

BILL ANALYSIS

Senate Research Center
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H.B. 3907
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Finance
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Housing projects that provide affordable rental units do not produce high profit margins.

Thus, affordable rental housing projects are not likely to be developed, less so without the use of tax incentives—which provide a way to stimulate affordable housing for Texans.

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.

H.B. 3907 amends current law relating to a franchise or insurance tax credit for certain housing developments.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Department of Housing and Community Affairs in SECTION 1 (Section 171.561, Tax Code) and SECTION 2 (Section 233.0054, Insurance Code) of this bill.

Rulemaking authority is expressly granted to the Comptroller of Public Accounts of the State of Texas in SECTION 1 (Section 171.561, Tax Code) and SECTION 2 (Section 233.0054, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

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

SUBCHAPTER K. TAX CREDIT FOR CERTAIN HOUSING DEVELOPMENTS

Sec. 171.551. DEFINITIONS. Defines "allocation certificate," "credit," "credit period," "department," "development," "federal tax credit," "qualified basis," "qualified development," and "state housing credit ceiling."

Sec. 171.552. ENTITLEMENT TO CREDIT. Entitles a taxable entity to a credit against the taxes imposed under Chapter 171 (Franchise Tax) in the amount and under the limitations provided by this subchapter if the taxable entity owns a direct or indirect interest in a qualified development.

Sec. 171.553. ALLOCATION CERTIFICATE. (a) Authorizes a taxable entity or an entity subject to state insurance tax liability as defined by Section 233.0001, Insurance Code, in a year during a credit period, to apply to the Texas Department of Housing and Community Affairs (TDHCA) for an allocation certificate in connection with a development in which the taxable entity or other entity owns an interest.

(b) Requires TDHCA to issue an allocation certificate if the development is a qualified development.

Sec. 171.554. AMOUNT OF CREDITS. (a) Requires TDHCA in the manner provided by this section to determine the total amount of credits under this subchapter and Chapter 233, Insurance Code, awarded for the credit period in connection with a qualified development and indicate the amount of credits awarded on the allocation certificate.

(b) Requires that the amount of credits awarded in connection with a qualified development over the credit period be the minimum amount necessary for the financial feasibility of the qualified development after considering any federal tax credit, subject to the limitations of this section.

(c) Prohibits the amount of credits awarded in connection with a qualified development over the credit period from exceeding the total federal tax credit awarded to the owner or owners of the qualified development over the 10-year federal tax credit period.

(d) Requires that the manner in which TDHCA awards the amount of credits be consistent with criteria established by TDHCA.

(e) Prohibits the total amount of credits awarded for a year in connection with all qualified developments financed through tax exempt bonds from exceeding the sum of 50 percent of the state housing credit ceiling for this state, any unallocated credits for the preceding year, and any credit recaptured or otherwise returned to TDHCA in the year.

(f) Prohibits the total amount of credits awarded for a year in connection with all qualified developments not financed through tax exempt bonds from exceeding the sum of 50 percent of the state housing credit ceiling for this state, any unallocated credits for the preceding year, and any credit recaptured or otherwise returned to TDHCA in the year.

Sec. 171.555. APPORTIONMENT OF CREDIT. Authorizes the direct or indirect owners of a qualified development who intend to claim a credit under this subchapter or Chapter 233, Insurance Code, to by agreement determine the portion of the total amount of credits awarded under Section 171.554 that each owner is entitled to claim. Requires TDHCA, if the owners do not agree, to determine the portion each owner is entitled to claim based on each owner's ownership interest in the qualified development.

Sec. 171.556. LENGTH OF CREDIT; LIMITATION. (a) Requires a taxable entity entitled to a credit under this subchapter to claim the credit in equal installments during each year of the credit period.

(b) Prohibits the total credit claimed under this subchapter for a report, including any carry forward or backward under Section 171.557, from exceeding the amount of franchise tax due for the report after any other applicable credit.

Sec. 171.557. CARRY FORWARD OR BACKWARD. (a) Authorizes a taxable entity, if the taxable entity is eligible for a credit that exceeds the limitations under Section 171.556, to carry the unused credit back for not more than three tax years or forward for not more than 10 consecutive reports following the tax year in which the allocation was made. Provides that a credit carryforward from a previous report is considered to be used before the current year installment.

(b) Prohibits a credit that is not used from being refunded.

Sec. 171.558. RECAPTURE. (a) Requires the Comptroller of Public Accounts of the State of Texas (comptroller) to recapture the amount of a credit claimed on a report filed under this chapter from a taxable entity if, on the last day of a tax year, the amount of the qualified basis of the qualified development is less than the amount of the qualified basis as of the last day of the prior tax year. Requires the comptroller to determine the amount

required to be recaptured using the formula provided by Section 42(j), Internal Revenue Code, as that section existed on January 1, 2021.

(b) Requires that a report include any portion of credit required to be recaptured, the identity of any taxable entity subject to the recapture, and the amount of any credit previously allocated to the taxable entity.

Sec. 171.559. ALLOCATION OF CREDIT. (a) Authorizes a taxable entity, if the taxable entity receiving a credit under this subchapter is a partnership, limited liability company, S corporation, or similar pass-through entity, to allocate the credit to its partners, shareholders, members, or other constituent taxable entities in any manner agreed by those entities.

(b) Requires a taxable entity that makes an allocation under this section to certify to the comptroller the amount of credit allocated to each constituent taxable entity or to notify the comptroller that it has delegated the duty of certification to one constituent taxable entity that is required to provide the notification to the comptroller. Entitles each constituent taxable entity to claim the allocated amount subject to any restrictions prescribed by this subchapter.

(c) Provides that an allocation under this section is not a transfer for purposes of state law.

Sec. 171.560. FILING REQUIREMENTS AFTER ALLOCATION. Requires a taxable entity that allocates a portion of the credit under Section 171.559, and each taxable entity to which a portion was allocated, to file with the taxable entity's report a copy of the allocation certificate on which the credit is based.

Sec. 171.561. RULES; PROCEDURES. Requires TDHCA and the comptroller, in consultation with each other, to adopt rules and procedures to implement, administer, and enforce this subchapter.

Sec. 171.562. COMPLIANCE MONITORING. (a) Requires TDHCA, in consultation with the comptroller, to monitor compliance with this subchapter in the same manner as TDHCA monitors compliance with the federal tax credit program.

(b) Requires TDHCA to report any instances of noncompliance with this subchapter to the comptroller.

Sec. 171.563. REPORT TO LEGISLATURE. (a) Requires TDHCA, not later than December 31 of each year, to deliver a written report to the legislature. Requires that the report:

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

(2) describe each qualified development for which an allocation certificate was issued during the year, including location, household type, available demographic information for the residents intended to be served by the development, the income levels intended to be served by the development, and the rents or set-asides authorized for the development;

(3) include housing market and demographic information to demonstrate how the qualified developments, supported by the tax credits under this subchapter and Chapter 233, Insurance Code, are addressing the need for affordable housing in their communities; and

(4) analyze any remaining disparities in the affordability of housing within those communities.

(b) Requires TDHCA to make a report delivered under this section available to the public.

SECTION 2. Amends Subtitle B, Title 3, Insurance Code, by adding Chapter 233, as follows:

CHAPTER 233. CREDIT AGAINST CERTAIN TAXES FOR CERTAIN HOUSING DEVELOPMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 233.0001. DEFINITIONS. Defines "allocation certificate," "qualified development," and "state insurance tax liability."

SUBCHAPTER B. CREDIT

Sec. 233.0051. CREDIT. Provides that an entity is eligible for a credit against the entity's state insurance tax liability in the amount and under the limitations provided by this chapter if the entity owns a direct or indirect interest in a qualified development.

Sec. 233.0052. LENGTH OF CREDIT; LIMITATIONS. (a) Requires the entity to claim the credit in the manner provided by Section 171.556(a), Tax Code.

(b) Prohibits the total credit claimed under this chapter for a report, including any carry forward or backward described by Subsection (c), from exceeding the amount of the entity's state insurance tax liability due for the report after any other applicable credit.

(c) Authorizes the entity to carry a surplus credit forward or backward as provided by Section 171.557, Tax Code.

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

(b) Requires the comptroller to adopt a form for the application for the credit. Requires an entity to use this form in applying for the credit.

Sec. 233.0054. RULES; PROCEDURES. Requires the comptroller and TDHCA, in consultation with each other, to adopt rules and procedures to implement, administer, and enforce this chapter.

Sec. 233.0055. APPLICABLE PROVISIONS. Provides that the provisions of Subchapter K, Chapter 171, Tax Code, relating to recapture, allocation of credit, filing requirements after allocation, and compliance monitoring apply to the credit authorized by this chapter.

SECTION 3. (a) Authorizes TDHCA to begin issuing allocation certificates under Section 171.553, Tax Code, as added by this Act, in an open cycle beginning on January 1, 2022.

(b) Provides that Subchapter K, Chapter 171, Tax Code, as added by this Act, and Chapter 233, Insurance Code, as added by this Act, apply only to a tax report originally due on or after January 1, 2023.

(c) Prohibits an entity from carrying back a credit under Section 171.557, Tax Code, as added by this Act, to a tax year the report for which is originally due before January 1, 2023.

SECTION 4. Effective date: January 1, 2022.