section 45D; and

(B)  has entered into, or is controlled by an entity that has entered into, an allocation agreement with the Community Development Financial Institutions Fund with respect to tax credits under 26 U.S.C. Section 45D and is authorized to conduct business in this state under the agreement.

(5)  "Qualified investment" means an equity investment in, or a long-term debt security issued by, a qualified community development entity that is:

(A)  issued solely in exchange for cash;

(B)  designated by the qualified community development entity as a qualified investment; and

(C)  approved by the comptroller as a qualified investment.

(6)  "Redevelopment community" means a municipality that:

(A)  was incorporated on or before September 1, 1960;

(B)  has a population of more than 67,000; and

(C)  is located in two counties, with at least 90 percent of the municipality's territory located in a county with a population of at least 580,000 and the remaining territory located in a county with a population of at least four million.

(7)  "Redevelopment investment" means an investment made by a qualified community development entity in a business located in a redevelopment community using the proceeds from the purchase price on one or more qualified investments.

Sec. 171.753.  ELIGIBLE INDUSTRIES. (a) The comptroller shall designate, using the North American Industry Classification System, industries that are eligible to receive redevelopment investments. The comptroller shall designate those industries that have the greatest potential to create strong positive impacts on or benefits to the economies of redevelopment communities.

(b)  A qualified community development entity may not make a redevelopment investment in a business unless the principal activities of the business are in an eligible industry. The comptroller may waive this limitation if the comptroller determines that the redevelopment investment will have a positive impact on a redevelopment community.

(c)  In an area of a redevelopment community where the median family income is not more than 50 percent of the median family income for the redevelopment community, the comptroller may allow a redevelopment investment in:

(1)  an office building project that guarantees a minimum average occupancy rate of at least 90 percent; or

(2)  a retail project that guarantees a minimum average occupancy rate of at least 90 percent.

(d)  A tax credit in connection with a redevelopment investment described by Subsection (c) is subject to recapture if the office building project or retail project fails to achieve the minimum occupancy rate required by that subsection.

Sec. 171.754.  APPLICATION. A qualified community development entity must apply to the comptroller for approval of a proposed investment as a qualified investment. The application must include:

(1)  the name, address, and tax identification number of the qualified community development entity;

(2)  proof of certification as a qualified community development entity under 26 U.S.C. Section 45D;

(3)  a copy of an authorization document executed by the qualified community development entity, or its controlling entity, authorizing the entity to conduct business in this state;

(4)  a description of the proposed amount, structure, and purchasers of the proposed investment;

(5)  the name and tax identification number of each taxable entity that will claim a credit under this subchapter in connection with the qualified investment;

(6)  a detailed explanation of the expected impact of a proposed qualified investment and the related redevelopment investments;

(7)  a resolution of support from the governing bodies of the redevelopment communities where redevelopment investments will be made;

(8)  a resolution of support from the economic development council, if any, of each redevelopment community described by Subdivision (7);

(9)  a nonrefundable application fee of $1,000, payable to the comptroller;

(10)  a statement that the qualified community development entity will make redevelopment investments only in the industries designated by the comptroller or as otherwise allowed by the comptroller;

(11)  the qualified community development entity's plans for fostering relationships with local economic development organizations in the redevelopment communities where the entity will make redevelopment investments and an explanation of the steps the entity has taken to implement those plans; and

(12)  a statement that the qualified community development entity will not make a redevelopment investment in a business unless the business will create or retain jobs that pay an average wage equal to at least 115 percent of the federal poverty income guidelines for a family of four.

Sec. 171.755.  REVIEW. (a) The comptroller shall review applications to approve an investment as a qualified investment in the order received. The office shall approve or deny each application not later than the 30th day after receipt of the application.

(b)  If the comptroller intends to deny an application, the comptroller shall provide notice to the applicant of the basis of the proposed denial. The applicant may, not later than the 15th day after receiving the notice, submit a revised application to the comptroller. The comptroller shall issue a final order approving or denying the revised application not later than the 30th day after receipt of the revised application.

(c)  The comptroller shall limit the amount of qualified investments approved to an amount that will result in not more than:

(1)  $200 million in total tax credits being claimed under this subchapter; or

(2)  $40 million in tax credits being claimed under this subchapter in any state fiscal year, other than credits carried forward from a previous year.

Sec. 171.756.  APPROVAL. (a) The comptroller shall provide a copy of the final order approving an investment as a qualified investment to the qualified community development entity. The notice shall include the identity of the taxable entities that are eligible to claim tax credits in connection with the investment and the amount that may be claimed by each taxable entity.

(b)  The comptroller shall approve a portion of the amount of a proposed qualified investment if the full amount may not be approved because of the limit under Section 171.755(c).

(c)  If more than one application for approval of a qualified investment submitted on the same day is found to qualify for approval and the full amount of all qualified investments under those applications may not be approved because of the limit under Section 171.755(c), the comptroller shall approve a pro rata portion of each of those qualified investments based on the purchase price.

Sec. 171.757.  DURATION OF APPROVAL. The qualified community development entity must issue the qualified investment in exchange for cash not later than the 60th day after receiving the order approving an investment as a qualified investment or the approval order becomes void.

Sec. 171.758.  REPORT OF ISSUANCE OF QUALIFIED INVESTMENT. The qualified community development entity must provide the comptroller with evidence of receiving the purchase price of the qualified investment in cash not later than the 30th business day after issuance.

Sec. 171.759.  USE OF PROCEEDS FROM QUALIFIED INVESTMENTS; RECORDKEEPING. (a) A qualified community development entity may not make cash interest payments on a long-term debt security that is a qualified investment in excess of the entity's operating income for six years following the issuance of the security.

(b)  A qualified community development entity shall keep detailed records showing the use of proceeds from qualified investments to fund redevelopment investments.

(c)  A business, including its affiliates, may not receive more than $10 million in redevelopment investments under this subchapter.

Sec. 171.760.  FRANCHISE TAX CREDIT. (a) A taxable entity is eligible for a credit against the tax imposed under this chapter in the amount provided by this section and under the conditions and limitations provided by this subchapter.

(b)  A taxable entity is eligible for a credit if the taxable entity holds a qualified investment on a credit allowance date. The amount of the credit on the first, second, and third credit allowance dates is equal to five percent of the purchase price of the qualified investment. The amount of the credit on the fourth, fifth, sixth, and seventh credit allowance dates is equal to six percent of the purchase price of the qualified investment.

(c)  The total credit claimed for a report, including the amount of any carryforward under Subsection (e), may not exceed the amount of franchise tax due for the report after applying all other applicable tax credits.

(d)  Credits may be applied to the taxable entity's estimated or final tax payments for the applicable period.

(e)  If a taxable entity is eligible for a credit that exceeds the limitation under Subsection (c), the taxable entity may carry the unused credit forward for not more than five consecutive reports. Credits, including credit carryforwards, are considered to be used in the following order:

(1)  a credit carryforward under this section; and

(2)  a current year credit.

(f)  A taxable entity may sell or transfer the credit allowed under this section, including the unused amount of a credit carryforward, to another taxable entity. The taxable entity making the sale or transfer must report to the comptroller:

(1)  the amount of credit sold or transferred;

(2)  the identity of the entity making the purchase or receiving the transfer; and

(3)  the reporting period to which the credit applies and whether the credit is a carryforward credit.

Sec. 171.761.  ANNUAL REPORT. A qualified community development entity that has issued a qualified investment shall, not later than the 30th day after each credit allowance date, submit to the comptroller:

(1)  a report, verified by the chief executive officer of the community development entity, describing each redevelopment investment made by the entity since the last credit allowance date, including:

(A)  a description of the type and amount of each redevelopment investment; and

(B)  the address of the principal location of each business receiving a redevelopment investment;

(2)  bank records, wire transfer records, or similar documents that provide evidence of the redevelopment investments made since the last credit allowance date;

(3)  a verified statement by the chief financial or accounting officer of the qualified community development entity that no redemption or principal repayment was made with respect to the qualified investment since the previous credit allowance date;

(4)  information relating to any recapture of a federal new markets tax credit involving the qualified community development entity since the last credit allowance date;

(5)  the qualified community development entity's annual financial statements for the preceding tax year, audited by an independent certified public accountant;

(6)  the number of jobs created and retained by businesses receiving redevelopment investments made by the qualified community development entity;

(7)  a description of the relationships the qualified community development entity has established with local economic development organizations and a summary of the outcomes resulting from those relationships; and

(8)  other information and documentation required by the comptroller to verify the entity's continued certification as a qualified community development entity under 26 U.S.C. Section 45D.

Sec. 171.762.  AUDITS AND EXAMINATIONS. The comptroller may conduct audits and examinations to verify compliance with this subchapter.

Sec. 171.763.  RECAPTURE AND PENALTIES. (a) The comptroller shall direct at any time before December 31, 2026, the recapture of all or a portion of a tax credit authorized under this subchapter if:

(1)  the federal government recaptures any portion of a federal new markets tax credit in connection with a qualified investment or redevelopment investment that was also the basis for a credit under this subchapter, in which case the recapture under this section shall be proportional to the recapture by the federal government;

(2)  the qualified community development entity redeems or makes a principal repayment on a qualified investment before the seventh credit allowance date, in which case the recapture under this section for each taxable entity shall be equal to the taxable entity's total tax credits multiplied by a fraction, the numerator of which is the redemption or principal repayment received by the taxable entity and the denominator of which is the purchase price paid by the taxable entity;

(3)  subject to Subsection (b), the qualified community development entity fails to invest at least 85 percent of the purchase price in redevelopment investments before the second credit allowance date;

(4)  subject to Subsection (b), the qualified community development entity fails to maintain at least 85 percent of the purchase price invested in redevelopment investments until the seventh credit allowance date;

(5)  the qualified community development entity fails to provide the comptroller's office with information, reports, or documentation required under this subchapter; or

(6)  the comptroller determines that a taxable entity received tax credits to which the taxable entity was not entitled.

(b)  For the purpose of Subsections (a)(3) and (4):

(1)  capital or principal recovered from a redevelopment investment is considered to be invested in the redevelopment investment for one year following the recovery; and

(2)  capital or principal recovered from a redevelopment investment after the sixth credit allowance date is considered to remain invested in the redevelopment investment until the seventh credit allowance date.

(c)  The comptroller's office shall provide notice to the qualified community development entity of a proposed recapture of a tax credit. The entity may, not later than the 90th day after receiving the notice, cure a deficiency identified in the notice and avoid recapture. The comptroller shall issue a final order of recapture if the entity fails to cure a deficiency on or before the 90th day after receiving the notice. The final order of recapture shall be provided to the entity and a taxable entity otherwise authorized to claim the tax credit. The amount recovered shall be deposited in the general revenue fund.

(d)  A person who submits fraudulent information to the comptroller is liable to the state for the costs associated with the investigation and prosecution of the fraudulent claim and a penalty in an amount equal to twice the amount of tax credits claimed by investors in the entity's qualified investments. This penalty is in addition to any other penalty that may be imposed by law.

Sec. 171.764.  RULES. The comptroller shall adopt rules to implement this subchapter.

Sec. 171.765.  EXPIRATION. (a) This subchapter expires December 31, 2026.

(b)  The expiration of this subchapter does not affect the carryforward of a credit under Section 171.760(e) or those credits for which a taxable entity is eligible after the date this subchapter expires based on a qualified investment made before the date this subchapter expires.

SECTION 2.  This Act applies only to a report originally due on or after the effective date of this Act.

SECTION 3.  This Act takes effect January 1, 2020.