

BILL ANALYSIS

C.S.H.B. 3843
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties point to a recent report indicating that the increase in housing costs across Texas has far outpaced the increase in incomes for most Texans and contend that a decline in affordable housing could have a negative effect on the state's future economic growth. C.S.H.B. 3843 seeks to address this issue and increase the state's affordable housing inventory by providing tax credits for certain low income housing developments.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Department of Housing and Community Affairs and the comptroller of public accounts in SECTIONS 1 and 2 of this bill.

ANALYSIS

C.S.H.B. 3843 amends the Tax Code to entitle a development, as defined under Government Code Provisions relating to the low income housing tax credit program, to a franchise tax credit if the Texas Department of Housing and Community Affairs (TDHCA) classifies the development as a qualified development. The bill authorizes the TDHCA to determine the amount of a credit awarded to a qualified development, subject to the following: the credit must be the minimum amount necessary for the financial feasibility of the qualified development after considering any federal low income housing tax credit; the amount of the credit during the credit period may not exceed the total federal tax credit awarded to the qualified development over the 10-year federal tax credit period; the manner in which the TDHCA awards the credit must be consistent with criteria established by the TDHCA; and, in a year, the total amount awarded may not exceed the sum of \$0, any unallocated credits for the preceding year, and any credit recaptured or otherwise returned to the TDHCA in the year. The bill defines, among other terms, "qualified development" as a development in Texas that the TDHCA determines is eligible for a federal low income housing tax credit and that is financed with tax-exempt bonds, is the subject of a recorded restrictive covenant requiring the development to be maintained and operated as a qualified development, and, for the lesser of 15 years after the beginning of the credit period or the period required by the TDHCA, is in compliance with all accessibility and adaptability requirements for a federal low income housing tax credit and with specified portions of the federal Civil Rights Act of 1968. The bill defines "credit period" as the period of six taxable years beginning with the taxable year in which a qualified development is placed in service and specifies that, for purposes of calculating the credit period, a qualified development consisting of more than one building is expressly not considered to be in service until all buildings in the qualified development are placed in service.

C.S.H.B. 3843 authorizes a qualified taxpayer, defined by the bill as a person who owns an interest in a qualified development, or other person, in a year during a credit period, to apply to the TDHCA for an allocation certificate for the franchise tax credit established by the bill and requires the TDHCA to issue an allocation certificate if the development qualifies for a credit. The bill authorizes the TDHCA to begin issuing allocation certificates in an open cycle beginning on January 1, 2018, and requires the credit established to be claimed in equal installments during each year of the credit period. The bill provides for the carrying of an unused credit back for not more than three taxable years or forward for not more than 10 consecutive reports following the taxable year in which the allocation was made and caps the total credit claimed for a report, including any carryforward, at the amount of franchise tax due for the report after any other applicable credit. The bill establishes that a credit carryforward from a previous report is considered to be used before the current year installment and prohibits an unused credit from being refunded to the qualified taxpayer.

C.S.H.B. 3843 requires the comptroller of public accounts to recapture the amount of a low income housing credit claimed on a franchise tax report from a qualified taxpayer if on the last day of a taxable 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 taxable year. The bill requires the comptroller to determine the amount required to be recaptured using a specified formula provided by the federal Internal Revenue Code, as effective January 1, 2017. The bill requires a franchise tax return to include any proportion of the low income housing franchise tax credit required to be recaptured, the identity of any qualified taxpayer subject to the recapture, and the amount of credit previously allocated to the qualified taxpayer.

C.S.H.B. 3843 authorizes a qualified taxpayer receiving a low income housing franchise tax credit that is a pass-through entity to allocate credit among its constituent taxable entities in any manner agreed by those entities. The bill requires a qualified taxpayer that makes such an allocation to certify to the comptroller the amount of credit allocated to each constituent taxable entity or to notify the comptroller that it has assigned the duty of certification to one constituent taxable entity that is then required to provide the notification to the comptroller. The bill entitles each constituent taxable entity to claim the allocated amount subject to any restrictions prescribed by the bill's provisions for the tax credit. The bill establishes that an assignment under these provisions is not a transfer and requires a qualified taxpayer that allocates a portion of the franchise tax credit established by the bill and each taxable entity to which a portion was allocated to file with the qualified taxpayer's or taxable entity's report a copy of the allocation certificate received for that year.

C.S.H.B. 3843 requires the TDHCA and the comptroller, in consultation with each other, to adopt rules and procedures to implement, administer, and enforce the bill's provisions establishing the low income housing franchise tax credit and requires the TDHCA, in consultation with the comptroller, to monitor compliance with those provisions in the same manner as the TDHCA monitors compliance with the federal low income housing tax credit program. The bill requires the TDHCA to report any instances of noncompliance to the comptroller and requires the TDHCA, not later than December 31 of each year, to deliver a written report to the legislature. The bill sets out requirements related to the report and requires the TDHCA to make the report available to the public. The bill prohibits a taxable entity from claiming a low income housing franchise tax credit in connection with a privilege period that begins before January 1, 2019, or on a report filed before January 1, 2020.

C.S.H.B. 3843 amends the Insurance Code to make a qualified taxpayer who owns an interest in a qualified development that receives an allocation certificate for the franchise tax credit established by the bill eligible for a credit against the qualified taxpayer's state insurance premium tax liability in an amount equal to the amount provided by the allocation certificate. The bill requires such a qualified taxpayer to claim the premium tax credit in the manner provided by the bill for the franchise tax credit, subject to the limitation provided for the

franchise tax credit by the bill, and authorizes the qualified taxpayer to carry a surplus premium tax credit forward or backward as provided by the bill for the franchise tax credit.

C.S.H.B. 3843 requires such a qualified taxpayer to apply for the premium tax credit on or with the tax return for the taxable year for which the credit is claimed and to submit with the application the allocation certificate issued to the qualified development and any other information required by the bill's provisions establishing the low income housing franchise tax credit. The bill requires the comptroller to adopt a form for the application for the premium tax credit and requires a qualified taxpayer to use this form in applying for the credit. The bill requires the comptroller and the TDHCA, in consultation with each other, to adopt rules and procedures to implement, administer, and enforce the bill's provisions establishing the premium tax credit. The bill applies its provisions regarding the low income housing franchise tax credit relating to recapture, allocation of credit, filing requirements after allocation, and compliance monitoring to the premium tax credit.

EFFECTIVE DATE

January 1, 2018.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3843 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Chapter 171, Tax Code, is amended by adding Subchapter V to read as follows: <u>SUBCHAPTER V. TAX CREDIT FOR LOW-INCOME HOUSING DEVELOPMENTS</u> <u>Sec. 171.9241. DEFINITIONS. In this subchapter:</u> <u>(1) "Allocation certificate" means a statement issued by the department certifying that a given development qualifies for a credit under this subchapter and specifying the amount of the credit.</u> <u>(2) "Compliance period" means the period of 15 years beginning with the first taxable year of the credit period.</u> <u>(3) "Credit" means the low-income housing tax credit authorized by this subchapter.</u> <u>(4) "Credit period" means the period of six taxable years beginning with the taxable year in which a qualified development is placed in service. A qualified development consisting of more than one building is not considered to be in service until all buildings in the qualified development are placed in service.</u> <u>(5) "Department" means the Texas Department of Housing and Community</u>	SECTION 1. Chapter 171, Tax Code, is amended by adding Subchapter V to read as follows: <u>SUBCHAPTER V. TAX CREDIT FOR LOW-INCOME HOUSING DEVELOPMENTS</u> <u>Sec. 171.9241. DEFINITIONS. In this subchapter:</u> <u>(1) "Allocation certificate" means a statement issued by the department certifying that a given development qualifies for a credit under this subchapter and specifying the amount of the credit.</u> <u>(2) "Compliance period" means the period of 15 years beginning with the first taxable year of the credit period.</u> <u>(3) "Credit" means the low-income housing tax credit authorized by this subchapter.</u> <u>(4) "Credit period" means the period of six taxable years beginning with the taxable year in which a qualified development is placed in service. A qualified development consisting of more than one building is not considered to be in service until all buildings in the qualified development are placed in service.</u> <u>(5) "Department" means the Texas Department of Housing and Community</u>

Affairs.

(6) "Development" has the meaning assigned by Section 2306.6702, Government Code.

(7) "Federal tax credit" means the federal low-income housing credit created by 26 U.S.C. Section 42.

(8) "Qualified allocation plan" has the meaning assigned by Section 2306.6702, Government Code.

(9) "Qualified basis" means the qualified basis of a qualified development, as determined under Section 42, Internal Revenue Code.

(10) "Qualified development" means a development in this state that the department determines is eligible for a federal tax credit and that:

(A) is financed with tax-exempt bonds;

(B) is the subject of a recorded restrictive covenant requiring the development to be maintained and operated as a qualified development; and

(C) for the lesser of 15 years after the beginning of the credit period or the period required by the department is in compliance with:

(i) all accessibility and adaptability requirements for a federal tax credit; and

(ii) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. Section 1983).

Sec. 171.9242. ENTITLEMENT TO CREDIT. A taxable entity is entitled to a credit against the taxes imposed under this chapter in the amount and under the conditions and limitations provided by this subchapter if the taxable entity is a qualified taxpayer and receives an allocation certificate under Section 171.9243.

Sec. 171.9243. ALLOCATION CERTIFICATE; CREDIT. (a) In a year during a credit period, a taxable entity may apply to the department for an allocation certificate for a franchise tax credit under this subchapter.

(b) The department shall issue an allocation certificate to a taxable entity that applies under this section and meets the requirements to receive an allocation certificate.

(c) The department may determine the amount of a credit allowed to taxable

Affairs.

(6) "Development" has the meaning assigned by Section 2306.6702, Government Code.

(7) "Federal tax credit" means the federal low-income housing credit created by 26 U.S.C. Section 42.

(8) "Qualified basis" means the qualified basis of a qualified development, as determined under Section 42, Internal Revenue Code.

(9) "Qualified development" means a development in this state that the department determines is eligible for a federal tax credit and that:

(A) is financed with tax-exempt bonds;

(B) is the subject of a recorded restrictive covenant requiring the development to be maintained and operated as a qualified development; and

(C) for the lesser of 15 years after the beginning of the credit period or the period required by the department is in compliance with:

(i) all accessibility and adaptability requirements for a federal tax credit; and

(ii) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. Section 3601 et seq.).

(10) "Qualified taxpayer" means a person who owns an interest in a qualified development.

Sec. 171.9242. ENTITLEMENT TO CREDIT. A development is entitled to a credit against the taxes imposed under this chapter in the amount and under the limitations provided by this subchapter if the department classifies the development as a qualified development.

Sec. 171.9243. ALLOCATION CERTIFICATE; CREDIT. (a) In a year during a credit period, a qualified taxpayer or other person may apply to the department for an allocation certificate.

(b) The department shall issue an allocation certificate if the development qualifies for a credit.

(c) The department may determine the amount of a credit awarded to a qualified

entities, subject to the following:

(1) a credit must be the minimum amount necessary to the financial feasibility of the qualified development after considering any federal credit;

(2) the amount of the credit given to a taxable entity during the credit period may not exceed the total federal tax credit awarded to the qualified development over the 10-year federal credit period;

(3) the credit must be consistent with the qualified allocation plan for the qualified development; and

(4) in a year, the total amount awarded may not exceed the sum of:

(A) \$20 million;

(B) any unallocated credits for the preceding year; and

(C) any credit recaptured or otherwise returned to the department in the year.

Sec. 171.9244. LENGTH OF CREDIT; LIMITATION.

Sec. 171.9245. CARRY FORWARD OR BACKWARD. (a) If a taxable entity is eligible for a credit that exceeds the limitations under Section 171.9244, the taxable entity may carry the unused credit back for not more than three taxable years or forward for not more than 10 consecutive reports following the taxable year in which the allocation was made. A credit carryforward from a previous report is considered to be used before the current year installment.

(b) A credit that is not used may not be refunded to the taxable entity.

Sec. 171.9246. RECAPTURE. (a) The comptroller shall recapture the amount of a credit claimed on a franchise tax report filed under this chapter from a taxable entity if, on the last day of a taxable year, the amount of the qualified basis of a qualified development with respect to a taxable entity is less than the amount of the qualified basis as of the last day of the prior taxable year. The comptroller shall determine the amount required to be recaptured using the formula provided by Section 42(j), Internal Revenue Code, as effective January 1, 2017.

(b) A franchise tax return must include any proportion of credit required to be recaptured, the identity of any taxable entity subject to the recapture, and the amount of

development, subject to the following:

(1) the credit must be the minimum amount necessary for the financial feasibility of the qualified development after considering any federal tax credit;

(2) the amount of the credit during the credit period may not exceed the total federal tax credit awarded to the qualified development over the 10-year federal tax credit period;

(3) the manner in which the department awards the credit must be consistent with criteria established by the department; and

(4) in a year, the total amount awarded may not exceed the sum of:

(A) \$0;

(B) any unallocated credits for the preceding year; and

(C) any credit recaptured or otherwise returned to the department in the year.

Sec. 171.9244. LENGTH OF CREDIT; LIMITATION.

Sec. 171.9245. CARRY FORWARD OR BACKWARD. (a) If a qualified taxpayer is eligible for a credit that exceeds the limitations under Section 171.9244, the qualified taxpayer may carry the unused credit back for not more than three taxable years or forward for not more than 10 consecutive reports following the taxable year in which the allocation was made. A credit carryforward from a previous report is considered to be used before the current year installment.

(b) A credit that is not used may not be refunded to the qualified taxpayer.

Sec. 171.9246. RECAPTURE. (a) The comptroller shall recapture the amount of a credit claimed on a franchise tax report filed under this chapter from a qualified taxpayer if, on the last day of a taxable 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 taxable year. The comptroller shall determine the amount required to be recaptured using the formula provided by Section 42(j), Internal Revenue Code, as effective January 1, 2017.

(b) A franchise tax return must include any proportion of credit required to be recaptured, the identity of any qualified taxpayer subject to the recapture, and the

credit previously allocated to the taxable entity.

Sec. 171.9247. ALLOCATION OF CREDIT. (a) If a taxable entity receiving a credit under this subchapter is a partnership, limited liability company, S corporation, or similar pass-through entity, the taxable entity may allocate credit among its partners, shareholders, members, or other constituent taxable entities in any manner agreed by those entities.

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

(c) An assignment under this section is not a transfer.

Sec. 171.9248. FILING REQUIREMENTS AFTER ALLOCATION. A taxable entity that allocates a portion of the credit under Section 171.9247, and each taxable entity to which a portion was allocated, shall file with the taxable entity's report a copy of the allocation certificate received by the taxpayer for that year.

Sec. 171.9249. RULES; PROCEDURES.

Sec. 171.9250. COMPLIANCE MONITORING. (a) The department, in consultation with the comptroller, shall monitor compliance with this subchapter.

(b) The department shall report any instances of noncompliance with this subchapter to the comptroller.

Sec. 171.9251. REPORT.

SECTION 2. Subtitle B, Title 3, Insurance Code, is amended by adding Chapter 230 to read as follows:

CHAPTER 230. CREDIT AGAINST PREMIUM TAXES

amount of credit previously allocated to the qualified taxpayer.

Sec. 171.9247. ALLOCATION OF CREDIT. (a) If a qualified taxpayer receiving a credit under this subchapter is a partnership, limited liability company, S corporation, or similar pass-through entity, the qualified taxpayer may allocate credit among its partners, shareholders, members, or other constituent taxable entities in any manner agreed by those entities.

(b) A qualified taxpayer that makes an allocation under this section shall certify to the comptroller the amount of credit allocated to each constituent taxable entity or shall notify the comptroller that it has assigned the duty of certification to one constituent taxable entity that shall provide the notification to the comptroller. Each constituent taxable entity is entitled to claim the allocated amount subject to any restrictions prescribed by this subchapter.

(c) An assignment under this section is not a transfer.

Sec. 171.9248. FILING REQUIREMENTS AFTER ALLOCATION. A qualified taxpayer that allocates a portion of the credit under Section 171.9247, and each taxable entity to which a portion was allocated, shall file with the qualified taxpayer's or taxable entity's report a copy of the allocation certificate received for that year.

Sec. 171.9249. RULES; PROCEDURES.

Sec. 171.9250. COMPLIANCE MONITORING. (a) The department, in consultation with the comptroller, shall monitor compliance with this subchapter in the same manner as the department monitors compliance with the federal tax credit program.

(b) The department shall report any instances of noncompliance with this subchapter to the comptroller.

Sec. 171.9251. REPORT.

SECTION 2. Subtitle B, Title 3, Insurance Code, is amended by adding Chapter 230 to read as follows:

CHAPTER 230. CREDIT AGAINST PREMIUM TAXES

FOR LOW-INCOME HOUSING DEVELOPMENTS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 230.001. DEFINITIONS. In this chapter:

(1) "Allocation certificate" and "credit period"

have the meanings assigned by Section 171.9241, Tax Code.

(2) "Qualified taxpayer" means a person that owns an interest in a qualified development, as that term is defined in Subchapter V, Chapter 171, Tax Code.

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

SUBCHAPTER B. CREDIT

Sec. 230.051. CREDIT. (a) An entity is eligible for a credit against the entity's state premium tax liability in the amount and under the conditions and limitations provided by this chapter if the entity is a qualified taxpayer and receives an allocation certificate issued in the manner prescribed by Section 171.9243, Tax Code.

(b) The amount of the credit is equal to the amount provided by the allocation certificate.

Sec. 230.052. LENGTH OF CREDIT; LIMITATION.

Sec. 230.053. APPLICATION FOR CREDIT. (a) An entity must apply for a credit under this chapter on or with the tax return for the taxable year for which the credit is claimed and submit with the application the allocation certificate issued to the entity and any other information required by Subchapter V, Chapter 171, Tax Code.

(b) The comptroller shall adopt a form for the application for the credit. An entity must use this form in applying for the credit.

Sec. 230.054. RULES; PROCEDURES.

Sec. 230.055.

The provisions of Subchapter V, Chapter 171, Tax Code, relating to recapture, allocation of credit, filing requirements after

FOR LOW-INCOME HOUSING DEVELOPMENTS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 230.001. DEFINITIONS. In this chapter:

(1) "Allocation certificate," "qualified development," and "qualified taxpayer"

have the meanings assigned by Section 171.9241, Tax Code.

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

SUBCHAPTER B. CREDIT

Sec. 230.051. CREDIT. (a) An entity is eligible for a credit against the entity's state premium tax liability in the amount and under the conditions and limitations provided by this chapter if the entity is a qualified taxpayer and the qualified development in which the entity owns an interest receives an allocation certificate issued in the manner prescribed by Section 171.9243, Tax Code.

(b) The amount of the credit is equal to the amount provided by the allocation certificate.

Sec. 230.052. LENGTH OF CREDIT; LIMITATION.

Sec. 230.053. APPLICATION FOR CREDIT. (a) An entity must apply for a credit under this chapter on or with the tax return for the taxable year for which the credit is claimed and submit with the application the allocation certificate issued to the qualified development and any other information required by Subchapter V, Chapter 171, Tax Code.

(b) The comptroller shall adopt a form for the application for the credit. An entity must use this form in applying for the credit.

Sec. 230.054. RULES; PROCEDURES.

Sec. 230.055. APPLICABLE PROVISIONS.

The provisions of Subchapter V, 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. This Act applies only to an original report due on or after the effective date of this Act.

No equivalent provision.

SECTION 4. This Act takes effect January 1, 2018.

allocation, and compliance monitoring apply to the credit authorized by this chapter.

No equivalent provision.

SECTION 3. (a) The Texas Department of Housing and Community Affairs may begin issuing allocation certificates under Section 171.9243, Tax Code, as added by this Act, in an open cycle beginning on January 1, 2018.
(b) A taxable entity may not claim a tax credit under Subchapter V, Chapter 171, Tax Code, as added by this Act, in connection with a privilege period that begins before January 1, 2019, or on a report filed before January 1, 2020.

SECTION 4. Same as introduced version.