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H.B. No. 3907

A BILL TO BE ENTITLED

AN ACT

relating to a franchise or insurance tax credit for certain housing
developments.

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

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

SUBCHAPTER K. TAX CREDIT FOR CERTAIN HOUSING DEVELOPMENTS

Sec. 171.551. 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 for the credit period.

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

(3) "Credit period" means, with respect to a building
that is part of a qualified development, the period of 10 tax years
beginning with the tax year in which the building is 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

1 housing credit created by Section 42, Internal Revenue Code.

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

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

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

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

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

16 (ii) Title VIII of the Civil Rights Act of
17 1968 (42 U.S.C. Section 3601 et seq.).

18 (9) "State housing credit ceiling" means the number
19 calculated under Section 42(h)(3)(C), Internal Revenue Code.

20 Sec. 171.552. ENTITLEMENT TO CREDIT. A taxable entity is
21 entitled to a credit against the taxes imposed under this chapter in
22 the amount and under the limitations provided by this subchapter if
23 the taxable entity owns a direct or indirect interest in a qualified
24 development.

25 Sec. 171.553. ALLOCATION CERTIFICATE. (a) In a year during
26 a credit period, a taxable entity or an entity subject to state
27 insurance tax liability as defined by Section 233.0001, Insurance

1 Code, may apply to the department for an allocation certificate in
2 connection with a development in which the taxable entity or other
3 entity owns an interest.

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

6 Sec. 171.554. AMOUNT OF CREDITS. (a) The department shall
7 in the manner provided by this section determine the total amount of
8 credits under this subchapter and Chapter 233, Insurance Code,
9 awarded for the credit period in connection with a qualified
10 development and indicate the amount of credits awarded on the
11 allocation certificate.

12 (b) The amount of credits awarded in connection with a
13 qualified development over the credit period must be the minimum
14 amount necessary for the financial feasibility of the qualified
15 development after considering any federal tax credit, subject to
16 the limitations of this section.

17 (c) The amount of credits awarded in connection with a
18 qualified development over the credit period may not exceed the
19 total federal tax credit awarded to the owner or owners of the
20 qualified development over the 10-year federal tax credit period.

21 (d) The manner in which the department awards the amount of
22 credits must be consistent with criteria established by the
23 department.

24 (e) The total amount of credits awarded for a year in
25 connection with all qualified developments financed through tax
26 exempt bonds may not exceed the sum of:

27 (1) 50 percent of the state housing credit ceiling for

1 this state;

2 (2) any unallocated credits for the preceding year;

3 and

4 (3) any credit recaptured or otherwise returned to the
5 department in the year.

6 (f) The total amount of credits awarded for a year in
7 connection with all qualified developments not financed through tax
8 exempt bonds may not exceed the sum of:

9 (1) 50 percent of the state housing credit ceiling for
10 this state;

11 (2) any unallocated credits for the preceding year;

12 and

13 (3) any credit recaptured or otherwise returned to the
14 department in the year.

15 Sec. 171.555. APPORTIONMENT OF CREDIT. The direct or
16 indirect owners of a qualified development who intend to claim a
17 credit under this subchapter or Chapter 233, Insurance Code, may by
18 agreement determine the portion of the total amount of credits
19 awarded under Section 171.554 that each owner is entitled to claim.
20 If the owners do not agree, the department shall determine the
21 portion each owner is entitled to claim based on each owner's
22 ownership interest in the qualified development.

23 Sec. 171.556. LENGTH OF CREDIT; LIMITATION. (a) A taxable
24 entity entitled to a credit under this subchapter shall claim the
25 credit in equal installments during each year of the credit period.

26 (b) The total credit claimed under this subchapter for a
27 report, including any carry forward or backward under Section

1 171.557, may not exceed the amount of franchise tax due for the
2 report after any other applicable credit.

3 Sec. 171.557. CARRY FORWARD OR BACKWARD. (a) If a taxable
4 entity is eligible for a credit that exceeds the limitations under
5 Section 171.556, the taxable entity may carry the unused credit
6 back for not more than three tax years or forward for not more than
7 10 consecutive reports following the tax year in which the
8 allocation was made. A credit carryforward from a previous report
9 is considered to be used before the current year installment.

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

11 Sec. 171.558. RECAPTURE. (a) The comptroller shall
12 recapture the amount of a credit claimed on a report filed under
13 this chapter from a taxable entity if, on the last day of a tax year,
14 the amount of the qualified basis of the qualified development is
15 less than the amount of the qualified basis as of the last day of the
16 prior tax year. The comptroller shall determine the amount
17 required to be recaptured using the formula provided by Section
18 42(j), Internal Revenue Code, as that section existed on January 1,
19 2021.

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

24 Sec. 171.559. ALLOCATION OF CREDIT. (a) If a taxable
25 entity receiving a credit under this subchapter is a partnership,
26 limited liability company, S corporation, or similar pass-through
27 entity, the taxable entity may allocate the credit to its partners,

1 shareholders, members, or other constituent taxable entities in any
2 manner agreed by those entities.

3 (b) A taxable entity that makes an allocation under this
4 section shall certify to the comptroller the amount of credit
5 allocated to each constituent taxable entity or shall notify the
6 comptroller that it has delegated the duty of certification to one
7 constituent taxable entity that shall provide the notification to
8 the comptroller. Each constituent taxable entity is entitled to
9 claim the allocated amount subject to any restrictions prescribed
10 by this subchapter.

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

13 Sec. 171.560. FILING REQUIREMENTS AFTER ALLOCATION. A
14 taxable entity that allocates a portion of the credit under Section
15 171.559, and each taxable entity to which a portion was allocated,
16 shall file with the taxable entity's report a copy of the allocation
17 certificate on which the credit is based.

18 Sec. 171.561. RULES; PROCEDURES. The department and
19 comptroller, in consultation with each other, shall adopt rules and
20 procedures to implement, administer, and enforce this subchapter.

21 Sec. 171.562. COMPLIANCE MONITORING. (a) The department,
22 in consultation with the comptroller, shall monitor compliance with
23 this subchapter in the same manner as the department monitors
24 compliance with the federal tax credit program.

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

27 Sec. 171.563. REPORT TO LEGISLATURE. (a) Not later than

1 December 31 of each year, the department shall deliver a written
2 report to the legislature. The report must:

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

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

8 (A) location;

9 (B) household type;

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

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

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

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

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

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

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

27 CHAPTER 233. CREDIT AGAINST CERTAIN TAXES FOR CERTAIN 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 171.551, 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 limitations provided by this chapter if the entity owns a direct or indirect interest in a qualified development.

Sec. 233.0052. LENGTH OF CREDIT; LIMITATIONS. (a) The entity shall claim the credit in the manner provided by Section 171.556(a), Tax Code.

(b) The total credit claimed under this chapter for a report, including any carry forward or backward described by Subsection (c), may not exceed the amount of the entity's state insurance tax liability due for the report after any other applicable credit.

(c) The entity may carry a surplus credit forward or backward as provided by Section 171.557, 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

1 application a copy of the allocation certificate issued in
2 connection with the qualified development and any other information
3 required by Subchapter K, Chapter 171, Tax Code.

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

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

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

16 SECTION 3. (a) The Texas Department of Housing and
17 Community Affairs may begin issuing allocation certificates under
18 Section 171.553, Tax Code, as added by this Act, in an open cycle
19 beginning on January 1, 2022.

20 (b) Subchapter K, Chapter 171, Tax Code, as added by this
21 Act, and Chapter 233, Insurance Code, as added by this Act, apply
22 only to a tax report originally due on or after January 1, 2023.

23 (c) An entity may not carry back a credit under Section
24 171.557, Tax Code, as added by this Act, to a tax year the report for
25 which is originally due before January 1, 2023.

26 SECTION 4. This Act takes effect January 1, 2022.