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S.B. No. 1429

A BILL TO BE ENTITLED

AN ACT

relating to tax credits for business development in low-income communities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 171, Tax Code, is amended by adding Subchapter J-1 to read as follows:

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

Sec. 171.521. DEFINITIONS. In this subchapter:

(1) "Credit allowance date" means with respect to any qualified equity investment:

(A) the date on which the investment is initially made; and

(B) each of the six anniversary dates of that date.

(2) "Long-term debt security" means any debt instrument issued by a qualified community development entity, at par value or a premium, with an original maturity date of at least seven years from the date of its issuance, with no acceleration of repayment, amortization, or prepayment features before its original maturity date. The qualified community development entity that issues the debt instrument may not make cash interest payments on the debt instrument during the period beginning on the date of issuance and ending on the final credit allowance date in an amount

1 that exceeds the sum of the cash interest payments and the
2 cumulative operating income, as defined by regulations adopted
3 under Section 45D, Internal Revenue Code of 1986, as amended, of the
4 qualified community development entity for that period. This
5 subdivision does not limit the holder's ability to accelerate
6 payments on the debt instrument in situations in which the
7 qualified community development entity has defaulted on covenants
8 designed to ensure compliance with this subchapter or Section 45D,
9 Internal Revenue Code of 1986, as amended.

10 (3) "Purchase price" means the amount of cash paid to a
11 qualified community development entity that issues a qualified
12 equity investment for the qualified equity investment.

13 (4) "Qualified active low-income community business"
14 has the meaning assigned by Section 45D(d)(2), Internal Revenue
15 Code of 1986, as amended. A business shall be considered a
16 qualified active low-income community business for the duration of
17 the qualified community development entity's investment in, or loan
18 to, the business if the entity reasonably expects, at the time it
19 makes the investment or loan, that the business will continue to
20 satisfy the requirements for being a qualified active low-income
21 community business throughout the entire period of the investment
22 or loan.

23 (5) "Qualified community development entity" has the
24 meaning assigned by Section 45D(c), Internal Revenue Code of 1986,
25 as amended, provided that the entity has entered into, or is
26 controlled by an entity that has entered into, an allocation
27 agreement with the Community Development Financial Institutions

1 Fund of the United States Department of the Treasury with respect to
2 credits authorized by Section 45D, Internal Revenue Code of 1986,
3 as amended, that includes this state within the service area
4 provided in the allocation agreement.

5 (6) "Qualified equity investment" means:

6 (A) any equity investment in, or long-term debt
7 security issued by, a qualified community development entity that:

8 (i) is acquired after September 1, 2009, at
9 its original issuance solely in exchange for cash;

10 (ii) has at least 85 percent of its cash
11 purchase price used by the issuer to make qualified low-income
12 community investments in qualified active low-income community
13 businesses located in this state by the first anniversary of the
14 initial credit allowance date; and

15 (iii) is designated by the issuer as a
16 qualified equity investment under this subdivision and is certified
17 by the comptroller as not exceeding the limitation contained in
18 Section 171.522(a); and

19 (B) any qualified equity investment that does not
20 meet the requirements of Paragraph (A) if the investment was a
21 qualified equity investment in the hands of a prior holder.

22 (7) "Qualified low-income community investment" means
23 any capital or equity investment in, or loan to, any qualified
24 active low-income community business made after September 1, 2009.

25 Sec. 171.522. TOTAL AMOUNT OF CREDITS THAT MAY BE CLAIMED.

26 (a) Notwithstanding any other provision of this subchapter, the
27 total amount of tax credits that may be claimed by all entities

1 under both this subchapter and Chapter 231, Insurance Code, in a
2 state fiscal year may not exceed \$40 million, not including any
3 carryforward amounts authorized by Section 171.526 or by Section
4 231.006, Insurance Code.

5 (b) The comptroller by rule shall prescribe procedures by
6 which the comptroller may allocate credits under this subchapter
7 and Chapter 231, Insurance Code.

8 Sec. 171.523. QUALIFICATION FOR CREDIT. (a) A taxable
9 entity qualifies for and is entitled to a credit under this
10 subchapter on a report if the taxable entity purchases a qualified
11 equity investment from a qualified community development entity and
12 holds the qualified equity investment on a credit allowance date
13 that occurs during the period on which the report is based.

14 (b) A taxable entity described by Subsection (a) may claim a
15 credit under this subchapter for not more than seven consecutive
16 reports beginning with the report based on the period during which
17 the taxable entity first holds the investment on a credit allowance
18 date.

19 Sec. 171.524. MAXIMUM INVESTMENT PER QUALIFIED ACTIVE
20 LOW-INCOME COMMUNITY BUSINESS. With respect to any one qualified
21 active low-income community business, the maximum amount of
22 qualified low-income community investments that may be made in the
23 business, on a collective basis with all of its affiliates, with the
24 proceeds of qualified equity investments that have been certified
25 under this subchapter, is \$20 million whether made by one or several
26 qualified community development entities.

27 Sec. 171.525. AMOUNT OF ANNUAL CREDIT. (a) Except as

1 otherwise provided by this subchapter, the amount of the tax credit
2 a taxable entity may claim on a report is equal to:

3 (1) for each of the first two years for which the
4 taxable entity may claim the credit, zero percent of the purchase
5 price on the applicable credit allowance date;

6 (2) for the third year for which the taxable entity may
7 claim the credit, seven percent of the purchase price on the
8 applicable credit allowance date; and

9 (3) for the remaining four years for which the taxable
10 entity may claim the credit, eight percent of the purchase price on
11 the applicable credit allowance date.

12 (b) The total credit claimed under this subchapter for a
13 report, including the amount of any carryforward credit under
14 Section 171.526, may not exceed the amount of franchise tax due
15 after any other applicable credits.

16 Sec. 171.526. CARRYFORWARD. (a) Notwithstanding the
17 limitation provided by Section 171.522(a), if a taxable entity is
18 eligible for a credit that exceeds the limitation under Section
19 171.525(b), the taxable entity may carry the unused credit forward
20 for not more than five consecutive reports.

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

27 (c) A carryforward may not be added to any subsequent year's

1 credit for the purpose of determining the limitation in Section
2 171.522(a).

3 Sec. 171.527. CERTIFICATION OF ELIGIBILITY. (a) For the
4 initial and each succeeding report in which a credit is claimed
5 under this subchapter, the taxable entity shall file with its
6 report, on a form provided by the comptroller, information that
7 sufficiently demonstrates that the taxable entity is eligible for
8 the credit.

9 (b) The burden of establishing entitlement to and the value
10 of the credit is on the taxable entity.

11 Sec. 171.528. ASSIGNMENT PROHIBITED. (a) A taxable entity
12 may not convey, assign, or transfer the credit allowed under this
13 subchapter to another entity unless all of the assets of the taxable
14 entity, including the taxable entity's qualified equity investment
15 to which the credit relates, are conveyed, assigned, or transferred
16 in the same transaction.

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

23 Sec. 171.529. APPLICATION AND CERTIFICATION PROCEDURE.

24 (a) A qualified community development entity that seeks to have an
25 equity investment or long-term debt security certified as a
26 qualified equity investment and eligible for tax credits shall
27 apply to the comptroller. The qualified community development

1 entity must submit an application on a form provided by the
2 comptroller that includes:

3 (1) the entity's name, address, tax identification
4 number, and evidence of its certification as a qualified community
5 development entity;

6 (2) a copy of an allocation agreement executed by the
7 entity, or its controlling entity, and the Community Development
8 Financial Institutions Fund of the United States Treasury that
9 includes this state in its service area;

10 (3) a certificate executed by an executive officer of
11 the entity attesting that the allocation agreement remains in
12 effect and has not been revoked or canceled by the Community
13 Development Financial Institutions Fund of the United States
14 Department of the Treasury;

15 (4) a description of the proposed amount, structure,
16 and purchaser of the equity investment or long-term debt security;

17 (5) the name and tax identification number of any
18 entity eligible to claim tax credits as a result of the purchase of
19 the qualified equity investment, if known;

20 (6) information regarding the proposed use of proceeds
21 from the issuance of the qualified equity investment, if known; and

22 (7) an economic impact analysis from an economic
23 expert of the potential qualified equity investment and the
24 proposed use of the proceeds, which must include:

25 (A) an estimate of the amount of revenue to be
26 generated to the state as a result of the qualified equity
27 investment and the proposed use of the proceeds;

1 (B) an estimate of any secondary economic
2 benefits to be generated as a result of the qualified equity
3 investment and the proposed use of the proceeds; and

4 (C) any other information required by the
5 comptroller to make the certification required by Subsection (c).

6 (b) The application must be accompanied by a nonrefundable
7 application fee of \$5,000. The fee shall be paid to the comptroller
8 and shall be required for each application submitted.

9 (c) Within 15 days after receipt of a completed application
10 containing the information necessary for the comptroller to certify
11 a potential qualified equity investment, including the payment of
12 the application fee, the comptroller shall grant or deny the
13 application in full or in part. The comptroller may not grant an
14 application in full or in part until the comptroller, based on an
15 evaluation of the economic impact analysis under Subsection (a)(7),
16 certifies that the potential qualified equity investment and the
17 proposed use of the proceeds will have a positive impact on state
18 revenue. If the comptroller denies any part of the application, the
19 comptroller shall inform the qualified community development
20 entity of the grounds for the denial. If the qualified community
21 development entity provides any additional information required by
22 the comptroller or otherwise completes its application within 15
23 days of the notice of denial, the application shall be considered
24 completed as of the original date of submission. If the qualified
25 community development entity fails to provide the information or
26 complete its application within the 15-day period, the application
27 remains denied and must be resubmitted in full with a new submission

1 date.

2 (d) If the application is considered complete, the
3 comptroller shall certify the proposed equity investment or
4 long-term debt security as a qualified equity investment and
5 eligible for tax credits under this section, subject to the
6 limitations provided by this subchapter. The comptroller shall
7 provide written notice of the certification to the qualified
8 community development entity. The notice shall include the names
9 of those taxable entities who are eligible to claim the credits, if
10 known, and their respective credit amounts. If the names of the
11 taxable entities identified as eligible to claim the credits change
12 due to a transfer of a qualified equity investment under Section
13 171.528(a) or a change in an allocation under Section 171.528(b),
14 the qualified community development entity shall notify the
15 comptroller of the change.

16 (e) Within 30 days after receiving notice of certification,
17 the qualified community development entity shall issue the
18 qualified equity investment and receive cash in the amount of the
19 certified purchase price. The qualified community development
20 entity must provide the comptroller with evidence of the receipt of
21 the cash investment within 10 business days after receipt. If the
22 qualified community development entity does not receive the cash
23 investment and issue the qualified equity investment within 30 days
24 following receipt of the certification notice, the certification
25 shall lapse and the entity may not issue the qualified equity
26 investment without reapplying to the comptroller for
27 certification. A certification that lapses reverts back to the

1 comptroller and may be reissued only in accordance with the
2 application process prescribed by this section.

3 (f) The comptroller shall certify qualified equity
4 investments in the order applications are received by the
5 comptroller. Applications received on the same day shall be
6 considered to have been received simultaneously. For applications
7 received on the same day and considered complete, the comptroller
8 shall certify, consistent with remaining tax credit capacity,
9 qualified equity investments in proportionate percentages based on
10 the ratio of the amount of qualified equity investment requested in
11 an application to the total amount of qualified equity investments
12 requested in all applications received on the same day. If a
13 pending request cannot be fully certified because of the
14 limitations prescribed by Section 171.522(a), the comptroller
15 shall certify the portion that may be certified unless the
16 qualified community development entity elects to withdraw its
17 request rather than receive partial credit.

18 (g) A qualified community development entity, on a
19 collective basis with all of its affiliated entities listed in its
20 allocation agreement with the Community Development Financial
21 Institutions Fund of the United States Department of the Treasury
22 or subsidiaries of those entities, may not request certification
23 for a qualified equity investment that would entitle the purchaser
24 of the qualified equity investment to have allocated to the
25 purchaser at any time more than 30 percent of the total value of the
26 tax credits that may be claimed under this subchapter.

27 (h) Notwithstanding Subsection (g), a qualified community

1 development entity, alone or on a collective basis with all of its
2 affiliated entities listed in its allocation agreement with the
3 Community Development Financial Institutions Fund of the United
4 States Department of the Treasury or subsidiaries of those
5 entities, may request certification for a qualified equity
6 investment that would entitle the purchaser of the qualified equity
7 investment to have allocated to the purchaser at any time more than
8 30 percent of the total value of the tax credits that may be claimed
9 under this subchapter if:

10 (1) it has been at least 180 days since the date the
11 comptroller certified the qualified community development entity's
12 most recent request under this subchapter; or

13 (2) it has been less than 180 days since the date the
14 comptroller certified the qualified community development entity's
15 most recent request under this subchapter, and the entity
16 demonstrates that the entity has invested substantially all of the
17 purchase price of the qualified equity investments that have been
18 previously certified under this subchapter.

19 Sec. 171.530. RECAPTURE OF CREDIT. (a) The comptroller
20 may recapture a portion of a tax credit allowed under this
21 subchapter if:

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

26 (2) the qualified community development entity
27 redeems or makes a principal repayment with respect to the

1 qualified equity investment that generated the tax credit before
2 the final credit allowance date of the qualified equity investment;
3 or

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

13 (b) The qualified community development entity shall keep
14 sufficiently detailed books and records with respect to the
15 investments made with the proceeds of the qualified equity
16 investments to allow the direct tracing of the proceeds into
17 qualified low-income community investments in qualified active
18 low-income community businesses in this state. For purposes of
19 calculating the amount of qualified low-income community
20 investments held by a qualified community development entity, an
21 investment shall be considered held by the qualified community
22 development entity even if the investment has been sold or repaid,
23 provided that the qualified community development entity reinvests
24 an amount equal to the capital returned to or recovered from the
25 original investment, exclusive of any profits realized, in another
26 qualified active low-income community business in this state within
27 12 months of the receipt of the capital. A qualified community

1 development entity may not be required to reinvest capital returned
2 from qualified low-income community investments after the sixth
3 anniversary of the issuance of the qualified equity investment, the
4 proceeds of which were used to make the qualified low-income
5 community investment, and the qualified low-income community
6 investment shall be considered held by the issuer through the
7 qualified equity investment's final credit allowance date.

8 (c) In a situation described by Subsection (a)(1), the
9 comptroller's recapture shall be proportionate to the federal
10 recapture with respect to the qualified equity investment. In a
11 situation described by Subsection (a)(2), the comptroller's
12 recapture shall be proportionate to the amount of the redemption or
13 repayment with respect to the qualified equity investment.

14 (d) The comptroller shall provide notice to the qualified
15 community development entity of any proposed recapture of tax
16 credits under this section. The entity shall have 90 days to cure
17 any deficiency indicated in the comptroller's original recapture
18 notice and avoid the recapture. If the entity fails or is unable to
19 cure the deficiency within the 90-day period, the comptroller shall
20 provide the entity and the taxpayer from whom the credit is to be
21 recaptured with a final order of recapture. Any tax credit for
22 which a final recapture order has been issued shall be recaptured by
23 the comptroller from the taxpayer who claimed the tax credit on a
24 tax return.

25 Sec. 171.531. EXPIRATION. (a) This subchapter expires
26 December 31, 2013.

27 (b) The expiration of this subchapter does not affect a

1 credit that was established under this subchapter due to the
2 purchase of a qualified equity investment that was made before the
3 date this subchapter expires. A taxable entity that has any unused
4 credits established under this subchapter, including any
5 carryforward credits, may continue to apply those credits on or
6 with each consecutive report until the date the credit would have
7 expired under this subchapter had this subchapter not expired, and
8 this subchapter is continued in effect for the purposes of
9 determining the amount of the credit the taxable entity may claim
10 and the manner in which the taxable entity may claim the credit.

11 SECTION 2. Subtitle B, Title 3, Insurance Code, is amended
12 by adding Chapter 231 to read as follows:

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

15 Sec. 231.001. DEFINITIONS. In this chapter:

16 (1) "Credit allowance date" means, with respect to any
17 qualified equity investment:

18 (A) the date on which the investment is initially
19 made; and

20 (B) each of the six anniversary dates of that
21 date.

22 (2) "Long-term debt security" means any debt
23 instrument issued by a qualified community development entity, at
24 par value or a premium, with an original maturity date of at least
25 seven years from the date of its issuance, with no acceleration of
26 repayment, amortization, or prepayment features before its
27 original maturity date. The qualified community development entity

1 that issues the debt instrument may not make cash interest payments
2 on the debt instrument during the period beginning on the date of
3 issuance and ending on the final credit allowance date in an amount
4 that exceeds the sum of the cash interest payments and the
5 cumulative operating income, as defined by regulations adopted
6 under Section 45D, Internal Revenue Code of 1986, as amended, of the
7 qualified community development entity for that period. This
8 subdivision does not limit the holder's ability to accelerate
9 payments on the debt instrument in situations in which the
10 qualified community development entity has defaulted on covenants
11 designed to ensure compliance with this chapter or Section 45D,
12 Internal Revenue Code of 1986, as amended.

13 (3) "Purchase price" means the amount of cash paid to a
14 qualified community development entity that issues a qualified
15 equity investment for the qualified equity investment.

16 (4) "Qualified active low-income community business"
17 has the meaning assigned by Section 45D(d)(2), Internal Revenue
18 Code of 1986, as amended. A business shall be considered a
19 qualified active low-income community business for the duration of
20 the qualified community development entity's investment in, or loan
21 to, the business if the entity reasonably expects, at the time it
22 makes the investment or loan, that the business will continue to
23 satisfy the requirements for being a qualified active low-income
24 community business throughout the entire period of the investment
25 or loan.

26 (5) "Qualified community development entity" has the
27 meaning assigned by Section 45D(c), Internal Revenue Code of 1986,

1 as amended, provided that the entity has entered into, or is
2 controlled by an entity that has entered into, an allocation
3 agreement with the Community Development Financial Institutions
4 Fund of the United States Department of the Treasury with respect to
5 credits authorized by Section 45D, Internal Revenue Code of 1986,
6 as amended, that includes this state within the service area
7 provided in the allocation agreement.

8 (6) "Qualified equity investment" means:

9 (A) any equity investment in, or long-term debt
10 security issued by, a qualified community development entity that:

11 (i) is acquired after September 1, 2009, at
12 its original issuance solely in exchange for cash;

13 (ii) has at least 85 percent of its cash
14 purchase price used by the issuer to make qualified low-income
15 community investments in qualified active low-income community
16 businesses located in this state by the first anniversary of the
17 initial credit allowance date; and

18 (iii) is designated by the issuer as a
19 qualified equity investment under this subdivision and is certified
20 by the comptroller as not exceeding the limitation contained in
21 Section 231.002(a); and

22 (B) any qualified equity investment that does not
23 meet the requirements of Paragraph (A) if the investment was a
24 qualified equity investment in the hands of a prior holder.

25 (7) "Qualified low-income community investment" means
26 any capital or equity investment in, or loan to, any qualified
27 active low-income community business made after September 1, 2009.

1 (8) "State premium tax liability" means any liability
2 incurred by an entity under Chapters 221 through 226.

3 Sec. 231.002. TOTAL AMOUNT OF CREDITS THAT MAY BE CLAIMED.

4 (a) Notwithstanding any other provision of this chapter, the total
5 amount of tax credits that may be claimed by all entities under both
6 this chapter and Chapter 171, Tax Code, in a state fiscal year may
7 not exceed \$40 million, not including any carryforward amounts
8 authorized by Section 171.526, Tax Code, or by Section 231.006 of
9 this code.

10 (b) The comptroller by rule shall prescribe procedures by
11 which the comptroller may allocate credits under this chapter and
12 Subchapter J-1, Chapter 171, Tax Code.

13 Sec. 231.003. QUALIFICATION FOR CREDIT. (a) An entity
14 qualifies for and is entitled to a credit against the entity's state
15 premium tax liability on a premium tax report filed under this
16 subtitle if the entity purchases a qualified equity investment from
17 a qualified community development entity and holds the qualified
18 equity investment on a credit allowance date that occurs during the
19 period on which the report is based.

20 (b) An entity described by Subsection (a) may claim a credit
21 under this chapter for not more than seven consecutive reports
22 beginning with the report based on the period during which the
23 entity first holds the investment on a credit allowance date.

24 Sec. 231.004. MAXIMUM INVESTMENT PER QUALIFIED ACTIVE
25 LOW-INCOME COMMUNITY BUSINESS. With respect to any one qualified
26 active low-income community business, the maximum amount of
27 qualified low-income community investments that may be made in the

1 business, on a collective basis with all of its affiliates, with the
2 proceeds of qualified equity investments that have been certified
3 under this chapter, is \$20 million whether made by one or several
4 qualified community development entities.

5 Sec. 231.005. AMOUNT OF ANNUAL CREDIT. (a) Except as
6 otherwise provided by this chapter, the amount of the tax credit an
7 entity may claim on a report is equal to:

8 (1) for each of the first two years for which the
9 entity may claim the credit, zero percent of the purchase price on
10 the applicable credit allowance date;

11 (2) for the third year for which the entity may claim
12 the credit, seven percent of the purchase price on the applicable
13 credit allowance date; and

14 (3) for the remaining four years for which the entity
15 may claim the credit, eight percent of the purchase price on the
16 applicable credit allowance date.

17 (b) The total credit claimed under this chapter for a
18 report, including the amount of any carryforward credit under
19 Section 231.006, may not exceed the amount of tax due after any
20 other applicable credits.

21 Sec. 231.006. CARRYFORWARD. (a) Notwithstanding the
22 limitation provided by Section 231.002(a), if an entity is eligible
23 for a credit that exceeds the limitation under Section 231.005(b),
24 the entity may carry the unused credit forward for not more than
25 five consecutive reports.

26 (b) A carryforward is considered the remaining portion of a
27 credit that cannot be claimed in the current year because of the tax

1 limitation under Section 231.005(b). A carryforward is added to
2 the next year's credit in determining whether the limitation is met
3 for that year. A credit carryforward from a previous report is
4 considered to be used before the current year credit.

5 (c) A carryforward may not be added to any subsequent year's
6 credit for the purpose of determining the limitation in Section
7 231.002(a).

8 Sec. 231.007. CERTIFICATION OF ELIGIBILITY. (a) For the
9 initial and each succeeding report in which a credit is claimed
10 under this chapter, the entity shall file with its report, on a form
11 provided by the comptroller, information that sufficiently
12 demonstrates that the entity is eligible for the credit.

13 (b) The burden of establishing entitlement to and the value
14 of the credit is on the entity.

15 Sec. 231.008. ASSIGNMENT PROHIBITED. (a) An entity may
16 not convey, assign, or transfer the credit allowed under this
17 chapter to another entity unless all of the assets of the entity,
18 including the entity's qualified equity investment to which the
19 credit relates, are conveyed, assigned, or transferred in the same
20 transaction.

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

27 Sec. 231.009. APPLICATION AND CERTIFICATION PROCEDURE.

1 (a) A qualified community development entity that seeks to have an
2 equity investment or long-term debt security certified as a
3 qualified equity investment and eligible for tax credits shall
4 apply to the comptroller. The qualified community development
5 entity must submit an application on a form provided by the
6 comptroller that includes:

7 (1) the entity's name, address, tax identification
8 number, and evidence of its certification as a qualified community
9 development entity;

10 (2) a copy of an allocation agreement executed by the
11 entity, or its controlling entity, and the Community Development
12 Financial Institutions Fund of the United States Department of the
13 Treasury that includes this state in its service area;

14 (3) a certificate executed by an executive officer of
15 the entity attesting that the allocation agreement remains in
16 effect and has not been revoked or canceled by the Community
17 Development Financial Institutions Fund of the United States
18 Treasury;

19 (4) a description of the proposed amount, structure,
20 and purchaser of the equity investment or long-term debt security;

21 (5) the name and tax identification number of any
22 entity eligible to claim tax credits earned as a result of the
23 purchase of the qualified equity investment, if known;

24 (6) information regarding the proposed use of proceeds
25 from the issuance of the qualified equity investment, if known; and

26 (7) an economic impact analysis from an economic
27 expert of the potential qualified equity investment and the

1 proposed use of the proceeds, which must include:

2 (A) an estimate of the amount of revenue to be
3 generated to the state as a result of the qualified equity
4 investment and the proposed use of the proceeds;

5 (B) an estimate of any secondary economic
6 benefits to be generated as a result of the qualified equity
7 investment and the proposed use of the proceeds; and

8 (C) any other information required by the
9 comptroller to make the certification required by Subsection (c).

10 (b) The application must be accompanied by a nonrefundable
11 application fee of \$5,000. The fee shall be paid to the comptroller
12 and shall be required for each application submitted.

13 (c) Within 15 days after receipt of a completed application
14 containing the information necessary for the comptroller to certify
15 a potential qualified equity investment, including the payment of
16 the application fee, the comptroller shall grant or deny the
17 application in full or in part. The comptroller may not grant an
18 application in full or in part until the comptroller, based on an
19 evaluation of the economic impact analysis under Subsection (a)(7),
20 certifies that the potential qualified equity investment and the
21 proposed use of the proceeds will have a positive impact on state
22 revenue. If the comptroller denies any part of the application, the
23 comptroller shall inform the qualified community development
24 entity of the grounds for the denial. If the qualified community
25 development entity provides any additional information required by
26 the comptroller or otherwise completes its application within 15
27 days of the notice of denial, the application shall be considered

1 completed as of the original date of submission. If the qualified
2 community development entity fails to provide the information or
3 complete its application within the 15-day period, the application
4 remains denied and must be resubmitted in full with a new submission
5 date.

6 (d) If the application is considered complete, the
7 comptroller shall certify the proposed equity investment or
8 long-term debt security as a qualified equity investment and
9 eligible for tax credits under this chapter, subject to the
10 limitations provided by this chapter. The comptroller shall
11 provide written notice of the certification to the qualified
12 community development entity. The notice shall include the names
13 of those entities who are eligible to claim the credits, if known,
14 and their respective credit amounts. If the names of the entities
15 that are eligible to claim the credits change due to a transfer of a
16 qualified equity investment under Section 231.008(a) or a change in
17 an allocation under Section 231.008(b), the qualified community
18 development entity shall notify the comptroller of the change.

19 (e) Within 30 days after receiving notice of certification,
20 the qualified community development entity shall issue the
21 qualified equity investment and receive cash in the amount of the
22 certified purchase price. The qualified community development
23 entity must provide the comptroller with evidence of the receipt of
24 the cash investment within 10 business days after receipt. If the
25 qualified community development entity does not receive the cash
26 investment and issue the qualified equity investment within 30 days
27 following receipt of the certification notice, the certification

1 shall lapse and the entity may not issue the qualified equity
2 investment without reapplying to the comptroller for
3 certification. A certification that lapses reverts back to the
4 comptroller and may be reissued only in accordance with the
5 application process provided by this section.

6 (f) The comptroller shall certify qualified equity
7 investments in the order applications are received by the
8 comptroller. Applications received on the same day shall be
9 considered to have been received simultaneously. For applications
10 received on the same day and considered complete, the comptroller
11 shall certify, consistent with remaining tax credit capacity,
12 qualified equity investments in proportionate percentages based on
13 the ratio of the amount of qualified equity investment requested in
14 an application to the total amount of qualified equity investments
15 requested in all applications received on the same day. If a
16 pending request cannot be fully certified because of the
17 limitations provided by Section 231.002(a), the comptroller shall
18 certify the portion that may be certified unless the qualified
19 community development entity elects to withdraw its request rather
20 than receive partial credit.

21 (g) A qualified community development entity, on a
22 collective basis with all of its affiliated entities listed in its
23 allocation agreement with the Community Development Financial
24 Institutions Fund of the United States Department of the Treasury
25 or subsidiaries of those entities, may not request certification
26 for a qualified equity investment that would entitle the purchaser
27 of the qualified equity investment to have allocated to the

1 purchaser at any time more than 30 percent of the total value of the
2 tax credits that may be claimed under this chapter.

3 (h) Notwithstanding Subsection (g), a qualified community
4 development entity, alone or on a collective basis with all of its
5 affiliated entities listed in its allocation agreement with the
6 Community Development Financial Institutions Fund of the United
7 States Department of the Treasury or subsidiaries of those
8 entities, may request certification for a qualified equity
9 investment that would entitle the purchaser of the qualified equity
10 investment to have allocated to the purchaser at any time more than
11 30 percent of the total value of the tax credits that may be claimed
12 under this chapter if:

13 (1) it has been at least 180 days since the date the
14 comptroller certified the qualified community development entity's
15 most recent request under this chapter; or

16 (2) it has been less than 180 days since the date the
17 comptroller certified the qualified community development entity's
18 most recent request under this chapter, and the entity demonstrates
19 that the entity has invested substantially all of the purchase
20 price of the qualified equity investments that have been previously
21 certified under this chapter.

22 Sec. 231.010. RECAPTURE OF CREDIT. (a) The comptroller
23 may recapture a portion of a tax credit allowed under this chapter
24 if:

25 (1) any amount of federal tax credit that might be
26 available with respect to the qualified equity investment that
27 generated the tax credit under this chapter is recaptured under

1 Section 45D, Internal Revenue Code of 1986, as amended;

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

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

16 (b) The qualified community development entity shall keep
17 sufficiently detailed books and records with respect to the
18 investments made with the proceeds of the qualified equity
19 investments to allow the direct tracing of the proceeds into
20 qualified low-income community investments in qualified active
21 low-income community businesses in this state. For purposes of
22 calculating the amount of qualified low-income community
23 investments held by a qualified community development entity, an
24 investment shall be considered held by the qualified community
25 development entity even if the investment has been sold or repaid,
26 provided that the qualified community development entity reinvests
27 an amount equal to the capital returned to or recovered from the

1 original investment, exclusive of any profits realized, in another
2 qualified active low-income community business in this state within
3 12 months of the receipt of the capital. A qualified community
4 development entity may not be required to reinvest capital returned
5 from qualified low-income community investments after the sixth
6 anniversary of the issuance of the qualified equity investment, the
7 proceeds of which were used to make the qualified low-income
8 community investment, and the qualified low-income community
9 investment shall be considered held by the issuer through the
10 qualified equity investment's final credit allowance date.

11 (c) In a situation described by Subsection (a)(1), the
12 comptroller's recapture shall be proportionate to the federal
13 recapture with respect to the qualified equity investment. In a
14 situation described by Subsection (a)(2), the comptroller's
15 recapture shall be proportionate to the amount of the redemption or
16 repayment with respect to the qualified equity investment.

17 (d) The comptroller shall provide notice to the qualified
18 community development entity of any proposed recapture of tax
19 credits under this section. The entity shall have 90 days to cure
20 any deficiency indicated in the comptroller's original recapture
21 notice and avoid the recapture. If the entity fails or is unable to
22 cure the deficiency within the 90-day period, the comptroller shall
23 provide the entity and the taxpayer from whom the credit is to be
24 recaptured with a final order of recapture. Any tax credit for
25 which a final recapture order has been issued shall be recaptured by
26 the comptroller from the taxpayer who claimed the tax credit on a
27 tax return.

1 Sec. 231.011. RETALIATORY TAX. An entity claiming a credit
2 under this chapter is not required to pay any additional
3 retaliatory tax levied under Chapter 281 as a result of claiming
4 that credit.

5 Sec. 231.012. EXPIRATION. (a) This chapter expires
6 December 31, 2013.

7 (b) The expiration of this chapter does not affect a credit
8 that was established under this chapter due to the purchase of a
9 qualified equity investment that was made before the date this
10 chapter expires. An entity that has any unused credits established
11 under this chapter, including any carryforward credits, may
12 continue to apply those credits on or with each consecutive report
13 until the date the credit would have expired under this chapter had
14 this chapter not expired, and this chapter is continued in effect
15 for the purposes of determining the amount of the credit the entity
16 may claim and the manner in which the entity may claim the credit.

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

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

24 SECTION 4. This Act takes effect January 1, 2010.