86R6131 SMT-D

By:  Whitmire S.B. No. 1590

A BILL TO BE ENTITLED

AN ACT

relating to a franchise or insurance tax credit for low-income housing developments.

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

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

SUBCHAPTER V. TAX CREDIT FOR LOW-INCOME HOUSING DEVELOPMENTS

Sec. 171.9241.  DEFINITIONS. In this subchapter:

(1)  "Allocation certificate" means a statement issued by the department certifying that a qualified development qualifies for credits under this subchapter and Chapter 233, Insurance Code, and specifying the total amount of the credits awarded in connection with the qualified development.

(2)  "Credit" means the low-income housing development tax credit authorized by this subchapter.

(3)  "Credit period" means the period of 10 tax years beginning with the tax year in which a qualified development is placed in service. A qualified development consisting of more than one building is not considered to be in service until all buildings in the qualified development are placed in service.

(4)  "Department" means the Texas Department of Housing and Community Affairs.

(5)  "Development" has the meaning assigned by Section 2306.6702, Government Code.

(6)  "Federal tax credit" means the federal low-income housing credit created by Section 42, Internal Revenue Code.

(7)  "Qualified basis" means the qualified basis of a qualified development, as determined under Section 42, Internal Revenue Code.

(8)  "Qualified development" means a development in this state that the department determines is eligible for a federal tax credit and that:

(A)  is financed with tax-exempt bonds;

(B)  is the subject of a recorded restrictive covenant requiring the development to be maintained and operated as a qualified development; and

(C)  for the lesser of 15 years after the beginning of the credit period or the period required by the department, is in compliance with:

(i)  all accessibility and adaptability requirements for a federal tax credit; and

(ii)  Title VIII of the Civil Rights Act of 1968 (42 U.S.C. Section 3601 et seq.).

Sec. 171.9242.  ENTITLEMENT TO CREDIT. A taxable entity is entitled to a credit against the taxes imposed under this chapter in the amount and under the limitations provided by this subchapter if the taxable entity owns an interest in a qualified development.

Sec. 171.9243.  ALLOCATION CERTIFICATE; CREDIT. (a) In a year during a credit period, a taxable entity or an entity subject to state insurance tax liability as defined by Section 233.0001, Insurance Code, may apply to the department for an allocation certificate in connection with a development in which the taxable entity or other entity owns an interest.

(b)  The department shall issue an allocation certificate if the development is a qualified development.

(c)  The department may determine the total amount of credits under this subchapter and Chapter 233, Insurance Code, awarded in connection with a qualified development, subject to the following:

(1)  the amount of credits awarded in connection with a qualified development must be the minimum amount necessary for the financial feasibility of the qualified development after considering any federal tax credit;

(2)  the amount of credits awarded in connection with a qualified development over the credit period may not exceed the total federal tax credit awarded to the owner or owners of the qualified development over the 10-year federal tax credit period;

(3)  the manner in which the department awards the amount of credits must be consistent with criteria established by the department; and

(4)  in a year, the total amount of credits awarded in connection with all qualified developments may not exceed the sum of:

(A)  $35 million;

(B)  any unallocated credits for the preceding year; and

(C)  any credit recaptured or otherwise returned to the department in the year.

(d)  The owners of a qualified development who intend to claim a credit under this subchapter or Chapter 233, Insurance Code, may by agreement determine the portion of the total amount of credits awarded under Subsection (c) that each owner is entitled to claim. If the owners do not agree, the department shall determine the portion each owner is entitled to claim based on each owner's ownership interest in the qualified development.

Sec. 171.9244.  LENGTH OF CREDIT; LIMITATION. (a) A taxable entity entitled to a credit under this subchapter shall claim the credit in equal installments during each year of the credit period.

(b)  The total credit claimed under this subchapter for a report, including any carry forward or backward under Section 171.9245, may not exceed the amount of franchise tax due for the report after any other applicable credit.

Sec. 171.9245.  CARRY FORWARD OR BACKWARD. (a) If a taxable entity is eligible for a credit that exceeds the limitations under Section 171.9244, the taxable entity may carry the unused credit back for not more than three tax years or forward for not more than 10 consecutive reports following the tax year in which the allocation was made. A credit carryforward from a previous report is considered to be used before the current year installment.

(b)  A credit that is not used may not be refunded.

Sec. 171.9246.  RECAPTURE. (a) The comptroller shall recapture the amount of a credit claimed on a franchise tax report filed under this chapter from a taxable entity if, on the last day of a tax year, the amount of the qualified basis of the qualified development is less than the amount of the qualified basis as of the last day of the prior tax year. The comptroller shall determine the amount required to be recaptured using the formula provided by Section 42(j), Internal Revenue Code, as that section existed on January 1, 2019.

(b)  A franchise tax report must include any portion of credit required to be recaptured, the identity of any taxable entity subject to the recapture, and the amount of any credit previously allocated to the taxable entity.

Sec. 171.9247.  ASSIGNMENT OF CREDIT. (a) If a taxable entity receiving a credit under this subchapter is a partnership, limited liability company, S corporation, or similar pass-through entity, the taxable entity may assign the credit to its partners, shareholders, members, or other constituent taxable entities in any manner agreed by those entities.

(b)  A taxable entity that makes an assignment under this section shall certify to the comptroller the amount of credit assigned to each constituent taxable entity or shall notify the comptroller that it has delegated the duty of certification to one constituent taxable entity that shall provide the notification to the comptroller. Each constituent taxable entity is entitled to claim the assigned amount subject to any restrictions prescribed by this subchapter.

(c)  An assignment under this section is not a transfer for purposes of state law.

Sec. 171.9248.  FILING REQUIREMENTS AFTER ASSIGNMENT. A taxable entity that assigns a portion of the credit under Section 171.9247, and each taxable entity to which a portion was assigned, shall file with the taxable entity's report a copy of the allocation certificate received for that year.

Sec. 171.9249.  RULES; PROCEDURES. The department and comptroller, in consultation with each other, shall adopt rules and procedures to implement, administer, and enforce this subchapter.

Sec. 171.9250.  COMPLIANCE MONITORING. (a) The department, in consultation with the comptroller, shall monitor compliance with this subchapter in the same manner as the department monitors compliance with the federal tax credit program.

(b)  The department shall report any instances of noncompliance with this subchapter to the comptroller.

Sec. 171.9251.  REPORT. (a) Not later than December 31 of each year, the department shall deliver a written report to the legislature. The report must:

(1)  specify the number of qualified developments for which allocation certificates were issued during the year and the total number of units supported by the developments;

(2)  describe each qualified development for which an allocation certificate was issued during the year, including:

(A)  location;

(B)  household type;

(C)  available demographic information for the residents intended to be served by the development;

(D)  the income levels intended to be served by the development; and

(E)  the rents or set-asides authorized for the development;

(3)  include housing market and demographic information to demonstrate how the qualified developments, supported by the tax credits under this subchapter and Chapter 233, Insurance Code, are addressing the need for affordable housing in their communities; and

(4)  analyze any remaining disparities in the affordability of housing within those communities.

(b)  The department shall make a report delivered under this section available to the public.

SECTION 2.  Subtitle B, Title 3, Insurance Code, is amended by adding Chapter 233 to read as follows:

CHAPTER 233. CREDIT AGAINST CERTAIN TAXES

FOR LOW-INCOME HOUSING DEVELOPMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 233.0001.  DEFINITIONS. In this chapter:

(1)  "Allocation certificate" and "qualified development" have the meanings assigned by Section 171.9241, Tax Code.

(2)  "State insurance tax liability" means any tax liability incurred by an entity under Chapters 221 through 226 or Chapter 281.

SUBCHAPTER B. CREDIT

Sec. 233.0051.  CREDIT. An entity is eligible for a credit against the entity's state insurance tax liability in the amount and under the conditions and limitations provided by this chapter if the entity owns an interest in a qualified development.

Sec. 233.0052.  LENGTH OF CREDIT; LIMITATION. The entity shall claim the credit in the manner provided by Section 171.9244(a), Tax Code, subject to the limitation provided by Section 171.9244(b), Tax Code. The entity may carry a surplus credit forward or backward as provided by Section 171.9245, Tax Code.

Sec. 233.0053.  APPLICATION FOR CREDIT. (a) An entity must apply for a credit under this chapter on or with the tax report for the tax year for which the credit is claimed and submit with the application a copy of the allocation certificate issued in connection with the qualified development and any other information required by Subchapter V, Chapter 171, Tax Code.

(b)  The comptroller shall adopt a form for the application for the credit. An entity must use this form in applying for the credit.

Sec. 233.0054.  RULES; PROCEDURES. The comptroller and the Texas Department of Housing and Community Affairs, in consultation with each other, shall adopt rules and procedures to implement, administer, and enforce this chapter.

Sec. 233.0055.  APPLICABLE PROVISIONS. The provisions of Subchapter V, Chapter 171, Tax Code, relating to recapture, allocation of credit, filing requirements after allocation, and compliance monitoring apply to the credit authorized by this chapter.

SECTION 3.  (a) The Texas Department of Housing and Community Affairs may begin issuing allocation certificates under Section 171.9243, Tax Code, as added by this Act, in an open cycle beginning on January 1, 2020.

(b)  Subchapter V, Chapter 171, Tax Code, as added by this Act, and Chapter 233, Insurance Code, as added by this Act, apply only to a tax report originally due on or after January 1, 2021.

SECTION 4.  This Act takes effect January 1, 2020.