SUBJECT: Authorizing tax credits for qualified low-income housing developments

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 11 ayes — Meyer, Thierry, Button, Cole, Guerra, Martinez Fischer, Murphy, Noble, Rodriguez, Sanford, Shine

0 nays

WITNESSES: For — Alex Johnson, InState Partners; (*Registered, but did not testify*: Michael Lozano, Permian Basin Petroleum Association; David Mintz, Texas Apartment Association; J.D. Hale, Texas Association of Builders; Julia Parenteau, Texas Realtors; Leticia Van de Putte, The Texas Affiliation of Affordable Housing Providers)

Against — None

On — (*Registered, but did not testify*: Tom Currah, Comptroller of Public Accounts; Colin Nickells, Texas Department of Housing and Community Affairs)

DIGEST: HB 3907 would authorize franchise and insurance tax credits for taxable entities that owned an interest in qualified low-income housing developments.

A qualified development would be a low-income housing project in the state that the Texas Department of Housing and Community Affairs (TDHCA) determined was eligible for a federal tax credit and that:

- was the subject of a recorded restrictive covenant requiring the development to be maintained and operated as a qualified development; and
- for 15 years after the beginning of the credit period or for a period required by TDHCA, was in compliance with all accessibility and adaptability requirements for a federal tax credit and Title 8 of the Civil Rights Act of 1968.

Franchise tax credit. HB 3907 would entitle a taxable entity to a low-income housing credit against the franchise tax if the entity owned a direct or indirect interest in a qualified development.

In a year during a credit period, an entity could apply for an allocation certificate (a statement certifying that a development qualified for a credit) in connection with a development in which the entity owned an interest. TDHCA would have to issue a certificate if the development was qualified then determine the total amount of credits awarded and indicate the amount on the allocation certificate.

The amount of credits awarded would have to be the minimum amount necessary for the financial feasibility of the qualified development after considering any federal tax credit. The amount could not exceed the total federal tax credit awarded to an owner over the 10-year federal credit period.

The bill would require TDHCA to award the credits in a manner consistent with the criteria it established.

The total amount of credits awarded in a year in connection with all qualified developments financed through tax exempt bonds could not exceed the sum of:

- 50 percent of the state housing credit ceiling;
- any unallocated credits for the preceding year; and
- any credit recaptured or otherwise returned to TDHCA.

The same limitation would apply to the total amount of credits awarded in a year in connection with all qualified developments not financed through tax exempt bonds.

The owners of a qualified development who intended to claim a credit could by agreement determine the portion that each owner was entitled to claim. If the owners did not agree, TDHCA would have to determine the portions based on each owner's ownership interest in the development.

Insurance tax credit. HB 3907 would make an entity eligible for a low-income housing credit against their state insurance tax liability if the entity owned a direct or indirect interest in a qualified development.

An entity would have to apply for the credit on or with their tax report and submit with the application a copy of the allocation certificate issued in connection with the qualified development. The entity would have to use a form adopted by the comptroller to apply for the credit.

The provisions below would apply to the insurance tax credit as well as the franchise tax credit.

Length of credit. The bill would require a taxable entity entitled to a credit to claim it in equal installments each year during the credit period.

The total credit claimed for a report, including any carry forward or backward, could not exceed the amount of franchise tax or insurance tax, whichever was applicable, due for the report after any applicable credits.

Carry forward or backward. If a taxable entity was eligible for a credit that exceeded the limitations under the bill, the taxable entity could carry the unused credit back for up to three tax years or forward for up to 10 consecutive reports. A credit carryforward from a previous report would be considered used before the current year installment.

A credit that was not used could not be refunded.

Recapture. The bill would require the comptroller to recapture the amount of a credit claimed on a report if, on the last day of a tax year, the amount of the qualified basis of the qualified development was less than the amount of the qualified basis as of the last day of the prior tax year.

The comptroller would have to determine the amount required to be recaptured using a formula provided by the Internal Revenue Code as of January 1, 2021.

A report would have to include any portion of credit required to be recaptured, the identity of the taxable entity subject to recapture, and the amount of any credit previously allocated to that entity.

Allocation. If a taxable entity receiving a credit was a partnership, limited liability company, S corporation, or similar pass-through entity, the entity could allocate the credit to its partners, shareholders, members, or other constituent taxable entities in any manner agreed by those entities.

The bill would require a taxable entity that made such an allocation to certify to the comptroller the amount of credit allocated to each constituent taxable entity or notify the comptroller that it had delegated the duty of certification to a constituent taxable entity. Each constituent taxable entity would be entitled to claim the allocated amount, subject to restrictions.

An allocation would not be a transfer for purposes of state law.

A taxable entity that allocated a portion of the credit, and each entity that was allocated a portion, would have to file with the taxable entity's report a copy of the allocation certificate.

Rules, compliance. TDHCA and the comptroller, in consultation with each other, would have to adopt rules and procedures to implement, administer, and enforce the provisions of this bill.

TDHCA and the comptroller would have to monitor compliance with the provisions of this bill in the same manner as the department monitors compliance with the federal tax credit program.

Report. By December 31 of each year, TDHCA would have to deliver a report to the Legislature that:

- specified the number of qualified developments for which allocation certificates were issued and the total number of units supported by the developments;

- described each qualified development for which an allocation certificate was issued, including the location, household type, demographic information of residents, income levels served, and the authorized rents or set-asides for the development;
- included housing market and demographic information to demonstrate how the qualified developments were addressing the need for affordable housing in their communities; and
- analyzed any remaining disparities in the affordability of housing within those communities.

TDHCA would have to make the report available to the public.

Dates. TDHCA could begin issuing allocation certificates in an open cycle beginning on January 1, 2022.

An entity could not carry back a credit to a tax year the report for which was originally due before January 1, 2023.

The bill would take effect January 1, 2022, and apply only to a tax report originally due on or after that date.

SUPPORTERS SAY:

HB 3907 would incentivize investment in affordable housing projects across the state to address increasing housing costs. Texas has one of the highest median rental rates in the country, making it hard for residents, especially those most vulnerable, to find attainable housing. As the state grows, so does the cost of living, further impacting low-income residents. The COVID-19 pandemic also has exacerbated the issue for this socioeconomic group.

The bill would address this problem by allowing franchise or insurance tax credits to be allocated for housing developments approved by the Texas Department of Housing and Community Affairs (TDHCA). These credits would increase private sector interest and investment in affordable housing, providing a free market solution with appropriate state and federal oversight.

HB 3907 would supplement the federal low-income housing tax credit program by creating state franchise and insurance tax credits for qualified developers. The requirements under the bill would align with requirements for the federal tax credit. Other states that have implemented similar programs to award state tax credits have successfully drawn down additional federal dollars and incentivized new construction, acquisition, and rehabilitation for affordable housing projects.

CRITICS SAY:

HB 3907 would give preferential treatment to certain low-income housing developers by allowing them to qualify for franchise and insurance tax credits. By creating these special exemptions, the bill unfairly would raise the burden on the rest of the tax base. The Legislature should maintain low taxes on a broad base of taxpayers to ensure that Texans were not overly burdened.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of $9.7 million in general revenue related funds in fiscal 2022-23. The bill also would cost the Property Tax Relief Fund $6.3 million for the biennium, which would have to be made up with an equal amount of general revenue to fund the Foundation School Program. Annual reductions in tax revenue would continue to grow as credit awardees cumulated, and by 2032 the estimated total state revenue reductions would exceed $188 million.