

By: Goldman

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



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.