

BILL ANALYSIS

Senate Research Center
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S.B. 1429
By: Williams
Economic Development
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

It is very difficult to establish a new business in low-income areas and therefore create jobs for low-income Texans.

This legislation encourages job creation through economic stimulus in rural and emerging urban markets throughout the state. This legislation creates a tax credit incentive program by combining the existing federal tax credit program with a new state incentive program. By granting a tax credit on the state franchise tax beginning in the third year after the credit was granted, the bill ensures that the new business has already created tax revenue for the state and local taxing entities along with ensuring that the company has matured enough to create jobs to justify the grant of a state franchise tax credit.

As proposed, S.B. 1429 amends Chapter 171, Tax Code, by adding Subchapter J-1 relating to tax credits for business development in low-income communities.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 1 (Section 171.522, Tax Code) and SECTION 2 (Section 231.002, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 171, Tax Code, by adding Subchapter J-1, as follows:

SUBCHAPTER J-1. CREDIT FOR BUSINESS DEVELOPMENT IN LOW-INCOME COMMUNITIES

Sec. 171.521. DEFINITIONS. Defines "credit allowance date," "long-term debt security," "purchase price," "qualified active low-income community business," "qualified community development entity," "qualified equity investment," and "qualified low-income community investment."

Sec. 171.522. TOTAL AMOUNT OF CREDITS THAT MAY BE CLAIMED. (a) Prohibits the total amount of tax credits that may be claimed by a taxable entity under both this subchapter and Chapter 231, Insurance Code, in a state fiscal year, notwithstanding any other provision of this subchapter, from exceeding \$40 million, not including any carryforward amounts authorized by Section 171.526 or by Section 231.006, Insurance Code.

(b) Requires the comptroller of public accounts of the State of Texas (comptroller) by rule to prescribe procedures by which the comptroller is authorized to allocate credits under this subchapter and Chapter 231, Insurance Code.

Sec. 171.523. QUALIFICATION FOR CREDIT. (a) Provides that a taxable entity qualifies for and is entitled to a credit under this subchapter on a report if the taxable entity holds a qualified equity investment on a credit allowance date that occurs during the period on which the report is based.

(b) Authorizes a taxable entity that holds a qualified equity investment to claim a credit under this subchapter for not more than seven consecutive reports beginning with the report based on the period during which the taxable entity first holds the investment on a credit allowance date.

Sec. 171.524. **MAXIMUM INVESTMENT PER QUALIFIED ACTIVE LOW-INCOME COMMUNITY BUSINESS.** Provides that the maximum amount of qualified low-income community investments, with respect to any one qualified active low-income community business, that is authorized to be made in the business, on a collective basis with all of its affiliates, with the proceeds of qualified equity investments that have been certified under this subchapter, is \$10 million whether made by one or several qualified community development entities.

Sec. 171.525. **AMOUNT OF ANNUAL CREDIT.** (a) Provides that the amount of the tax credit a taxable entity is authorized to claim on a report, except as otherwise provided by this subchapter, is equal to zero percent of the purchase price on the applicable credit allowance date for each of the first two years for which the taxable entity is authorized to claim the credit, seven percent of the purchase price on the applicable credit allowance date for the third year for which the taxable entity is authorized to claim the credit, and eight percent of the purchase price on the applicable credit allowance date for the remaining four years for which the taxable entity is authorized to claim the credit.

(b) Prohibits the total credit claimed under this subchapter for a report, including the amount of any carryforward credit under Section 171.526, from exceeding the amount of franchise tax due after any other applicable credits.

Sec. 171.526. **CARRYFORWARD.** (a) Authorizes a taxable entity, notwithstanding the limitation provided by Section 171.522(a), to carry the unused credit forward for not more than five consecutive reports if a taxable entity is eligible for a credit that exceeds the limitation under Section 171.525(b).

(b) Provides that a carryforward is considered the remaining portion of a credit that cannot be claimed in the current year because of the tax limitation under Section 171.525(b). Provides that a carryforward is added to the next year's credit in determining whether the limitation is met for that year. Provides that a credit carryforward from a previous report is considered to be used before the current year credit.

(c) Prohibits a carryforward from being added to any subsequent year's credit for the purpose of determining the limitation in Section 171.522(a).

Sec. 171.527. **CERTIFICATION OF ELIGIBILITY.** (a) Requires the taxable entity, for the initial and each succeeding report in which a credit is claimed under this subchapter, to file with its report, on a form provided by the comptroller, information that sufficiently demonstrates that the taxable entity is eligible for the credit.

(b) Provides that the burden of establishing entitlement to and the value of the credit is on the taxable entity.

Sec. 171.528. **ASSIGNMENT PROHIBITED.** (a) Prohibits a taxable entity from conveying, assigning, or transferring the credit allowed under this subchapter to another entity unless all of the assets of the taxable entity are conveyed, assigned, or transferred in the same transaction.

(b) Authorizes a tax credit earned by a partnership, limited liability company, S corporation, or other "pass-through" entity, notwithstanding Subsection (a), to be allocated to the partners, members, or shareholders of that entity and claimed under this subchapter in accordance with the provisions of any agreement among the partners, members, or shareholders.

Sec. 171.529. APPLICATION AND CERTIFICATION PROCEDURE. (a) Requires a qualified community development entity that seeks to have an equity investment or long-term debt security certified as a qualified equity investment and eligible for tax credits to apply to the comptroller. Requires the qualified community development entity to submit an application on a form provided by the comptroller that includes certain content.

(b) Requires that the application be accompanied by a nonrefundable application fee of \$5,000. Requires that the fee be paid to the comptroller and be required for each application submitted.

(c) Requires the comptroller, within 15 days after receipt of a completed application containing the information necessary for the comptroller to certify a potential qualified equity investment, including the payment of the application fee, to grant or deny the application in full or in part. Requires the comptroller, if the comptroller denies any part of the application, to inform the qualified community development entity of the grounds for the denial. Requires that the application, if the qualified community development entity provides any additional information required by the comptroller or otherwise completes its application within 15 days of the notice of denial, be considered completed as of the original date of submission. Provides that the application remains denied and must be resubmitted in full with a new submission date if the qualified community development entity fails to provide the information or complete its application within the 15-day period.

(d) Requires the comptroller, if the application is considered complete, to certify the proposed equity investment or long-term debt security as a qualified equity investment and eligible for tax credits under this section, subject to the limitations provided by Section 171.522(a). Requires the comptroller to provide written notice of the certification to the qualified community development entity. Requires that the notice include the names of those taxpayers who are eligible to use the credits and their respective credit amounts. Requires the qualified community development entity, if the names of the persons or entities that are eligible to use the credits change due to a transfer of a qualified equity investment or a change in an allocation under Section 171.528(b), to notify the comptroller of the change.

(e) Requires the qualified community development entity, within 30 days after receiving notice of certification, to issue the qualified equity investment and receive cash in the amount of the certified purchase price. Requires the qualified community development to provide the comptroller with evidence of the receipt of the cash investment within 10 business days after receipt. Requires that the certification lapse and the entity is prohibited from issuing the qualified equity investment without reapplying to the comptroller for certification, if the qualified community development entity does not receive the cash investment and issue the qualified equity investment within 30 days following receipt of the certification notice. Provides that a certification that lapses reverts back to the comptroller and may be reissued only in accordance with the application process prescribed by this section.

(f) Requires the comptroller to certify qualified equity investments in the order applications are received by the comptroller. Requires that applications received on the same day be considered to have been received simultaneously. Requires the comptroller, for applications received on the same day and considered complete, to certify, consistent with remaining tax credit capacity, qualified equity investments in proportionate percentages based on the ratio of the amount of qualified equity investments requested in an application to the total amount of qualified equity investments requested in all applications received on the same day. Requires the comptroller, if a pending request cannot be fully certified because of the limitations prescribed by Section 171.522(a), to certify the portion that is authorized to be certified unless the qualified community development entity elects to withdraw its request rather than receive partial credit.

Sec. 171.530. RECAPTURE OF CREDIT. (a) Authorizes the comptroller to recapture a portion of a tax credit allowed under this section if:

(1) any amount of federal tax credit that might be available with respect to the qualified equity investment that generated the tax credit under this section is recaptured under Section 45D, Internal Revenue Code of 1986, as amended;

(2) the qualified community development entity redeems or makes a principal repayment with respect to the qualified equity investment that generated the tax credit before the final credit allowance date of the qualified equity investment; or

(3) the qualified community development entity fails to invest at least 85 percent of the purchase price of the qualified equity investment in qualified low-income community investments in qualified active low-income community businesses located in this state within 12 months of the issuance of the qualified equity investment and maintain that level of investment in qualified low-income community investments in qualified active low-income community businesses located in this state until the last credit allowance date for the qualified equity investment.

(b) Requires the qualified community development entity to keep sufficiently detailed books and records with respect to the investments made with the proceeds of the qualified equity investments to allow the direct tracing of the proceeds into qualified low-income community investments in qualified active low-income community businesses in this state. Requires that an investment, for purposes of calculating the amount of qualified low-income community investments held by a qualified community development entity, be considered held by the qualified community development entity even if the investment has been sold or repaid, provided that the qualified community development entity reinvests an amount equal to the capital returned to or recovered from the original investment, exclusive of any profits realized, in another qualified active low-income community business in this state within 12 months of the receipt of the capital. Prohibits a qualified community development entity from being required to reinvest capital returned from qualified low-income community investments after the sixth anniversary of the issuance of the qualified equity investment, the proceeds of which were used to make the qualified low-income community investment, and requires that the qualified low-income community investment be considered held by the issuer through the qualified equity investment's final credit allowance date.

(c) Requires that the comptroller's recapture, in a situation described by Subsection (a)(1), be proportionate to the federal recapture with respect to the qualified equity investment. Requires that the comptroller's recapture, in a situation described by Subsection (a)(2), be proportionate to the amount of the redemption or repayment with respect to the qualified equity investment.

(d) Requires the comptroller to provide notice to the qualified community development entity of any proposed recapture of tax credits under this section. Requires that the entity have 90 days to cure any deficiency indicated in the comptroller's original recapture notice and avoid the recapture. Requires the comptroller, if the entity fails or is unable to cure the deficiency within the 90-day period, to provide the entity and the taxpayer from whom the credit is to be recaptured with a final order of recapture. Requires that any tax credit for which a final recapture order has been issued be recaptured by the comptroller from the taxpayer who claimed the tax credit on a tax return.

Sec. 171.531. EXPIRATION. (a) Provides that this subchapter expires December 31, 2013.

(b) Provides that the expiration of this subchapter does not affect a credit that was established under this subchapter due to a qualified equity investment that was made before the date this subchapter expires. Authorizes a taxable entity that has any unused credits established under this subchapter, including any carryforward credits, to continue to apply those credits on or with each consecutive report until the date the credit would have expired under this subchapter had this subchapter not expired, and this subchapter is continued in effect for the purposes of determining the amount of the credit the taxable entity is authorized to claim and the manner in which the taxable entity is authorized to claim the credit.

SECTION 2. Amends Subtitle B, Title 3, Insurance Code, by adding Chapter 231, as follows:

CHAPTER 231. CREDIT FOR BUSINESS DEVELOPMENT IN LOW-INCOME COMMUNITIES

Sec. 231.001. DEFINITIONS. Defines "credit allowance date," "long-term debt security," "purchase price," "qualified active low-income community business," "qualified community development entity" (entity), "qualified equity investment," and "qualified low-income community investment."

Sec. 231.002. TOTAL AMOUNT OF CREDITS THAT MAY BE CLAIMED. (a) Prohibits the total amount of tax credits, notwithstanding any other provision of this chapter, that may be claimed by an entity under both this chapter and Chapter 171 (Franchise Tax), Tax Code, in a state fiscal year from exceeding \$40 million, not including any carryforward amounts authorized by Section 171.526, Tax Code, or by Section 231.006 of this code.

(b) Requires the comptroller by rule to prescribe procedures by which the comptroller may allocate credits under this chapter and Subchapter J-1 (Refunds), Chapter 171, Tax Code.

Sec. 231.003. QUALIFICATION FOR CREDIT. (a) Provides that an entity qualifies for and is entitled to a credit under this chapter on a report if the entity holds a qualified equity investment on a credit allowance date that occurs during the period on which the report is based.

(b) Authorizes an entity that holds a qualified equity investment to claim a credit under this chapter for not more than seven consecutive reports beginning with the report based on the period during which the entity first holds the investment on a credit allowance date.

Sec. 231.004. MAXIMUM INVESTMENT PER QUALIFIED ACTIVE LOW-INCOME COMMUNITY BUSINESS. Provides that the maximum amount of qualified low-income community investments that may be made in the business, with respect to any one qualified active low-income community business, on a collective basis with all of its affiliates, with the proceeds of qualified equity investments that have been certified under this chapter, is \$10 million whether made by one or several qualified community development entities.

Sec. 231.005. AMOUNT OF ANNUAL CREDIT. (a) Provides that the amount of the tax credit an entity is authorized to claim on a report, except as otherwise provided by this chapter, is equal to zero percent of the purchase price on the applicable credit allowance date for each of the first two years for which the entity may claim the credit, seven percent of the purchase price on the applicable credit allowance date for the third year for which the entity may claim the credit, and eight percent of the purchase price on the applicable credit allowance date for the remaining four years for which the entity may claim the credit.

(b) Prohibits the total credit claimed under this chapter for a report, including the amount of any carryforward credit under Section 231.006, from exceeding the amount of tax due after any other applicable credits.

Sec. 231.006. CARRYFORWARD. (a) Authorizes an entity, notwithstanding the limitation provided by Section 231.002(a), if an entity is eligible for a credit that exceeds the limitation under Section 231.005(b), to carry the unused credit forward for not more than five consecutive reports.

(b) Provides that a carryforward is considered the remaining portion of a credit that cannot be claimed in the current year because of the tax limitation under Section 231.005(b). Provides that a carryforward is added to the next year's credit in determining whether the limitation is met for that year. Provides that a credit carryforward from a previous report is considered to be used before the current year credit.

(c) Prohibits a carryforward from being added to any subsequent year's credit for the purpose of determining the limitation in Section 231.002(a).

Sec. 231.007. CERTIFICATION OF ELIGIBILITY. (a) Requires the entity, for the initial and each succeeding report in which a credit is claimed under this chapter, to file with its reports, on a form provided by the comptroller, information that sufficiently demonstrates that the entity is eligible for the credit.

(b) Provides that the burden of establishing entitlement to and the value of the credit is on the entity.

Sec. 231.008. ASSIGNMENT PROHIBITED. (a) Prohibits an entity from conveying, assigning, or transferring the credit allowed under this chapter to another entity unless all of the assets of the taxable entity are conveyed, assigned, or transferred in the same transaction.

(b) Authorizes a tax credit earned by a partnership, limited liability company, S corporation, or other "pass-through" entity, notwithstanding Subsection (a), to be allocated to the partners, members, or shareholders of that entity and claimed under this chapter in accordance with the provisions of any agreement among the partners, members, or shareholders.

Sec. 231.009. APPLICATION AND CERTIFICATION PROCEDURE. (a) Requires a qualified community development entity that seeks to have an equity investment or long-term debt security certified as a qualified equity investment and eligible for tax credits to apply to the comptroller. Requires the qualified community development entity to submit an application on a form provided by the comptroller that includes certain information.

(b) Requires that the application be accompanied by a nonrefundable application fee of \$5,000. Requires that the fee be paid to the comptroller and be required for each application submitted.

(c) Requires the comptroller, within 15 days after receipt of a completed application containing the information necessary for the comptroller to certify a potential qualified equity investment, including the payment of the application fee, to grant or deny the application in full or in part. Requires the comptroller, if the comptroller denies any part of the application, to inform the qualified community development entity of the grounds for the denial. Requires that the application, if the qualified community development entity provides any additional information required by the comptroller or otherwise completes its application within 15 days of the notice of denial, be considered completed as of the original date of submission. Provides that the application remains denied and is required to be resubmitted in full with a new submission date if the qualified community development entity fails to provide the information or complete its application within the 15-day period.

(d) Requires the comptroller, if the application is considered complete, to certify the proposed equity investment or long-term debt security as a qualified equity investment and eligible for tax credits under this chapter, subject to the limitations provided by Section 231.022(a). Requires the comptroller to provide written notice of the certification to the qualified community development entity. Requires that the notice include the names of those taxpayers who are eligible to use the credits and their respective credit amounts. Requires the qualified community development entity, if the names of the persons or entities that are eligible to use the credits change due to a transfer of a qualified equity investment or a change in an allocation under Section 231.008(b), to notify the comptroller of the change.

(e) Requires the qualified community development entity, within 30 days after receiving notice of certification, to issue the qualified equity investment and receive cash in the amount of the certified purchase price. Requires the qualified community development entity to provide the comptroller with evidence of the receipt of the cash investment within 10 business days after receipt. Requires that the certification lapse and the entity is prohibited from issuing the qualified equity investment without reapplying to the comptroller for certification, if the qualified community development entity does not receive the cash investment and issue the qualified equity investment within 30 days following receipt of the certification notice. Provides that a certification that lapses reverts back to the comptroller and is authorized to be reissued only in accordance with the application process prescribed by this section.

(f) Requires the comptroller to certify qualified equity investments in the order applications are received by the comptroller. Requires that applications received on the same day be considered to have been received simultaneously. Requires the comptroller, for applications received on the same day and considered complete, to certify, consistent with remaining tax credit capacity, qualified equity investments in proportionate percentages based on the ratio of the amount of qualified equity investment requested in an application to the total amount of qualified equity investments requested in all applications received on the same day. Requires the comptroller, if a pending request cannot be fully certified because of the limitations prescribed by Section 231.002(a), to certify the portion that is authorized to be certified unless the qualified community development entity elects to withdraw its request rather than receive partial credit.

Sec. 231.010. RECAPTURE OF CREDIT. (a) Authorizes the comptroller to recapture a portion of a tax credit allowed under this section if:

(1) any amount of federal tax credit that might be available with respect to the qualified equity investment that generated the tax credit under this section is recaptured under Section 45D, Internal Revenue Code of 1986, as amended;

(2) the qualified community development entity redeems or makes a principal repayment with respect to the qualified equity investment that generated the tax credit before the final credit allowance date of the qualified equity investment; or

(3) the qualified community development entity fails to invest at least 85 percent of the purchase price of the qualified equity investment in qualified low-income community investments in qualified active low-income community businesses located in this state within 12 months of the issuance of the qualified equity investment and maintain that level of investment in qualified low-income community investments in qualified active low-income community businesses located in this state until the last credit allowance date for the qualified equity investment.

(b) Requires the qualified community development entity to keep sufficiently detailed books and records with respect to the investments made with the proceeds of the qualified equity investments to allow the direct tracing of the proceeds into qualified low-income community investments in qualified active low-income community businesses in this state. Requires that an investment, for purposes of calculating the amount of qualified low-income community investments held by a qualified community development entity, be considered held by the qualified community development entity even if the investment has been sold or repaid, provided that the qualified community development entity reinvests an amount equal to the capital returned to or recovered from the original investment, exclusive of any profits realized, in another qualified active low-income community business in this state within 12 months of the receipt of the capital. Prohibits a qualified community development entity from being required to reinvest capital returned from qualified low-income community investments after the sixth anniversary of the issuance of the qualified equity investment, the proceeds of which were used to make the qualified low-income community investment, and requires that the qualified low-income community investment be considered held by the issuer through the qualified equity investment's final credit allowance date.

(c) Requires that the comptroller's recapture, in a situation described by Subsection (a)(1), be proportionate to the federal recapture with respect to the qualified equity investment. Requires that the comptroller's recapture, in a situation described by Subsection (a)(2), be proportionate to the amount of the redemption or repayment with respect to the qualified equity investment.

(d) Requires the comptroller to provide notice to the qualified community development entity of any proposed recapture of tax credits under this section. Requires that the entity have 90 days to cure any deficiency indicated in the comptroller's original recapture notice and avoid the recapture. Requires the comptroller, if the entity fails or is unable to cure the deficiency within the 90-day period, to provide the entity and the taxpayer from whom the credit is to be recaptured with a final order of recapture. Requires that any tax credit for which a final recapture order has been issued be recaptured by the comptroller from the taxpayer who claimed the tax credit on a tax return.

Sec. 231.011. EXPIRATION. (a) Provides that this chapter expires December 31, 2013.

(b) Provides that the expiration of this chapter does not affect a credit that was established under this chapter due to a qualified equity investment that was made before the date this chapter expires. Authorizes a taxable entity that has any unused credits established under this subchapter, including any carryforward credits, to continue to apply those credits on or with each consecutive report until the date the credit would have expired under this subchapter had this subchapter not expired, and this subchapter is continued in effect for the purposes of determining the amount of the credit the entity is authorized to claim and the manner in which the entity is authorized to claim the credit.

SECTION 3. (a) Provides that this Act applies only to a report originally due on or after the effective date of this Act.

(b) Authorizes a taxable entity or other entity to claim the credit under Subchapter J-1, Chapter 171, Tax Code, or Chapter 231, Insurance Code, as added by this Act, only in relation to a qualified equity investment issued on or after the effective date of this Act.

SECTION 4. Effective date: January 1, 2010.