87R2824 RDS-F

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A BILL TO BE ENTITLED

AN ACT

relating to insurance premium tax credits for investments supporting agriculture and rural development projects; authorizing a fee; providing an administrative penalty.

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

SECTION 1.  Subtitle B, Title 3, Insurance Code, is amended by adding Chapter 230 to read as follows:

CHAPTER 230. PREMIUM TAX CREDIT FOR INVESTMENTS SUPPORTING AGRICULTURE AND RURAL DEVELOPMENT PROJECTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 230.001.  GENERAL DEFINITIONS. In this chapter:

(1)  "Affiliate" has the meaning assigned by Section 228.002.

(2)  "Agriculture development company" means a partnership, corporation, trust, or limited liability company, whether organized on a profit or nonprofit basis, that:

(A)  has as the company's primary business activity the investment of cash in qualified projects, including rural projects; and

(B)  is approved as meeting the criteria of this chapter.

(3)  "Allocation date" means the date on which approved investors are allocated premium tax credits.

(4)  "Approved investor" means an insurer or other person that has state premium tax liability, other than a title insurance company, and that contributes designated capital pursuant to a premium tax credit allocation under this chapter.

(5)  "Critical agriculture facility" means a structure or facility that:

(A)  is available or is to be made available for public or private use, including:

(i)  an appurtenance to the structure or facility or other property necessary or appropriate to operate the structure or facility; and

(ii)  technology installed in the structure or facility that relates to the structure's or facility's purpose; and

(B)  is related to or will be related to all or part of one or more of the following:

(i)  new or developing cyber-agriculture communications systems;

(ii)  rural broadband networks that address and relieve digital poverty;

(iii)  new efficient generation, transmission, or storage of electric energy centered around agricultural use;

(iv)  agriculture-related robotic development and related businesses;

(v)  new exposition and industrial agribusiness park complexes that include educational facilities;

(vi)  transportation-related systems or logistics focused on agriculture, including rail, truck, or airplane facilities;

(vii)  agriculture-related water or wastewater system improvements or upgrades;

(viii)  packaging, processing, or freezing of any agricultural product; or

(ix)  agriculture-related biological product manufacturing or research facilities.

(6)  "Designated capital" means an investment of cash by an approved investor in an agriculture development company that fully funds the purchase price of a qualified debt instrument issued by the agriculture development company.

(7)  "Governmental or authorized nonprofit entity" means an entity that is authorized by the laws of this state to make a public work contract and that is:

(A)  a governmental entity or quasi-governmental authority, including:

(i)  this state, a county, or a municipality;

(ii)  a department, board, or agency of this state, a county, or a municipality; and

(iii)  a school district or a subdivision of a school district; or

(B)  a nonprofit corporation exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code.

(8)  "Liquidating distribution" means a distribution or payment by an agriculture development company, other than a qualified distribution.

(9)  "Participating company" means an agriculture development company that has not opted out of redistribution and reallocation under Section 230.353.

(10)  "Person" means an individual or entity, including a corporation, general or limited partnership, trust, or limited liability company.

(11)  "Premium tax credit allocation claim" means a claim for allocation of premium tax credits.

(12)  "Qualified debt instrument" means a debt instrument issued by an agriculture development company, at par value or a premium, that:

(A)  has an original maturity date that is a date on or after the fifth anniversary of the date of issuance; and

(B)  has a repayment schedule that is not faster than the schedule by which the premium tax credits may be applied under Sections 230.301 and 230.302.

(13)  "Qualified distribution" means a distribution or payment from designated capital by an agriculture development company in connection with:

(A)  the reasonable costs and expenses of forming, syndicating, managing, and operating the company, including:

(i)  reasonable and necessary fees paid for professional services, including legal and accounting services, related to the formation and operation of the company; and

(ii)  an annual management fee in an amount that does not exceed two and one-half percent of the designated capital of the company; and

(B)  any projected liability for federal or state taxes, including penalties and interest related to federal or state income taxes, of:

(i)  the company; or

(ii)  an equity owner of the company to the extent that the tax liability is related to the ownership, management, or operation of the company.

(14)  "Qualified escrow account" means an escrow account:

(A)  maintained in a savings and loan association, bank, or trust company;

(B)  that the escrow holder clearly denotes in the holder's records as an escrow account; and

(C)  that allows solely for qualified withdrawals.

(15)  "Qualified investment" means the investment of cash in a qualified project by an agriculture development company for the purchase of any debt, including a debt instrument.

(16)  "Qualified project" means:

(A)  a project that, at the time of an agriculture development company's first investment in the project:

(i)  is or may be governed by one or more public work contracts to which a governmental or authorized nonprofit entity is a party; and

(ii)  relates to the planning, design, development, installation, construction, acquisition, or expansion of a critical agriculture facility; or

(B)  a rural project.

(17)  "Qualified withdrawal" means a withdrawal from a qualified escrow account that may be made only on the receipt of the signed, written direction of:

(A)  an authorized signatory of the agriculture development company associated with the escrow account; and

(B)  the comptroller under Section 230.201(c), 230.251(c), or 230.252(c), as applicable.

(18)  "Rural project" means a project that, at the time of an agriculture development company's first investment in the project, relates to the planning, design, development, installation, construction, acquisition, or expansion of a critical agriculture facility in a non-metropolitan county as defined by the United States Census Bureau in its most recent census.

(19)  "State premium tax liability" means:

(A)  any liability incurred by any person under Chapter 221, 222, 223A, or 224; or

(B)  if the tax liability imposed under Chapter 221, 222, 223A, or 224 on January 1, 2021, is eliminated or reduced, any tax liability imposed on an insurer or other person that had premium tax liability under Chapter 221, 222, 223A, or 224 on that date.

SUBCHAPTER B. ADMINISTRATION AND PROMOTION

Sec. 230.051.  ADMINISTRATION BY COMPTROLLER. The comptroller shall administer this chapter.

Sec. 230.052.  RULES; FORMS. (a) The comptroller shall adopt rules and forms as necessary to implement this chapter, including rules that:

(1)  establish the application procedures for approval as agriculture development companies; and

(2)  facilitate the transfer or assignment of premium tax credits by approved investors.

(b)  In establishing rules under Subsection (a)(1), the comptroller shall consult with the Department of Agriculture.

Sec. 230.053.  REPORT TO LEGISLATURE. (a) The comptroller shall prepare a biennial report with respect to results of the implementation of this chapter. The report must include:

(1)  the number of agriculture development companies holding designated capital;

(2)  the amount of designated capital invested in each agriculture development company;

(3)  the amount of designated capital each agriculture development company has invested in qualified projects as of January 1, 2024, and the cumulative total for each subsequent year;

(4)  the total amount of tax credits granted under this chapter for each year that credits have been granted;

(5)  the performance of each agriculture development company with respect to renewal and reporting requirements imposed under this chapter; and

(6)  the agriculture development companies that have been disapproved or that have failed to renew their approvals and the reason for any disapproval.

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

Sec. 230.054.  PROMOTION OF PROGRAM. The Department of Agriculture shall promote the program established under this chapter, including through the department's newsletter.

SUBCHAPTER C. APPLICATION FOR APPROVAL AS AND GENERAL OPERATION OF AGRICULTURE DEVELOPMENT COMPANIES

Sec. 230.101.  APPLICATION FOR APPROVAL AS AN AGRICULTURE DEVELOPMENT COMPANY. (a) An applicant for approval as an agriculture development company must file the application in the form prescribed by the comptroller. The application must be accompanied by a nonrefundable application fee of $7,500.

(b)  The application must include an audited balance sheet of the applicant, with an unqualified opinion from an independent certified public accountant, as of a date not more than 35 days before the date of the application.

Sec. 230.102.  QUALIFICATION. To qualify as an agriculture development company:

(1)  the applicant must have, at the time of application for approval, an equity capitalization of at least $500,000 in unencumbered cash or cash equivalents;

(2)  at least two principals or persons employed to manage the funds of the applicant must collectively have:

(A)  at least four years of experience managing the funds of a pooled investment vehicle; and

(B)  at least four years of experience managing or developing investments in public works or agriculturally related projects;

(3)  the applicant must have established a qualified escrow account;

(4)  the applicant must have signed and delivered the sworn document required by Section 230.104; and

(5)  the applicant must satisfy any additional requirement imposed by the comptroller by rule.

Sec. 230.103.  MANAGEMENT BY AND OWNERSHIP INTERESTS OF INSURANCE ENTITIES PROHIBITED. (a) An insurer, group of insurers, or other persons who may have state premium tax liability or the insurer's or other person's affiliates may not, directly or indirectly:

(1)  manage an agriculture development company;

(2)  own, whether through rights, options, convertible interests or otherwise, any outstanding securities of an agriculture development company; or

(3)  control the direction of investments for an agriculture development company.

(b)  Subsection (a) applies without regard to whether the insurer or other person or the affiliate of the insurer or other person is authorized by or engages in business in this state.

(c)  Subsections (a) and (b) do not preclude an insurer, approved investor, or any other party from exercising its legal rights and remedies, including interim management of an agriculture development company, if authorized by law, with respect to an agriculture development company that is in default of its statutory or contractual obligations to the insurer, approved investor, or other party.

Sec. 230.104.  SWORN AND SIGNED DOCUMENT REQUIRED AS CONDITION OF APPROVAL. As a condition to approval as an agriculture development company by the comptroller under Section 230.105, the company must execute a signed, sworn writing in language substantially similar to the following:

"The undersigned by this means agrees that, without further consideration, at any time after the date this document is signed, the undersigned will promptly execute and deliver such instruments and documents and take such action, at the comptroller's request, to permit the comptroller to carry out the comptroller's rights and obligations resulting from the undersigned's disapproval as an agriculture development company under the laws of this state. If the comptroller is unable for any reason to secure the undersigned's signature to any instrument or document that the comptroller may request in connection with the undersigned's disapproval as an agriculture development company, the undersigned irrevocably designates and appoints the comptroller and the comptroller's duly authorized officers and agents as the undersigned's attorneys-in-fact, with full power of substitution to act for and on the behalf of the undersigned to execute and file any instrument or document described above and to perform all other lawfully permitted acts to further the purposes of the above-stated with the same legal force and effect as if the instrument or document was executed or the acts were performed by the undersigned. The undersigned agrees and acknowledges that this appointment is coupled with an interest, and the undersigned agrees not to take steps in opposition to or to terminate this appointment."

Sec. 230.105.  ACTION ON APPLICATION. (a) The comptroller shall:

(1)  review the application, organizational documents, escrow agreement, sworn document required by Section 230.104, and business history of each applicant; and

(2)  ensure that the applicant satisfies the requirements of this chapter.

(b)  Not later than the 30th day after the date an application is filed, the comptroller shall:

(1)  issue the approval of the applicant as an agriculture development company; or

(2)  refuse to issue the approval and communicate in detail to the applicant the grounds for the refusal, including suggestions for the removal of those grounds.

Sec. 230.106.  CONTINUATION OF APPROVED STATUS. To continue to be approved, an agriculture development company must make qualified investments according to the schedule established by Section 230.151 or 230.152.

Sec. 230.107.  REPORTS TO COMPTROLLER; AUDITED FINANCIAL STATEMENT. (a) Each agriculture development company shall report to the comptroller as soon as practicable after the receipt of designated capital:

(1)  the name of each approved investor from which the designated capital was received, including the approved investor's insurance premium tax identification number;

(2)  the amount of each approved investor's investment of designated capital and premium tax credits;

(3)  the date on which the designated capital was received;

(4)  the name and address of the agriculture development company's escrow agent; and

(5)  the account number of the agriculture development company's qualified escrow account.

(b)  Not later than January 31 of each year, each agriculture development company shall report to the comptroller:

(1)  the amount of the company's designated capital at the end of the preceding year;

(2)  whether the company has invested more than 20 percent of its total designated capital in any one project during the preceding year;

(3)  each qualified investment that the company made during the preceding year;

(4)  each investment in a rural project that the company made during the preceding year; and

(5)  any other information required by the comptroller, including any information required by the comptroller to comply with Section 230.053.

(c)  Not later than April 1 of each year, each agriculture development company shall provide to the comptroller an annual audited financial statement that includes the opinion of an independent certified public accountant. The audit must address the methods of operation and conduct of the business of the company to determine whether:

(1)  the company is complying with this chapter and the rules adopted under this chapter;

(2)  the funds received by the company have been invested as required within the time prescribed by Section 230.151 or 230.152; and

(3)  the company has invested the funds in qualified investments, including rural projects, as required by Section 230.151 or 230.152.

Sec. 230.108.  RENEWAL FEE; LATE FEE; EXCEPTION. (a) Not later than January 31 of each year, each agriculture development company shall pay a nonrefundable renewal fee of $5,000 to the comptroller.

(b)  If an agriculture development company fails to pay the company's renewal fee on or before the date specified by Subsection (a), the company must pay, in addition to the renewal fee, a late fee of $5,000 to continue the company's approved status.

(c)  Notwithstanding Subsection (a), a renewal fee is not required within six months of the date on which the company's initial approval as an agriculture development company is issued under Section 230.105.

Sec. 230.109.  QUALIFIED ESCROW ACCOUNT. The designated capital of an agriculture development company, other than designated capital approved for investment under Section 230.201 or for distribution or repayment of debt under Section 230.251 or 230.252, shall be deposited and held in a qualified escrow account.

SUBCHAPTER D. INVESTMENT BY AGRICULTURE DEVELOPMENT COMPANY

Sec. 230.151.  REQUIRED SCHEDULE OF INVESTMENT FOR CERTAIN DESIGNATED CAPITAL. (a) Except as provided by Section 230.152, this section applies to qualified investments by an agriculture development company.

(b)  Before the second anniversary of an agriculture development company's allocation date, the company must make qualified investments in an amount cumulatively equal to at least 20 percent of the company's designated capital, with at least 50 percent of the amount of those qualified investments placed in rural projects.

(c)  Before the third anniversary of an agriculture development company's allocation date, the company must make qualified investments in an amount cumulatively equal to at least 30 percent of the company's designated capital, with at least 50 percent of the amount of those qualified investments placed in rural projects.

(d)  Before the fourth anniversary of an agriculture development company's allocation date, the company must make qualified investments in an amount cumulatively equal to at least 40 percent of the company's designated capital, with at least 50 percent of the amount of those qualified investments placed in rural projects.

(e)  Before the fifth anniversary of an agriculture development company's allocation date, the company must make qualified investments in an amount cumulatively equal to at least 50 percent of the company's designated capital, with at least 50 percent of the amount of those qualified investments placed in rural projects.

Sec. 230.152.  REQUIRED SCHEDULE OF INVESTMENT FOR DESIGNATED CAPITAL RESULTING FROM REDISTRIBUTION. (a) This section applies to qualified investments resulting from a redistribution of the designated capital of an agriculture development company under Section 230.353.

(b)  Notwithstanding Section 230.001(3), for purposes of this section, the allocation date of designated capital is the date on which the designated capital was redistributed to the agriculture development company.

(c)  Before the second anniversary of an agriculture development company's allocation date, the company must make qualified investments in an amount cumulatively equal to at least 20 percent of the designated capital redistributed to the company on the allocation date, with at least 50 percent of the amount of those qualified investments placed in rural projects.

(d)  Before the third anniversary of an agriculture development company's allocation date, the company must make qualified investments in an amount cumulatively equal to at least 30 percent of the designated capital redistributed to the company on the allocation date, with at least 50 percent of the amount of those qualified investments placed in rural projects.

(e)  Before the fourth anniversary of an agriculture development company's allocation date, the company must make qualified investments in an amount cumulatively equal to at least 40 percent of the designated capital redistributed to the company on the allocation date, with at least 50 percent of the amount of those qualified investments placed in rural projects.

(f)  Before the fifth anniversary of an agriculture development company's allocation date, the company must make qualified investments in an amount cumulatively equal to at least 50 percent of the designated capital redistributed to the company on the allocation date, with at least 50 percent of the amount of those qualified investments placed in rural projects.

Sec. 230.153.  COMPUTATION OF AMOUNT OF INVESTMENTS. (a) The aggregate cumulative amount of all qualified investments made by an agriculture development company after the company's allocation date shall be considered in the computation of the percentage requirements under this subchapter.

(b)  An agriculture development company may invest proceeds received from a qualified investment in another qualified investment, and that investment counts toward any requirement of this chapter with respect to investments of designated capital.

Sec. 230.154.  LIMIT ON QUALIFIED INVESTMENT. An agriculture development company may not make a qualified investment at a cost to the company that is greater than 20 percent of the company's total designated capital at the time of investment.

SUBCHAPTER E. QUALIFIED PROJECT; RURAL PROJECT

Sec. 230.201.  EVALUATION OF PROJECT BY COMPTROLLER. (a) An agriculture development company shall, before making an investment in a project, request a written opinion from the comptroller as to whether the project in which the agriculture development company proposes to invest is a qualified project other than a rural project or is a rural project, as applicable.

(b)  Not later than the 30th day after the date of the receipt of a request under Subsection (a), the comptroller shall:

(1)  determine whether the project meets the definition of a qualified project other than a rural project or of a rural project, as applicable; and

(2)  notify the agriculture development company in writing of the determination and include an explanation of the comptroller's determination.

(c)  If the comptroller determines that the project meets the definition of a qualified project other than a rural project or of a rural project, as applicable, then the comptroller shall direct the agriculture development company's escrow agent in a signed writing to release the requested funds for investment in the project.

Sec. 230.202.  CONTINUATION OF DETERMINATION AS QUALIFIED OR RURAL PROJECT. (a) A project that the comptroller determines to be a qualified project other than a rural project at the time of the first investment in the project by an agriculture development company remains a qualified project and may receive subsequent investments from the company. A subsequent investment in the qualified project is a qualified investment, even if the project no longer meets the definition of a qualified project at the time of the subsequent investment.

(b)  A project the comptroller determines to be a rural project at the time of the first investment in the project by an agriculture development company remains a rural project and may receive subsequent investments from the agriculture development company. A subsequent investment in the rural project remains an investment in a rural project, even if the project no longer meets the definition of a rural project at the time of the subsequent investment.

SUBCHAPTER F. DISTRIBUTIONS; REPAYMENT OF DEBT

Sec. 230.251.  DISTRIBUTIONS BY AGRICULTURE DEVELOPMENT COMPANY. (a) An agriculture development company shall, before making a qualified distribution or a liquidating distribution, as applicable, request a written opinion from the comptroller as to whether the distribution the company proposes to make is a qualified distribution or a liquidating distribution.

(b)  Not later than the 30th day after the date of the receipt of a request under Subsection (a), the comptroller shall:

(1)  determine whether the proposed distribution is either a qualified distribution or a liquidating distribution; and

(2)  notify the agriculture development company in writing of the determination and include an explanation of the comptroller's determination.

(c)  If the comptroller determines that the proposed distribution is either a qualified distribution or a liquidating distribution, the comptroller shall direct the agriculture development company's escrow agent in a signed writing to release the requested money for distribution.

(d)  To make a liquidating distribution, an agriculture development company must have made qualified investments in an amount cumulatively equal to 100 percent of the company's designated capital.

(e)  A qualified distribution may not be made directly or indirectly to an approved investor.

Sec. 230.252.  REPAYMENT OF DEBT. (a) An agriculture development company shall, before making a repayment of principal or interest on the agriculture development company's indebtedness, including repaying the company's indebtedness on which approved investors earned premium tax credits, request from the comptroller a written opinion as to whether the repayment the company proposes to make complies with the requirements of this chapter.

(b)  Not later than the 30th day after the date of the receipt of a request under Subsection (a), the comptroller shall:

(1)  determine whether the proposed repayment complies with the requirements of this chapter; and

(2)  notify the agriculture development company in writing of the determination and include an explanation of the comptroller's determination.

(c)  If the comptroller determines that the proposed repayment complies with the requirements of this chapter, the comptroller shall direct the agriculture development company's escrow agent in a signed writing to release the requested money for repayment.

SUBCHAPTER G. PREMIUM TAX CREDIT

Sec. 230.301.  PREMIUM TAX CREDIT. (a) An approved investor that makes an investment of designated capital shall earn in the year of investment a vested credit against state premium tax liability equal to 100 percent of the approved investor's investment of designated capital, subject to the limits imposed by this subchapter.

(b)  Beginning with the tax report due March 1, 2024, for the 2023 tax year, an approved investor may take up to 25 percent of the vested premium tax credit in any taxable year of the approved investor. The credit may not be applied to estimated payments due in 2023 but may be applied to estimated payments beginning with those payments made in 2024.

Sec. 230.302.  LIMIT ON PREMIUM TAX CREDIT. (a) The credit to be applied against state premium tax liability of an approved investor in any one year may not exceed the state premium tax liability of the investor for the taxable year.

(b)  An approved investor may carry forward any unused credit against state premium tax liability indefinitely until the premium tax credits are used.

Sec. 230.303.  PREMIUM TAX CREDIT ALLOCATION CLAIM REQUIRED. (a) An approved investor must prepare and execute a premium tax credit allocation claim on a form provided by the comptroller.

(b)  The agriculture development company must file the credit allocation claims with the comptroller by the date on which the comptroller sets to accept claims on behalf of approved investors by rule.

(c)  The premium tax credit allocation claim form must include an affidavit of the approved investor under which the approved investor becomes legally bound and irrevocably committed to make an investment of designated capital in an agriculture development company in the amount allocated even if the amount allocated is less than the amount of the claim, subject only to the receipt of an allocation under Section 230.305.

(d)  A certified investor may not claim a premium tax credit under Section 230.301 for an investment that has not been funded, even if the approved investor has committed to fund the investment.

Sec. 230.304.  TOTAL LIMIT ON PREMIUM TAX CREDITS. (a) The total amount of designated capital for which premium tax credits may be allowed under this chapter for all years in which premium tax credits are allowed is $250 million.

(b)  The total amount of designated capital for which premium tax credits may be allowed for all approved investors under this chapter may not exceed the amount that would entitle all approved investors in agriculture development companies to take total credits of $62.5 million in a year.

(c)  An agriculture development company and the company's affiliates may not file premium tax credit allocation claims in excess of the maximum amount of designated capital for which premium tax credits may be allowed as provided by this section.

Sec. 230.305.  ALLOCATION OF PREMIUM TAX CREDITS. (a) If the total premium tax credits claimed by all approved investors exceeds the total limits on premium tax credits established by Section 230.304, the comptroller shall allocate the total amount of premium tax credits allowed under this chapter to approved investors in agriculture development companies on a pro rata basis in accordance with this section.

(b)  The pro rata allocation for each approved investor shall be the product of:

(1)  a fraction, the numerator of which is the amount of the premium tax credit allocation claim filed on behalf of the investor and the denominator of which is the total amount of all premium tax credit allocation claims filed on behalf of all approved investors; and

(2)  the total amount of designated capital for which premium tax credits may be allowed under this chapter.

(c)  Not later than the 15th day after the date on which the comptroller accepts premium tax credit allocation claims on behalf of approved investors, the comptroller shall notify each agriculture development company of the amount of tax credits allocated to each approved investor in the agriculture development company. Each agriculture development company shall notify each approved investor of the investor's premium tax credit allocation.

(d)  If an agriculture development company does not receive an investment of designated capital equaling the amount of premium tax credits allocated to an approved investor for which the company filed a premium tax credit allocation claim before the end of the 10th business day after the date of receipt of notice of the allocation, the company shall notify the comptroller as soon as practicable, but not later than 24 hours, and the portion of designated capital allocated to the approved investor shall be forfeited. The comptroller shall reallocate the forfeited designated capital among the approved investors in the other agriculture development companies that originally received an allocation so that the result after reallocation is the same as if the initial allocation under this section had been performed without considering any premium tax credit allocation claims forfeited under this subsection.

Sec. 230.306.  TREATMENT OF CREDITS AND CAPITAL. In any case under this code or another insurance law of this state in which the assets of an approved investor are examined or considered, the designated capital may be treated as an admitted asset, subject to the applicable statutory valuation procedures.

Sec. 230.307.  TRANSFERABILITY OF CREDIT. (a) An approved investor may transfer or assign premium tax credits only as established by the comptroller by rule.

(b)  The transfer or assignment of a premium tax credit does not affect the schedule for taking the premium tax credit under this chapter.

Sec. 230.308.  IMPACT OF PREMIUM TAX CREDITS ON INSURANCE RATEMAKING. An approved investor is not required to reduce the amount of premium tax included by the investor in connection with ratemaking for any insurance contract written in this state because of a reduction in the investor's Texas premium tax derived from the credit granted under this chapter.

SUBCHAPTER H. ENFORCEMENT

Sec. 230.351.  ANNUAL REVIEW BY COMPTROLLER. (a) The comptroller shall conduct an annual review of each agriculture development company to:

(1)  ensure that the agriculture development company:

(A)  continues to satisfy the requirements of this chapter; and

(B)  has not made any investment, distribution, or repayment in violation of this chapter; and

(2)  determine the eligibility status of the company's qualified investments.

(b)  Each agriculture development company shall pay the cost of the annual review according to a reasonable fee schedule adopted by the comptroller.

Sec. 230.352.  DISAPPROVAL OF AGRICULTURE DEVELOPMENT COMPANY. (a) A material violation of Subchapter D or E or Section 230.106, 230.107, or 230.108 is grounds for the disapproval of an agriculture development company.

(b)  If the comptroller determines that an agriculture development company is not in compliance with a law listed in Subsection (a), the comptroller shall notify the company's officers in writing that the company may be subject to disapproval after the 120th day after the date the notice is mailed unless the company:

(1)  corrects the deficiencies; and

(2)  returns to compliance with the law.

(c)  The comptroller may disapprove an agriculture development company, after opportunity for hearing, if the comptroller finds that the company is not in compliance with a law listed in Subsection (a) at the end of the period prescribed by Subsection (b).

(d)  Disapproval is effective on the date the agriculture development company receives the notice of disapproval under Subsection (b).

(e)  The comptroller shall notify any appropriate state agency of the disapproval of an agriculture development company.

Sec. 230.353.  REDISTRIBUTION OF DESIGNATED CAPITAL AND REALLOCATION OF PREMIUM TAX CREDITS AFTER DISAPPROVAL. (a) On disapproval of an agriculture development company, the comptroller shall, in accordance with this section, cause the redistribution of the disapproved company's designated capital and the reallocation of the premium tax credits corresponding to the redistributed designated capital to participating companies. The comptroller shall:

(1)  cause the amount of designated capital remaining in the disapproved agriculture development company's qualified escrow account to be redistributed among the participating companies on a pro rata basis determined by dividing the amount of designated capital then held by each participating company by the aggregate amount of designated capital then held by all participating companies;

(2)  cause that portion of a qualified debt instrument that corresponds to the redistributed designated capital to be assigned by the disapproved agriculture development company to the participating company to which the designated capital was redistributed; and

(3)  reallocate that portion of the premium tax credits that corresponds to the redistributed designated capital to the participating company to which the designated capital was redistributed.

(b)  The designated capital and premium tax credits of any agriculture development company that has invested an amount cumulatively equal to 100 percent of the company's designated capital in qualified investments is not subject to redistribution or reallocation under this section.

(c)  The comptroller shall send written notice to the address shown on the last premium tax filing of each approved investor whose premium tax credit is subject to reallocation under this section.

(d)  An approved agriculture development company may opt out of participating in future redistributions and reallocations under this section by delivering a written opt-out notice to the comptroller at any time.

Sec. 230.354.  ADMINISTRATIVE PENALTY. (a) The comptroller may impose an administrative penalty on an agriculture development company that violates this chapter.

(b)  The amount of the penalty may not exceed $10,000 per violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing the penalty. The amount of the penalty shall be based on:

(1)  the seriousness of the violation, including the nature, circumstances, and extent of the violation;

(2)  the economic harm caused by the violation;

(3)  the history of previous violations;

(4)  the amount necessary to deter a future violation;

(5)  efforts to correct the violation; and

(6)  any other matter that justice may require.

(c)  An agriculture development company assessed a penalty under this chapter may request a redetermination as provided by Chapter 111, Tax Code.

(d)  The attorney general may sue to collect the penalty.

(e)  A proceeding to impose the penalty is a contested case under Chapter 2001, Government Code.

SECTION 2.  (a) Notwithstanding anything in this Act to the contrary, the comptroller of public accounts may implement Chapter 230, Insurance Code, as added by this Act, only if the comptroller determines, on the basis of a revenue estimate made after the 87th Legislature, Regular Session, 2021, adjourns sine die that revenues are anticipated in amounts sufficient to finance all appropriations made during that session of the 87th Legislature after making deductions for all reductions in taxes, including the reduction in premium tax through premium tax credits authorized under Chapter 230, Insurance Code, as added by this Act.

(b)  If the comptroller of public accounts determines under Subsection (a) of this section that revenues are anticipated to support a part, but less than all, of the premium tax credits authorized under Chapter 230, Insurance Code, as added by this Act, the comptroller shall:

(1)  reduce the total amount of premium tax credits allowed under Chapter 230, Insurance Code, as added by this Act, in the amount necessary to comply with Subsection (a) of this section; and

(2)  adopt rules as necessary to implement Chapter 230, Insurance Code, as added by this Act, taking into account the reduction to the amount of premium tax credits allowed that is made under Subdivision (1) of this subsection.

(c)  In adopting rules under Subsection (b)(2) of this section, the comptroller of public accounts may adjust any deadline or other date established under this Act as necessary to implement Chapter 230, Insurance Code, as added by this Act, as limited by this section.

(d)  The comptroller of public accounts shall notify the governor, lieutenant governor, and speaker of the house of representatives of the determination made under Subsection (a) of this section.

SECTION 3.  (a) Subject to Section 2 of this Act, the comptroller of public accounts shall, not later than the 60th day after the effective date of this Act, adopt rules as necessary to implement Chapter 230, Insurance Code, as added by this Act.

(b)  The comptroller shall begin accepting applications for approval as an agriculture development company under Chapter 230, Insurance Code, as added by this Act, on January 31, 2022.

(c)  An approved investor may not make an investment with an agriculture development company under Chapter 230, Insurance Code, as added by this Act, before June 30, 2022.

SECTION 4.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2021.