

1 AN ACT

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

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

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

7 SUBCHAPTER K. TAX CREDIT FOR CERTAIN HOUSING DEVELOPMENTS

8 Sec. 171.551. DEFINITIONS. In this subchapter:

9 (1) "Allocation certificate" means a statement issued
10 by the department certifying that a qualified development qualifies
11 for credits under this subchapter and Chapter 233, Insurance Code,
12 specifying the total amount of the credits awarded in connection
13 with the qualified development for the credit period, and
14 specifying the amount of credit that may be claimed each year for
15 each building that is part of the qualified development.

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

18 (3) "Credit period" means, with respect to a building
19 that is part of a qualified development, the period of 10 tax years
20 beginning with the tax year in which the building is placed in
21 service.

22 (4) "Department" means the Texas Department of Housing
23 and Community Affairs.

24 (5) "Development" has the meaning assigned by Section

1 2306.6702, Government Code.

2 (6) "Federal tax credit" means the federal low-income
3 housing credit created by Section 42, Internal Revenue Code.

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

7 (8) "Qualified development" means a development in
8 this state:

9 (A) for which the department awards or allocates
10 a federal tax credit through the issuance of a carryover allocation
11 agreement or determination notice;

12 (B) that has not had an allocation of federal tax
13 credits terminated by or at the direction of the department;

14 (C) that is the subject of a recorded restrictive
15 covenant requiring the development to be maintained and operated as
16 a qualified development that has not been terminated and is not
17 subject to termination through any process other than the natural
18 expiration of the covenant's extended use period;

19 (D) that meets all applicable requirements of the
20 qualified allocation plan, as defined by Section 2306.6702,
21 Government Code; and

22 (E) for the duration of the extended use period
23 established in the land use restriction agreement, as defined by
24 Section 2306.6702(a)(9), Government Code, is in compliance with:

25 (i) all accessibility and adaptability
26 requirements for a federal tax credit; and

27 (ii) Title VIII of the Civil Rights Act of

1 1968 (42 U.S.C. Section 3601 et seq.).

2 (9) "State housing credit ceiling" means \$25 million
3 of credits each award year.

4 Sec. 171.552. ENTITLEMENT TO CREDIT. A taxable entity is
5 entitled to a credit against the taxes imposed under this chapter in
6 the amount and under the limitations provided by this subchapter if
7 the taxable entity owns a direct or indirect interest in a qualified
8 development.

9 Sec. 171.553. APPLICATION FOR AND ISSUANCE OF ALLOCATION
10 CERTIFICATE. (a) A taxable entity or an entity subject to state
11 premium tax liability as defined by Section 233.0001, Insurance
12 Code, must apply to the department for an allocation certificate in
13 connection with a development in which the taxable entity or other
14 entity owns an interest. The application must be submitted to the
15 department along with the application for an allocation of federal
16 tax credits in a manner prescribed by the department.

17 (b) The department shall issue an allocation certificate
18 if:

19 (1) the department approves the application submitted
20 under Subsection (a);

21 (2) the development meets the requirements to be a
22 qualified development; and

23 (3) the department awards an amount of credit to the
24 development under Section 171.554.

25 Sec. 171.554. AMOUNT OF CREDITS; METHOD OF AWARD. (a) The
26 department shall in the manner provided by this section determine
27 the total amount of credits under this subchapter and Chapter 233,

1 Insurance Code, awarded for the credit period in connection with a
2 qualified development and indicate the amount of credits awarded on
3 the allocation certificate.

4 (b) The amount of credits awarded in connection with a
5 qualified development over the credit period must be the minimum
6 amount necessary for the financial feasibility of the qualified
7 development, subject to the limitations of this section.

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

12 (d) The manner in which the department awards the amount of
13 credits must be consistent with criteria established by the
14 department.

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

18 (1) 50 percent of the state housing credit ceiling for
19 the year;

20 (2) any portion of the state housing credit ceiling
21 for the preceding year that could have been awarded for qualified
22 developments financed through tax exempt bonds but was not awarded;
23 and

24 (3) any credits recaptured or otherwise returned to
25 the department in the year that were originally awarded in
26 connection with a qualified development financed through tax exempt
27 bonds.

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

4 (1) 50 percent of the state housing credit ceiling for
5 the year;

6 (2) any portion of the state housing credit ceiling
7 for the preceding year that could have been awarded for qualified
8 developments not financed through tax exempt bonds but was not
9 awarded; and

10 (3) any credits recaptured or otherwise returned to
11 the department in the year that were originally awarded in
12 connection with a qualified development not financed through tax
13 exempt bonds.

14 (g) The department shall, in the qualified allocation plan,
15 determine the priorities and criteria for awarding credits during
16 years in which the amount of credits applied for exceeds the maximum
17 amount that may be awarded under this section.

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

26 Sec. 171.556. LENGTH OF CREDIT; LIMITATION. (a) A taxable
27 entity entitled to a credit under this subchapter shall claim the

1 credit in equal installments during each year of the credit period.

2 (b) The total credit claimed under this subchapter for a
3 report, including any carry forward or backward under Section
4 171.557, may not exceed the amount of tax due for the report after
5 any other applicable credit.

6 Sec. 171.557. CARRY FORWARD OR BACKWARD. (a) If a taxable
7 entity is eligible for a credit that exceeds the limitations under
8 Section 171.556, the taxable entity may carry the unused credit
9 back for not more than three tax years or forward for not more than
10 10 consecutive reports following the tax year in which the
11 allocation certificate was issued. A credit carryforward from a
12 previous report is considered to be used before the current year
13 installment. A credit carried back to a previous report is
14 considered to be used after any other franchise tax credit is
15 applied to that report.

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

17 (c) The allocation of a credit in accordance with Section
18 171.559 does not extend the period for which a credit may be carried
19 forward and does not increase the total amount of the credit that
20 may be claimed.

21 (d) An entity may not carry back a credit under this
22 subchapter to a tax year for which the report was originally due
23 before January 1, 2026.

24 Sec. 171.558. RECAPTURE. (a) If a qualified development is
25 subject to the recapture of a portion of the federal tax credit
26 awarded or allocated to the development, then each taxable entity
27 or entity subject to state premium tax liability as defined by

1 Section 233.0001, Insurance Code, that has claimed or is entitled
2 to claim a portion of the credit under this subchapter is also
3 subject to the recapture of a portion of the credit under this
4 subchapter.

5 (b) The amount of credit under this subchapter that is
6 subject to recapture under this section is the same percentage of
7 the amount originally awarded or allocated as the percentage of the
8 amount of the federal tax credit originally awarded or allocated
9 that is subject to recapture under federal law. The recapture of a
10 credit under this section is not subject to a statute of limitations
11 provided by Chapter 111.

12 (c) The owners of a qualified development that is awarded or
13 allocated a credit under this subchapter or a representative of
14 those owners shall identify each taxable entity and each entity
15 subject to state premium tax liability as defined by Section
16 233.0001, Insurance Code, that is subject to recapture of the
17 credit under this section.

18 (d) Not later than the 30th day after the date any owner of a
19 qualified development receives notice that a federal tax credit
20 awarded or allocated to the development is subject to recapture,
21 the owners of the development or a representative of those owners
22 shall report to the comptroller:

23 (1) the amount of federal tax credit originally
24 awarded or allocated to the development;

25 (2) the amount of federal tax credit that is subject to
26 recapture and the percentage of the amount originally awarded or
27 allocated which that amount represents; and

1 (3) each entity identified under Subsection (c).

2 Sec. 171.559. ALLOCATION OF CREDIT. (a) If a taxable
3 entity receiving a credit under this subchapter is a partnership,
4 limited liability company, S corporation, or similar pass-through
5 entity, the taxable entity may allocate the credit to its partners,
6 shareholders, members, or other constituent taxable entities in any
7 manner agreed to by those entities, regardless of the size of the
8 person's ownership interest. This section does not prohibit a
9 partner, member, or shareholder from holding an investment
10 consisting only of a credit awarded under this subchapter or a
11 federal tax credit.

12 (b) A taxable entity that makes an allocation under this
13 section shall certify to the comptroller the amount of credit
14 allocated to each constituent taxable entity or shall notify the
15 comptroller that it has delegated the duty of certification to one
16 constituent taxable entity that shall provide the notification to
17 the comptroller. Each constituent taxable entity is entitled to
18 claim the allocated amount subject to any restrictions prescribed
19 by this subchapter.

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

22 Sec. 171.560. FILING REQUIREMENTS AFTER ALLOCATION. A
23 taxable entity that allocates a portion of the credit under Section
24 171.559, and each taxable entity to which a portion was allocated,
25 shall file with the taxable entity's report a copy of the
26 certification or notice required by Section 171.559(b).

27 Sec. 171.561. APPLICATION FOR CREDIT. (a) A taxable entity

1 must apply for a credit under this subchapter on or with the tax
2 report for which the credit is claimed and submit with the
3 application a copy of the allocation certificate issued in
4 connection with the qualified development and any other information
5 required by the comptroller.

6 (b) The comptroller shall adopt a form for the application
7 for the credit. A taxable entity must use the form to apply for the
8 credit.

9 Sec. 171.562. RULES; PROCEDURES. The department and
10 comptroller, in consultation with each other, shall adopt rules and
11 procedures to implement, administer, and enforce this subchapter.

12 Sec. 171.563. COMPLIANCE MONITORING. (a) The department
13 shall monitor compliance with this subchapter in the same manner as
14 the department monitors compliance with the federal tax credit
15 program.

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

18 Sec. 171.564. INCLUSION OF INFORMATION IN LOW INCOME
19 HOUSING PLAN. The department shall include in the low income
20 housing plan under Section 2306.0721, Government Code, information
21 relating to the performance of the credit during the previous
22 calendar year. The information must:

23 (1) specify the number of qualified developments for
24 which allocation certificates were issued during the year and the
25 total number of units supported by the developments;

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

- 1 (A) location;
- 2 (B) household type;
- 3 (C) available demographic information for the
4 residents intended to be served by the development;
- 5 (D) the income levels intended to be served by
6 the development; and
- 7 (E) the rents or set-asides authorized for the
8 development;
- 9 (3) include housing market and demographic
10 information to demonstrate how the qualified developments,
11 supported by the tax credits under this subchapter and Chapter 233,
12 Insurance Code, are addressing the need for affordable housing in
13 their communities; and
- 14 (4) analyze any remaining disparities in the
15 affordability of housing within those communities.

16 Sec. 171.565. EXPIRATION OF AUTHORITY TO ALLOCATE CREDITS.

17 (a) After December 31, 2029, the department may not:

- 18 (1) reserve an amount of credit under this subchapter
19 for a qualified development for the purpose of issuing an
20 allocation certificate for the development at a later date; or
- 21 (2) issue an allocation certificate for a qualified
22 development unless, on or before December 31, 2029, the department
23 reserved an amount of credit under this subchapter for the
24 development for the purpose of issuing an allocation certificate at
25 a later date if the requirements for issuance of the certificate are
26 met.

27 (b) On or after January 1, 2030:

1 (1) the department may issue an allocation certificate
2 for which an amount of credit was reserved under Subsection (a)(2);
3 and

4 (2) an entity may claim a credit on a tax report as
5 provided by this subchapter or Chapter 233, Insurance Code, in
6 connection with a qualified development for which the department
7 issued an allocation certificate or reserved an amount of credit
8 before January 1, 2030.

9 Sec. 171.566. PRIORITY ALLOCATION FOR CERTAIN QUALIFIED
10 DEVELOPMENTS. (a) This section applies only to a qualified
11 development:

12 (1) that received an allocation of federal tax credits
13 under the qualified allocation plan issued by the department for
14 2021 or 2022;

15 (2) the owners or developers of which have owned the
16 land necessary for the development since at least December 31,
17 2022;

18 (3) that is not financed through tax exempt bonds; and

19 (4) that the department determines requires an
20 allocation of credit under this subchapter to secure the financial
21 feasibility of the qualified development after considering any
22 federal tax credit.

23 (b) Notwithstanding Sections 171.554(e) and (f) and subject
24 to Subsection (e) of this section, for the first year the department
25 issues allocation certificates or reserves credit amounts for the
26 purpose of issuing allocation certificates, the department shall
27 use \$5 million of the state housing credit ceiling to award credits

1 to qualified developments to which this section applies.

2 (c) The owners of a qualified development to which this
3 section applies who intend to apply for an allocation of credit
4 under this section, or a representative of those owners, must
5 notify the department of that intent before the deadline for the
6 qualified development to be placed in service. If the owners or
7 their representative provide the notice required by this
8 subsection, the deadline for the qualified development to be placed
9 in service is extended until:

10 (1) the deadline set by the department for submitting
11 an application for an allocation under this section; or

12 (2) if an application for an allocation under this
13 section is submitted before the deadline set by the department, the
14 date the department issues a decision on the application.

15 (d) An applicant for an allocation of credit under this
16 section must submit to the department:

17 (1) documents proving that the owners or developers of
18 the qualified development meet the land ownership requirement under
19 Subsection (a)(2);

20 (2) a financial analysis demonstrating that the
21 allocation is necessary to secure the financial feasibility of the
22 development as required by Subsection (a)(4); and

23 (3) any other documentation required by the department
24 to demonstrate that the qualified development meets the
25 requirements provided by Subsection (a).

26 (e) If the amount of state credits reserved under this
27 section is not fully allocated to qualified developments to which

1 this section applies, the department shall allocate the remaining
2 portion to qualified developments to which this section does not
3 apply.

4 (f) The department shall, in the qualified allocation plan,
5 determine the priorities and criteria for awarding credits under
6 this section if the amount of credits applied for exceeds the
7 maximum amount that may be awarded under this section.

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

10 CHAPTER 233. CREDIT AGAINST CERTAIN TAXES FOR CERTAIN HOUSING
11 DEVELOPMENTS

12 SUBCHAPTER A. GENERAL PROVISIONS

13 Sec. 233.0001. DEFINITIONS. In this chapter:

14 (1) "Allocation certificate," "credit," and
15 "qualified development" have the meanings assigned by Section
16 171.551, Tax Code.

17 (2) "State premium tax liability" means any tax
18 liability incurred by an entity under Chapter 221, 222, 223, or 224.

19 SUBCHAPTER B. CREDIT

20 Sec. 233.0051. CREDIT. (a) An entity is eligible for a
21 credit against the entity's state premium tax liability in the
22 amount and under the limitations provided by this chapter if the
23 entity owns a direct or indirect interest in a qualified
24 development.

25 (b) An entity that claims a credit under this chapter is not
26 required to pay any additional retaliatory tax under Chapter 281 as
27 a result of claiming the credit.

1 Sec. 233.0052. LENGTH OF CREDIT; LIMITATIONS. (a) The
2 entity shall claim the credit in the manner provided by Section
3 171.556, Tax Code.

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

9 (c) The entity may carry a surplus credit forward or
10 backward as provided by Section 171.557, Tax Code.

11 Sec. 233.0053. APPLICATION FOR CREDIT. (a) An entity must
12 apply for a credit under this chapter on or with the tax report for
13 the tax year for which the credit is claimed and submit with the
14 application a copy of the allocation certificate issued in
15 connection with the qualified development and any other information
16 required by Subchapter K, Chapter 171, Tax Code.

17 (b) The comptroller shall adopt a form for the application
18 for the credit. An entity must use this form in applying for the
19 credit.

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

24 Sec. 233.0055. APPLICABLE PROVISIONS. The provisions of
25 Subchapter K, Chapter 171, Tax Code, relating to recapture,
26 allocation of credit, apportionment of credit, length of credit,
27 filing requirements after allocation, and compliance monitoring

1 apply to the credit authorized by this chapter.

2 SUBCHAPTER C. EXPIRATION OF AUTHORITY TO ALLOCATE CREDITS

3 Sec. 233.0101. EXPIRATION OF ALLOCATION AUTHORITY; USE OF
4 ALLOCATED CREDITS. (a) The authority of the Texas Department of
5 Housing and Community Affairs to reserve credit amounts and issue
6 allocation certificates for purposes of Subchapter K, Chapter 171,
7 Tax Code, and this chapter expires as provided by Section
8 171.565(a), Tax Code.

9 (b) An entity may claim a credit under this chapter on a tax
10 report as provided by Section 171.565(b), Tax Code.

11 SECTION 3. (a) The Texas Department of Housing and
12 Community Affairs may begin reserving credit amounts for the
13 purpose of issuing allocation certificates under Subchapter K,
14 Chapter 171, Tax Code, as added by this Act, in an open cycle
15 beginning on January 1, 2024.

16 (b) Except as provided by Subsection (c) of this section,
17 Subchapter K, Chapter 171, Tax Code, as added by this Act, and
18 Chapter 233, Insurance Code, as added by this Act, apply only to a
19 tax report originally due on or after January 1, 2026, and before
20 January 1, 2036.

21 (c) The expiration of the authority to allocate credits
22 under Subchapter K, Chapter 171, Tax Code, as added by this Act, in
23 accordance with Section 171.565, Tax Code, as added by this Act,
24 does not affect the carryforward of a credit under:

25 (1) Section 171.557, Tax Code, as added by this Act; or

26 (2) Section 233.0052(c), Insurance Code, as added by

27 this Act.

1 SECTION 4. This Act takes effect January 1, 2024.

President of the Senate

Speaker of the House

I certify that H.B. No. 1058 was passed by the House on April 4, 2023, by the following vote: Yeas 121, Nays 25, 1 present, not voting; that the House concurred in Senate amendments to H.B. No. 1058 on May 25, 2023, by the following vote: Yeas 122, Nays 15, 3 present, not voting; and that the House adopted H.C.R. No. 123 authorizing certain corrections in H.B. No. 1058 on May 25, 2023, by the following vote: Yeas 133, Nays 7, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1058 was passed by the Senate, with amendments, on May 22, 2023, by the following vote: Yeas 25, Nays 6; and that the Senate adopted H.C.R. No. 123 authorizing certain corrections in H.B. No. 1058 on May 27, 2023, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor