

BILL ANALYSIS

H.B. 3907
By: Goldman
Ways & Means
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Concerns have been raised regarding the tax incentives available to foster the development of affordable rental housing projects, which often do not generate sufficient profit to warrant an investment without these incentives. H.B. 3907 seeks to create increased interest and investment in affordable housing projects across Texas by providing for a franchise and insurance tax credit for certain low-income housing developments.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Department of Housing and Community Affairs and the comptroller of public accounts in SECTIONS 1 and 2 of this bill.

ANALYSIS

H.B. 3907 amends the Tax Code to entitle a taxable entity to a credit against the franchise tax if the entity owns a direct or indirect interest in a development in Texas that the Texas Department of Housing and Community Affairs (TDHCA) determines is eligible for a federal tax credit and that meets the following conditions:

- is the subject of a recorded restrictive covenant requiring the development to be maintained and operated as a qualified development; and
- is in compliance with all accessibility and adaptability requirements for a federal tax credit and the federal Civil Rights Act of 1968 for the lesser of 15 years after the beginning of the credit period or the period required by the TDHCA.

H.B. 3907 authorizes a taxable entity or an entity subject to state insurance tax liability to apply to the TDHCA, in a year during a credit period, for an allocation certificate in connection with a development in which the respective entity owns an interest. The bill requires the TDHCA to issue an allocation certificate if the development is a qualified development and requires the TDHCA to determine the total amount of credits awarded for the credit period in connection with a qualified development and to indicate the amount of credits awarded on the allocation certificate. The bill provides for the manner in which the amount of credits awarded is determined and for the cap on the amount of credits that may be awarded yearly. The bill authorizes the TDHCA to begin issuing allocation certificates in an open cycle beginning on January 1, 2022.

H.B. 3907 authorizes the direct or indirect owners of a qualified development who intend to claim a credit to determine, by agreement, the portion of the total amount of credits awarded

that each owner is entitled to claim. The bill requires the TDHCA, if the owners do not agree, to determine the portions based on each owner's ownership interest in the qualified development. The bill establishes the length of the credit and limits the total credit that may be claimed to the amount of franchise tax due for the report after any other applicable credit. The bill sets out provisions relating to the following:

- the carry forward or backward of unused credit;
- the recapture by the comptroller of public accounts of the amount of a credit claimed; and
- the allocation of the credit to certain entities and related filing requirements.

H.B. 3907 prohibits an unused credit from being refunded and requires the TDHCA and the comptroller, in consultation with each other, to adopt rules and procedures to implement, administer, and enforce the bill's provisions relating to the tax credit. The bill provides for the following:

- compliance monitoring by the TDHCA and the comptroller;
- an annual report to the legislature by the TDHCA regarding the issuance of allocation certificates during the year; and
- the public availability of the report.

H.B. 3907 amends the Insurance Code to make an entity eligible for a credit against the entity's state insurance tax liability if the entity owns a direct or indirect interest in such a qualified development. The bill requires the entity to claim the credit in the manner provided by the bill's Tax Code provisions and authorizes the entity to carry a surplus credit forward or backward. The bill caps the total credit claimed for a tax report, including any carry forward or backward, at the amount of the entity's state insurance tax liability due for the report after any other applicable credit. The bill requires the entity to apply for a credit on or with the tax report for the tax year for which the credit is claimed and to submit with the application a copy of the allocation certificate issued in connection with the qualified development and any other required information.

H.B. 3907 requires the comptroller to adopt a form for the application for the credit and requires an entity to use this form in applying for the credit. The bill requires the comptroller and the TDHCA, in consultation with each other, to adopt rules and procedures to implement, administer, and enforce the bill's provisions relating to the housing development credit against state insurance tax liability. The bill subjects its state insurance tax liability credit to its Tax Code provisions relating to recapture, allocation of credit, filing requirements after allocation, and compliance monitoring.

H.B. 3907 applies only to a tax report originally due on or after January 1, 2023.

EFFECTIVE DATE

January 1, 2022.