SUBJECT: Creating a tax credit for certain low-income housing developments

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 8 ayes — Burrows, Guillen, Cole, Martinez Fischer, Murphy, Noble, Sanford, Wray

1 nay — Bohac

2 absent — E. Rodriguez, Shaheen

WITNESSES: For — Alex Johnson, InState Partners; (*Registered, but did not testify*: Melissa Shannon, Bexar County Commissioners Court; Todd Kercheval, Texas Affiliation of Affordable Housing Providers; Scott Norman, Texas Association of Builders; Lee Johnson, Texas Council of Community Centers; Nate Walker, Texas Housers; Daniel Gonzalez and Julia Parenteau, Texas Realtors; Glenn Deshields, Texas State Association of Fire Fighters; Noel Johnson, TMPA)

Against — None

DIGEST: HB 1937 would entitle entities owning an interest in certain developments qualifying for a federal low-income housing credit to claim a nonrefundable credit against franchise tax and state insurance premium and retaliatory taxes. The credit would be available for any tax year within the 10-year period following the date on which the entirety of a qualified development was placed in service.

Credit. In any year for which a credit was available, a taxable entity or an entity subject to the above state insurance taxes that owned an interest in a qualified development would be entitled to apply for and receive an allocation certificate from the Texas Department of Housing and Community Affairs (TDHCA). A qualified development would be any development that was determined by TDHCA to be eligible for the federal low income housing credit and was:

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

The allocation certificate would specify the total amount of the credits awarded in connection with the qualified development. In determining the total amount of credits to be awarded, TDHCA would have to provide only the minimum amount necessary for the financial feasibility of the qualified development after considering any federal tax credit. This amount could not exceed the total federal tax credit awarded to the qualified development's owner or owners over the 10-year period in which the credit could be awarded.

The total amount of credits awarded in connection with all qualified developments in any year would be limited to the sum of $35 million, any unallocated credits for the preceding year, and any credit recaptured or returned to TDHCA in the year.

Allocation. The owners of a qualified development who intended to claim a credit could agree to the portion of the total amount of credits that each owner would be allowed to claim. Absent such an agreement, TDHCA would be required to determine the portion that each owner was entitled to claim based on the owner's interest in the qualified development.

Assignment. If an entity receiving a credit was a pass-through entity, the entity could assign the credit to its owners in any manner agreed to by its owners. The entity would be required to certify to the comptroller the amount of the credit assigned to each owner or notify the comptroller that it had delegated this requirement to an owner.

An entity that had assigned a portion of the credit would have to file a copy of the entity's allocation certificate with that year's tax report.

Each owner entity assigned a credit would be entitled to claim the credit subject to the restrictions in this bill. Such an assignment would not constitute a transfer under state law.

Limitations, carrybacks, and carryforwards. An entity would be required to claim the credit in equal installments during each year for which the credit was available, and the total credit claimed in any year could not exceed the amount of the applicable tax due for the year. An entity could carry any excess credit in a year back for up to three years or forward for up to 10 years.

Recapture. The comptroller would be required to recapture the amount of credit claimed by an entity if the amount of the qualified basis of the qualified development on the last day of a tax year, as calculated under the Internal Revenue Code, was less than the amount of the qualified basis on the last day of the prior year. The entity would have to report the portion of credit required to be recaptured, the identity of any entity subject to recapture, and the amount of any credit previously allocated to the entity.

Report. TDHCA would be required to submit a written report to the Legislature by December 31 of each year that:

- specified the number of qualified developments for which allocation certificates were issued during the year and the total number of units supported by those developments;
- described each such development's location and household type, the residents and income levels intended to be served by the development, and rents or set-asides authorized for the development;
- included housing market and demographic information demonstrating how these developments were addressing the needs for affordable housing in their communities; and
- analyzed any remaining disparities in the affordability of housing within those communities.

This report would be made available to the public.

Compliance monitoring. TDHCA would be required to consult with the comptroller in monitoring compliance with the provisions of this bill in the same manner as TDHCA monitored compliance with the federal tax credit program.

The bill would take effect January 1, 2020, and TDHCA could begin issuing allocation certificates on this date. The bill would apply only to a tax report originally due on or after January 1, 2021.

NOTES:

According to the Legislative Budget Board, the bill would have no impact on general revenue related funds through fiscal 2020-21. However, the bill would have a direct impact of a revenue loss to the Property Tax Relief Fund of $10.5 million for the fiscal 2022-23 biennium, eventually growing to $70 million per biennium. Any loss to the Property Tax Relief Fund would have to be made up with an equal amount of general revenue to fund the Foundation School Program.