LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

April 8, 2019

TO: Honorable Jane Nelson, Chair, Senate Committee on Finance

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: **SB1590** by Whitmire (Relating to a franchise or insurance tax credit for low-income housing developments.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for SB1590, As Introduced: an impact of $0 through the biennium ending August 31, 2021.

However, the bill will have a direct impact of a revenue loss to the Property Tax Relief Fund of ($10,500,000) for the 2022-23 biennium, eventually growing to ($70,000,000) per biennium. Any loss to the Property Tax Relief Fund must be made up with an equal amount of General Revenue to fund the Foundation School Program.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2020	$0
2021	$0
2022	$0
2023	$0
2024	$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue (Loss) from *Property Tax Relief Fund* 304
2020	$0
2021	$0
2022	($3,500,000)
2023	($7,000,000)
2024	($10,500,000)

Fiscal Analysis

The bill would amend Chapter 171 of the Tax Code and add Chapter 233 to the Insurance Code to provide franchise tax and insurance premium tax credits for qualified taxable entities that own an interest in a qualified low-income housing development. The new credits are similar to those offered under a federal program known as the Low-Income Housing Tax Credit, created by 26 U.S.C. Section 42.

The Low-Income Housing Tax Credit is a joint federal-state effort to maximize the amount of affordable rental housing available to low-income individuals and families. The program is largely funded through federal income tax credits that are allocated to states based on population. States are responsible for selecting projects and allocating credits. In Texas, the Texas Department of Housing and Community Affairs (TDHCA) assumes that role.

The bill would supplement the federal credits with tax credits for the franchise and insurance premium taxes. The requirements and rules for obtaining and using an allocation of state tax credits would largely mirror those of the federal credit.

The bill would allow taxable entities to apply to TDHCA for an allocation certificate, which the bill defines as a statement certifying that the development qualifies for credits and specifying the amount of credits awarded in connection with the development. The bill establishes criteria TDHCA must use when determining the amount of credits awarded in connection with a development.

The bill would limit the total amount of credits that could be allocated to taxable entities in a year to $35 million, not counting unallocated credits from the previous year and any recaptured credit. The credit must be taken in 10 equal installments beginning in the year a qualified development is placed in service.

The total credit claimed for a report could not exceed the amount of franchise or insurance premium tax liability due after any other applicable credit. Credits that could not be applied due to the limit could be carried back for not more than three taxable years and forward for not more than 10 consecutive reports. Under the bill, a credit carryforward from a previous report is considered to be used before the current year installment. Credits could also be recaptured by the Comptroller's Office under certain circumstances.

The bill allows certain taxable entities receiving a credit to assign the credit to its partners, shareholders, members, or other constituent taxable entities in any manner agreed to by those entities. The bill would require that the Comptroller be notified of any assignments and of the amounts assigned.

TDHCA would be required to monitor compliance with the provisions in the bill, as well as report to the Legislature each year on aspects of any developments that received credits.

The Comptroller's Office and TDHCA would be required adopt rules and procedures to implement the bill.

The bill would take effect on January 1, 2020, and would apply only to tax reports originally due on or after January 1, 2021.

Methodology

The estimated fiscal impact assumes no credits would be applied by taxable entities until the third year following the effective date, the time generally required to place a qualified development into service after an award is made.

The bill language limits the amount of credit an entity can claim against their state insurance tax liability according to the proposed Section 171.9244(b). This section states the total amount of credit that can be claimed cannot exceed the amount of franchise tax due. As a result, the Comptroller's Office assumes that all credits claimed under this bill will be applied to a taxable entity's franchise tax liability.

The Texas Department of Housing and Community Affairs indicates the additional work required under the program could be absorbed by existing staff.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts, 332 Department of Housing and Community Affairs

LBB Staff: WP, KK, SD