

By: Reynolds

H.B. No. 4225

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

1 qualified community development entity in exchange for a qualified
2 investment.

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

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

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

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

15 (A) issued solely in exchange for cash;

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

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

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

22 (A) was incorporated on or before September 1,
23 1960;

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

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

1 in a county with a population of at least four million.

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

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

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

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

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

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

26 (d) A tax credit in connection with a redevelopment
27 investment described by Subsection (c) is subject to recapture if

1 the office building project or retail project fails to achieve the
2 minimum occupancy rate required by that subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 receipt of the revised application.

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

4 (1) \$200 million in total tax credits being claimed
5 under this subchapter; or

6 (2) \$40 million in tax credits being claimed under
7 this subchapter in any state fiscal year, other than credits
8 carried forward from a previous year.

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

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

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

25 Sec. 171.757. DURATION OF APPROVAL. The qualified
26 community development entity must issue the qualified investment in
27 exchange for cash not later than the 60th day after receiving the

1 order approving an investment as a qualified investment or the
2 approval order becomes void.

3 Sec. 171.758. REPORT OF ISSUANCE OF QUALIFIED INVESTMENT.

4 The qualified community development entity must provide the
5 comptroller with evidence of receiving the purchase price of the
6 qualified investment in cash not later than the 30th business day
7 after issuance.

8 Sec. 171.759. USE OF PROCEEDS FROM QUALIFIED INVESTMENTS;

9 RECORDKEEPING. (a) A qualified community development entity may not
10 make cash interest payments on a long-term debt security that is a
11 qualified investment in excess of the entity's operating income for
12 six years following the issuance of the security.

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

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

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

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

1 fifth, sixth, and seventh credit allowance dates is equal to six
2 percent of the purchase price of the qualified investment.

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

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

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

14 (1) a credit carryforward under this section; and

15 (2) a current year credit.

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

20 (1) the amount of credit sold or transferred;

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

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

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

1 to the comptroller:

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

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

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

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

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

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

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

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

26 (7) a description of the relationships the qualified
27 community development entity has established with local economic

1 development organizations and a summary of the outcomes resulting
2 from those relationships; and

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

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

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

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

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

27 (3) subject to Subsection (b), the qualified community

1 development entity fails to invest at least 85 percent of the
2 purchase price in redevelopment investments before the second
3 credit allowance date;

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

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

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

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

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

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

21 (c) The comptroller's office shall provide notice to the
22 qualified community development entity of a proposed recapture of a
23 tax credit. The entity may, not later than the 90th day after
24 receiving the notice, cure a deficiency identified in the notice
25 and avoid recapture. The comptroller shall issue a final order of
26 recapture if the entity fails to cure a deficiency on or before the
27 90th day after receiving the notice. The final order of recapture

1 shall be provided to the entity and a taxable entity otherwise
2 authorized to claim the tax credit. The amount recovered shall be
3 deposited in the general revenue fund.

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

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

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

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

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

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