

## **BILL ANALYSIS**

Senate Research Center

S.B. 931  
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Finance  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Access to private sector capital for job-creating small businesses in economically distressed areas of Texas is a persistent problem that was exacerbated by the recent recession and ensuing credit crisis. Economically distressed communities across Texas, including many rural areas of the state, are typically financially underserved. It can be very challenging to establish new business, grow existing businesses, and create jobs for Texans in these economically distressed areas. These are the areas of the state most in need of economic development.

S.B. 931 creates a private capital investment incentive by combining the proven federal New Markets investment incentive with a state New Markets investment incentive, as has already been done effectively in 11 other states, including Florida. States with their own New Markets incentive attract significantly more of this valuable federal economic development resource.

S.B. 931 encourages private sector investment in job creating businesses in economically distressed rural and emerging urban markets throughout Texas.

As proposed, S.B. 931 amends current law relating to tax credits for investments in economically distressed communities.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 481, Government Code, by adding Subchapter C, as follows:

#### **SUBCHAPTER C. CREDIT FOR BUSINESS GROWTH IN ECONOMICALLY DISTRESSED COMMUNITIES**

Sec. 481.031. **SHORT TITLE.** Requires that this subchapter be known and authorizes it to be cited as the "Texas New Markets Jobs Act."

Sec. 481.032. **DEFINITIONS.** Defines "administrator," "applicable percentage," "credit allowance date," "long-term debt security," "purchase price," "qualified active low-income community business," "qualified community development entity," "qualified equity investment," "qualified low-income community investment," and "state premium tax liability" in this section.

Sec. 481.033. **CREDIT ESTABLISHED.** Provides that any entity that makes a qualified equity investment earns a vested right to credit against the entity's state premium tax liability on a premium tax report filed under Subtitle B (Insurance Premium Taxes), Title 3, Insurance Code, which is authorized to be used as follows:

(1) on each credit allowance date of the qualified equity investment, the entity, or the subsequent holder of the qualified equity investment, is entitled to use a portion of the credit, during the taxable year that includes the credit allowance

date, equal to the applicable percentage for that credit allowance date multiplied by the purchase price paid to the issuer of the qualified equity investment;

(2) the amount of the credit claimed by an entity may not exceed the amount of the entity's state premium tax liability for the tax year for which the credit is claimed; and

(3) any amount of tax credit that the entity is prohibited from claiming in a taxable year under the provisions of this subchapter may be carried forward for use in any subsequent taxable year.

Sec. 481.034. TRANSFERABILITY. Provides that no tax credit claimed under this subchapter is refundable or saleable on the open market. Authorizes tax credits earned by a partnership, limited liability company, S corporation, or other pass-through entity to be allocated to the partners, members, or shareholders of that entity for their direct use in accordance with the provisions of any agreement among those partners, members, or shareholders. Provides that an allocation under this section is not considered a sale for the purposes of this subchapter.

Sec. 481.035. CERTIFICATION OF QUALIFIED EQUITY INVESTMENTS. (a) Requires a qualified community development entity that seeks to have an equity investment or long-term debt security designated as a qualified equity investment and eligible for tax credits under this subchapter to apply to the Economic Development and Tourism Division of the office of the governor (administrator). Requires the administrator to begin accepting applications on October 2, 2013. Requires the qualified community development entity, in its application, to include the following:

(1) evidence of the applicant's certification as a qualified community development entity, including evidence of the service area of the entity that includes this state;

(2) a copy of the allocation agreement executed by the applicant, or its controlling entity, and the Community Development Financial Institutions Fund;

(3) a certificate executed by an executive officer of the applicant attesting that the allocation agreement remains in effect and has not been revoked or canceled by the Community Development Financial Institutions Fund;

(4) a description of the proposed amount, structure, and purchaser of the qualified equity investment;

(5) identifying information for any entity that will earn tax credits as a result of the issuance of the qualified equity investment;

(6) examples of the types of qualified active low-income community businesses in which the applicant, its controlling entity, or affiliates of its controlling entity have invested under the federal New Markets Tax Credit Program; applicants are not required to identify qualified active low-income community businesses in which they will invest when submitting an application;

(7) a nonrefundable application fee of \$5,000, which is to be paid to the administrator and is required for each application submitted; and

(8) the refundable performance fee of \$500,000 required by Section 481.038(a).

(b) Requires the administrator, not later than 30 days after the date of receipt of a completed application containing the information required under Subsection (a),

including the payment of the application fee and the refundable performance fee, to grant or deny the application in full or in part. Requires the administrator, if the administrator 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 entity provides any additional information required by the administrator or otherwise completes its application within 15 days after receiving notice of denial, be considered completed as of the original date of submission. Provides that if the qualified community development entity fails to provide the information or complete its application within the 15-day period, the application remains denied and is required to be resubmitted in full with a new submission date.

(c) Requires the administrator, if the application is complete, to certify the proposed equity investment or long-term debt security as a qualified equity investment that is eligible for tax credits under this subchapter, subject to the limitations provided by Subsection (e). Requires the administrator to provide written notice of the certification to the qualified community development entity and to the comptroller of public accounts of the State of Texas (comptroller). Requires that the notice include the names of the entities that earned the credits and their respective credit amounts. Requires the qualified community development entity, if the names of the entities that are eligible to use the credits change because of a transfer of a qualified equity investment or an allocation under Section 481.034, to notify the administrator of the change and the administrator is required to notify the comptroller.

(d) Requires the administrator to certify qualified equity investments in the order it receives applications under this section. Provides that applications received on the same day are considered to have been received simultaneously. Requires the administrator, for applications that are complete and received on the same day, to certify, consistent with remaining qualified equity investment capacity, the 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.

(e) Requires the administrator to certify \$750 million in qualified equity investments. Requires the administrator, if a pending request cannot be fully certified because of this limit, to certify the portion of the qualified equity investment requested that is authorized to be certified, unless the qualified community development entity elects to withdraw its request rather than receive a partial certification.

(f) Authorizes an approved applicant to transfer all or a portion of its certified qualified equity investment authority to its controlling entity, or any subsidiary qualified community development entity of the controlling entity, provided that the applicant provides the information required in the application with respect to the transferee and notifies the administrator of the transfer not later than the 30th day after the date of the transfer.

(g) Requires the qualified community development entity or any transferee under Subsection (f), not later than the 30th day after the date the applicant receives notice of certification, to issue the qualified equity investment and receive cash in the amount of the certified amount. Requires the qualified community development entity or transferee under Subsection (f) to provide the administrator with evidence of the receipt of the cash investment not later than the 10th day after the date of receipt. Provides that if the qualified community development entity or any transferee under Subsection (f) does not receive the cash investment and issue the qualified equity investment by the 30th day following the date of receipt of the certification notice, the certification lapses and the entity is prohibited from issuing the qualified equity investment without reapplying to the

administrator for certification. Provides that lapsed certifications revert to the administrator and are required to be reissued, first, pro rata to other applicants whose qualified equity investment allocations were reduced under Subsection (e) and, thereafter, in accordance with the application process.

Sec. 481.036. RECAPTURE. (a) Requires the comptroller to recapture, from the entity that claimed the credit on a return, the tax credit allowed under this subchapter if:

(1) any amount of a federal tax credit available with respect to a qualified equity investment that is eligible for a credit under this subchapter is recaptured under Section 45D, Internal Revenue Code of 1986, as amended, in which event, the comptroller's recapture shall be proportionate to the federal recapture with respect to the qualified equity investment;

(2) the issuer redeems or makes principal repayment with respect to a qualified equity investment before the seventh anniversary of the date of issuance of the qualified equity investment, in which event the comptroller's recapture is required to be proportionate to the amount of the redemption or repayment with respect to such qualified equity investment;

(3) the issuer fails to invest an amount equal to 100 percent of the purchase price of the qualified equity investment in qualified low-income community investments in the state not later than 12 months after the date of issuance of the qualified equity investment and to maintain at least 100 percent of such level of investment in qualified low-income community investments in the state until the last credit allowance date for the qualified equity investment; or

(4) at any time prior to the final credit allowance date of a qualified equity investment, the issuer uses the cash proceeds of the qualified equity investment to make qualified low-income community investments in any qualified active low-income community business, including affiliated qualified active low-income community businesses, exclusive of reinvestments of capital returned or repaid with respect to earlier investments in such qualified active low-income community business and its affiliates, in excess of 25 percent of such cash proceeds.

(b) Requires that an investment, for the purposes of this subchapter, be considered held by an issuer even if the investment has been sold or repaid if the issuer reinvests an amount equal to the capital returned to or recovered by the issuer from the original investment, exclusive of any profits realized, in another qualified low-income community investment not later than 12 months after the date of the receipt of such capital. Provides that an issuer is not required to reinvest capital returned from qualified low-income community investments after the sixth anniversary of the date of issuance of the qualified equity investment, the proceeds of which were used to make the qualified low-income community investment, and the qualified low-income community investment is required to be considered held by the issuer through the seventh anniversary of the date of the qualified equity investment's issuance.

Sec. 481.037. NOTICE OF NONCOMPLIANCE. Provides that enforcement of each recapture provision is subject to a six-month cure period. Prohibits a recapture from occurring until the qualified community development entity has been given notice of noncompliance and given six months from the date of the notice to correct the noncompliance.

Sec. 481.038. REFUNDABLE PERFORMANCE FEE. (a) Requires a qualified community development entity that has an equity investment or long-term debt security designated as a qualified equity investment and eligible for tax credits under this

subchapter to pay a fee in the amount of \$500,000 to the comptroller for deposit in the new markets performance guarantee account if the qualified community development entity and its subsidiary qualified community development entities fail to issue the total amount of qualified equity investments certified by the administrator and receive cash in the total amount certified under Section 481.035(c) or the qualified community development entity or any subsidiary qualified community development entity that issues a qualified equity investment certified under this section fails to meet the investment requirement under Section 481.036(a)(3) by the second credit allowance date of the qualified equity investment. Requires that forfeiture of the fee under this subdivision to be subject to the six-month period provided under Section 481.037.

(b) Requires that the fee required under Subsection (a) be paid to the comptroller and held in the new markets performance guarantee account until compliance with this subsection has been established. Authorizes the qualified community development entity to request a refund of the fee from the comptroller not earlier than 30 days after the date the entity meets all the requirements of Subsection (a). Provides that the comptroller has 30 days to comply with the request or to give notice of noncompliance.

Sec. 481.039. LETTER RULINGS. (a) Requires the administrator or the comptroller to issue letter rulings regarding the tax credit program authorized under this subchapter, subject to the terms and conditions provided by this section. Provides that, for the purposes of this subchapter, the term "letter ruling" means a written interpretation of law to a specific set of facts provided by the applicant requesting a letter ruling.

(b) Requires the administrator or comptroller to respond to a request for a letter ruling not later than the 60th day after the date of receipt of the request. Authorizes the applicant to provide a draft letter ruling for the administrator's or comptroller's consideration. Authorizes the applicant to withdraw the request for a letter ruling, in writing, before the issuance of the letter ruling. Authorizes the administrator or comptroller to refuse to issue a letter ruling for good cause but must list the specific reasons for refusing to issue the letter ruling. Provides that good cause includes cases in which the applicant requests that the administrator or comptroller determine whether a statute is constitutional or a regulation is lawful; the applicant's request involves a hypothetical situation or alternative plans; the facts or issues presented in the request are unclear, overbroad, insufficient, or otherwise inappropriate as a basis on which to issue a letter ruling; and the issue is currently being considered in a rulemaking procedure, contested case, or other agency or judicial proceeding that may definitively resolve the issue.

(c) Requires that letter rulings bind the administrator and comptroller and their agents and successors until the entity or its shareholders, members, or partners, as applicable, claim all tax credits on a Texas tax return or report, subject to the terms and conditions provided in properly published regulations. Requires that the letter ruling apply only to the applicant. Requires the administrator or comptroller, in making determinations under this subchapter, to, to the extent applicable, look for guidance to Section 45D, Internal Revenue Code of 1986, as amended, and the rules and regulations issued under that section.

Sec. 481.040. RETALIATORY TAX. (a) Provides that an entity claiming a tax credit under this subchapter is not required to pay any additional retaliatory tax levied under Chapter 281 (Retaliatory Provisions), Insurance Code, as a result of claiming that credit.

(b) Provides that, in addition to the exemption under Subsection (a), an entity claiming a tax credit under this subchapter is not required to pay any additional tax that may arise from claiming the credit.

SECTION 2. Provides that this Act applies only to a tax report originally due on or after the effective date of this Act.

SECTION 3. Effective date: September 1, 2013.