

1-1 By: Goldman, Talarico (Senate Sponsor - Perry) H.B. No. 1058
 1-2 (In the Senate - Received from the House April 5, 2023;
 1-3 April 12, 2023, read first time and referred to Committee on
 1-4 Finance; May 21, 2023, reported adversely, with favorable
 1-5 Committee Substitute by the following vote: Yeas 15, Nays 2;
 1-6 May 21, 2023, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			
1-18		X		
1-19	X			
1-20	X			
1-21	X			
1-22		X		
1-23	X			
1-24	X			
1-25	X			

1-26 COMMITTEE SUBSTITUTE FOR H.B. No. 1058 By: Perry

1-27 A BILL TO BE ENTITLED
 1-28 AN ACT

1-29 relating to a franchise or insurance premium tax credit for certain
 1-30 housing developments.

1-31 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-32 SECTION 1. Chapter 171, Tax Code, is amended by adding
 1-33 Subchapter K to read as follows:

1-34 SUBCHAPTER K. TAX CREDIT FOR CERTAIN HOUSING DEVELOPMENTS

1-35 Sec. 171.551. DEFINITIONS. In this subchapter:

1-36 (1) "Allocation certificate" means a statement issued
 1-37 by the department certifying that a qualified development qualifies
 1-38 for credits under this subchapter and Chapter 233, Insurance Code,
 1-39 specifying the total amount of the credits awarded in connection
 1-40 with the qualified development for the credit period, and
 1-41 specifying the amount of credit that may be claimed each year for
 1-42 each building that is part of the qualified development.

1-43 (2) "Credit" means the low-income housing development
 1-44 tax credit authorized by this subchapter.

1-45 (3) "Credit period" means, with respect to a building
 1-46 that is part of a qualified development, the period of 10 tax years
 1-47 beginning with the tax year in which the building is placed in
 1-48 service.

1-49 (4) "Department" means the Texas Department of Housing
 1-50 and Community Affairs.

1-51 (5) "Development" has the meaning assigned by Section
 1-52 2306.6702, Government Code.

1-53 (6) "Federal tax credit" means the federal low-income
 1-54 housing credit created by Section 42, Internal Revenue Code.

1-55 (7) "Qualified basis" means the qualified basis of a
 1-56 qualified development, as determined under Section 42, Internal
 1-57 Revenue Code.

1-58 (8) "Qualified development" means a development in
 1-59 this state:

1-60 (A) for which the department awards or allocates

2-1 a federal tax credit through the issuance of a carryover allocation
 2-2 agreement or determination notice;
 2-3 (B) that has not had an allocation of federal tax
 2-4 credits terminated by or at the direction of the department;
 2-5 (C) that is the subject of a recorded restrictive
 2-6 covenant requiring the development to be maintained and operated as
 2-7 a qualified development that has not been terminated and is not
 2-8 subject to termination through any process other than the natural
 2-9 expiration of the covenant's extended use period;
 2-10 (D) that meets all applicable requirements of the
 2-11 qualified allocation plan, as defined by Section 2306.6702,
 2-12 Government Code; and
 2-13 (E) for the duration of the extended use period
 2-14 established in the land use restriction agreement, as defined by
 2-15 Section 2306.6702(a)(9), Government Code, is in compliance with:
 2-16 (i) all accessibility and adaptability
 2-17 requirements for a federal tax credit; and
 2-18 (ii) Title VIII of the Civil Rights Act of
 2-19 1968 (42 U.S.C. Section 3601 et seq.).
 2-20 (9) "State housing credit ceiling" means \$25 million
 2-21 of credits each award year.
 2-22 Sec. 171.552. ENTITLEMENT TO CREDIT. A taxable entity is
 2-23 entitled to a credit against the taxes imposed under this chapter in
 2-24 the amount and under the limitations provided by this subchapter if
 2-25 the taxable entity owns a direct or indirect interest in a qualified
 2-26 development.
 2-27 Sec. 171.553. APPLICATION FOR AND ISSUANCE OF ALLOCATION
 2-28 CERTIFICATE. (a) A taxable entity or an entity subject to state
 2-29 premium tax liability as defined by Section 233.0001, Insurance
 2-30 Code, must apply to the department for an allocation certificate in
 2-31 connection with a development in which the taxable entity or other
 2-32 entity owns an interest. The application must be submitted to the
 2-33 department along with the application for an allocation of federal
 2-34 tax credits in a manner prescribed by the department.
 2-35 (b) The department shall issue an allocation certificate
 2-36 if:
 2-37 (1) the department approves the application submitted
 2-38 under Subsection (a);
 2-39 (2) the development meets the requirements to be a
 2-40 qualified development; and
 2-41 (3) the department awards an amount of credit to the
 2-42 development under Section 171.554.
 2-43 Sec. 171.554. AMOUNT OF CREDITS; METHOD OF AWARD. (a) The
 2-44 department shall in the manner provided by this section determine
 2-45 the total amount of credits under this subchapter and Chapter 233,
 2-46 Insurance Code, awarded for the credit period in connection with a
 2-47 qualified development and indicate the amount of credits awarded on
 2-48 the allocation certificate.
 2-49 (b) The amount of credits awarded in connection with a
 2-50 qualified development over the credit period must be the minimum
 2-51 amount necessary for the financial feasibility of the qualified
 2-52 development, subject to the limitations of this section.
 2-53 (c) The amount of credits awarded in connection with a
 2-54 qualified development over the credit period may not exceed the
 2-55 total federal tax credit awarded to the owner or owners of the
 2-56 qualified development over the 10-year federal tax credit period.
 2-57 (d) The manner in which the department awards the amount of
 2-58 credits must be consistent with criteria established by the
 2-59 department.
 2-60 (e) The total amount of credits awarded for a year in
 2-61 connection with all qualified developments financed through tax
 2-62 exempt bonds may not exceed the sum of:
 2-63 (1) 50 percent of the state housing credit ceiling for
 2-64 the year;
 2-65 (2) any portion of the state housing credit ceiling
 2-66 for the preceding year that could have been awarded for qualified
 2-67 developments financed through tax exempt bonds but was not awarded;
 2-68 and
 2-69 (3) any credits recaptured or otherwise returned to

3-1 the department in the year that were originally awarded in
 3-2 connection with a qualified development financed through tax exempt
 3-3 bonds.
 3-4 (f) The total amount of credits awarded for a year in
 3-5 connection with all qualified developments not financed through tax
 3-6 exempt bonds may not exceed the sum of:
 3-7 (1) 50 percent of the state housing credit ceiling for
 3-8 the year;
 3-9 (2) any portion of the state housing credit ceiling
 3-10 for the preceding year that could have been awarded for qualified
 3-11 developments not financed through tax exempt bonds but was not
 3-12 awarded; and
 3-13 (3) any credits recaptured or otherwise returned to
 3-14 the department in the year that were originally awarded in
 3-15 connection with a qualified development not financed through tax
 3-16 exempt bonds.
 3-17 (g) The department shall, in the qualified allocation plan,
 3-18 determine the priorities and criteria for awarding credits during
 3-19 years in which the amount of credits applied for exceeds the maximum
 3-20 amount that may be awarded under this section.
 3-21 Sec. 171.555. APPORTIONMENT OF CREDIT. The direct or
 3-22 indirect owners of a qualified development who intend to claim a
 3-23 credit under this subchapter or Chapter 233, Insurance Code, may by
 3-24 agreement determine the portion of the total amount of credits
 3-25 awarded under Section 171.554 that each owner is entitled to claim.
 3-26 If the owners do not agree, the department shall determine the
 3-27 portion each owner is entitled to claim based on each owner's
 3-28 ownership interest in the qualified development.
 3-29 Sec. 171.556. LENGTH OF CREDIT; LIMITATION. (a) A taxable
 3-30 entity entitled to a credit under this subchapter shall claim the
 3-31 credit in equal installments during each year of the credit period.
 3-32 (b) The total credit claimed under this subchapter for a
 3-33 report, including any carry forward or backward under Section
 3-34 171.557, may not exceed the amount of tax due for the report after
 3-35 any other applicable credit.
 3-36 Sec. 171.557. CARRY FORWARD OR BACKWARD. (a) If a taxable
 3-37 entity is eligible for a credit that exceeds the limitations under
 3-38 Section 171.556, the taxable entity may carry the unused credit
 3-39 back for not more than three tax years or forward for not more than
 3-40 10 consecutive reports following the tax year in which the
 3-41 allocation certificate was issued. A credit carryforward from a
 3-42 previous report is considered to be used before the current year
 3-43 installment. A credit carried back to a previous report is
 3-44 considered to be used after any other franchise tax credit is
 3-45 applied to that report.
 3-46 (b) A credit that is not used may not be refunded.
 3-47 (c) The allocation of a credit in accordance with Section
 3-48 171.559 does not extend the period for which a credit may be carried
 3-49 forward and does not increase the total amount of the credit that
 3-50 may be claimed.
 3-51 (d) An entity may not carry back a credit under this
 3-52 subchapter to a tax year for which the report was originally due
 3-53 before January 1, 2026.
 3-54 Sec. 171.558. RECAPTURE. (a) If a qualified development is
 3-55 subject to the recapture of a portion of the federal credit awarded
 3-56 or allocated to the development, then each taxable entity or entity
 3-57 subject to state premium tax liability as defined by Section
 3-58 233.0001, Insurance Code, that has claimed or is entitled to claim a
 3-59 portion of the credit under this subchapter is also subject to the
 3-60 recapture of a portion of the credit under this subchapter.
 3-61 (b) The amount of credit under this subchapter that is
 3-62 subject to recapture under this section is the same percentage of
 3-63 the amount originally awarded or allocated as the percentage of the
 3-64 amount of the federal credit originally awarded or allocated that
 3-65 is subject to recapture under federal law. The recapture of a credit
 3-66 under this section is not subject to a statute of limitations
 3-67 provided by Chapter 111.
 3-68 (c) The owners of a qualified development that is awarded or
 3-69 allocated a credit under this subchapter or a representative of

4-1 those owners shall identify each taxable entity and each entity
 4-2 subject to state premium tax liability as defined by Section
 4-3 233.0001, Insurance Code, that is subject to recapture of the
 4-4 credit under this section.

4-5 (d) Not later than the 30th day after the date any owner of a
 4-6 qualified development receives notice that a federal credit awarded
 4-7 or allocated to the development is subject to recapture, the owners
 4-8 of the development or a representative of those owners shall report
 4-9 to the comptroller:

4-10 (1) the amount of federal credit originally awarded or
 4-11 allocated to the development;

4-12 (2) the amount of federal credit that is subject to
 4-13 recapture and the percentage of the amount originally awarded or
 4-14 allocated which that amount represents; and

4-15 (3) each entity identified under Subsection (c).

4-16 Sec. 171.559. ALLOCATION OF CREDIT. (a) If a taxable
 4-17 entity receiving a credit under this subchapter is a partnership,
 4-18 limited liability company, S corporation, or similar pass-through
 4-19 entity, the taxable entity may allocate the credit to its partners,
 4-20 shareholders, members, or other constituent taxable entities in any
 4-21 manner agreed to by those entities, regardless of the size of the
 4-22 person's ownership interest. This section does not prohibit a
 4-23 partner, member, or shareholder from holding an investment
 4-24 consisting only of a credit awarded under this subchapter or a
 4-25 federal credit.

4-26 (b) A taxable entity that makes an allocation under this
 4-27 section shall certify to the comptroller the amount of credit
 4-28 allocated to each constituent taxable entity or shall notify the
 4-29 comptroller that it has delegated the duty of certification to one
 4-30 constituent taxable entity that shall provide the notification to
 4-31 the comptroller. Each constituent taxable entity is entitled to
 4-32 claim the allocated amount subject to any restrictions prescribed
 4-33 by this subchapter.

4-34 (c) An allocation under this section is not a transfer for
 4-35 purposes of state law.

4-36 Sec. 171.560. FILING REQUIREMENTS AFTER ALLOCATION. A
 4-37 taxable entity that allocates a portion of the credit under Section
 4-38 171.559, and each taxable entity to which a portion was allocated,
 4-39 shall file with the taxable entity's report a copy of the
 4-40 certification or notice required by Section 171.559(b).

4-41 Sec. 171.561. APPLICATION FOR CREDIT. (a) A taxable entity
 4-42 must apply for a credit under this subchapter on or with the tax
 4-43 report for which the credit is claimed and submit with the
 4-44 application a copy of the allocation certificate issued in
 4-45 connection with the qualified development and any other information
 4-46 required by the comptroller.

4-47 (b) The comptroller shall adopt a form for the application
 4-48 for the credit. A taxable entity must use the form to apply for the
 4-49 credit.

4-50 Sec. 171.562. RULES; PROCEDURES. The department and
 4-51 comptroller, in consultation with each other, shall adopt rules and
 4-52 procedures to implement, administer, and enforce this subchapter.

4-53 Sec. 171.563. COMPLIANCE MONITORING. (a) The department
 4-54 shall monitor compliance with this subchapter in the same manner as
 4-55 the department monitors compliance with the federal tax credit
 4-56 program.

4-57 (b) The department shall report any instances of
 4-58 noncompliance with this subchapter to the comptroller.

4-59 Sec. 171.564. INCLUSION OF INFORMATION IN LOW INCOME
 4-60 HOUSING PLAN. The department shall include in the low income
 4-61 housing plan under Section 2306.0721, Government Code, information
 4-62 relating to the performance of the credit during the previous
 4-63 calendar year. The information must:

4-64 (1) specify the number of qualified developments for
 4-65 which allocation certificates were issued during the year and the
 4-66 total number of units supported by the developments;

4-67 (2) describe each qualified development for which an
 4-68 allocation certificate was issued during the year, including:

4-69 (A) location;

5-1 (B) household type;
 5-2 (C) available demographic information for the
 5-3 residents intended to be served by the development;
 5-4 (D) the income levels intended to be served by
 5-5 the development; and
 5-6 (E) the rents or set-asides authorized for the
 5-7 development;
 5-8 (3) include housing market and demographic
 5-9 information to demonstrate how the qualified developments,
 5-10 supported by the tax credits under this subchapter and Chapter 233,
 5-11 Insurance Code, are addressing the need for affordable housing in
 5-12 their communities; and
 5-13 (4) analyze any remaining disparities in the
 5-14 affordability of housing within those communities.

5-15 Sec. 171.565. EXPIRATION OF AUTHORITY TO ALLOCATE CREDITS.
 5-16 (a) After December 31, 2025, the department may not:

5-17 (1) reserve an amount of credit under this subchapter
 5-18 for a qualified development for the purpose of issuing an
 5-19 allocation certificate for the development at a later date; or
 5-20 (2) issue an allocation certificate for a qualified
 5-21 development unless, on or before December 31, 2025, the department
 5-22 reserved an amount of credit under this subchapter for the
 5-23 development for the purpose of issuing an allocation certificate at
 5-24 a later date if the requirements for issuance of the certificate are
 5-25 met.

5-26 (b) On or after January 1, 2026:

5-27 (1) the department may issue an allocation certificate
 5-28 for which an amount of credit was reserved under Subsection (a)(2);
 5-29 and

5-30 (2) an entity may claim a credit on a tax report as
 5-31 provided by this subchapter or Chapter 233, Insurance Code, in
 5-32 connection with a qualified development for which the department
 5-33 issued an allocation certificate or reserved an amount of credit
 5-34 before January 1, 2026.

5-35 Sec. 171.566. PRIORITY ALLOCATION FOR CERTAIN QUALIFIED
 5-36 DEVELOPMENTS. (a) This section applies only to a qualified
 5-37 development:

5-38 (1) that received an allocation of federal tax credits
 5-39 under the qualified allocation plan issued by the department for
 5-40 2021 or 2022;

5-41 (2) the owners or developers of which have owned the
 5-42 land necessary for the development since at least December 31,
 5-43 2022;

5-44 (3) that is not financed through tax exempt bonds; and

5-45 (4) that the department determines requires an
 5-46 allocation of credit under this subchapter to secure the financial
 5-47 feasibility of the qualified development after considering any
 5-48 federal tax credit.

5-49 (b) Notwithstanding Sections 171.554(e) and (f) and subject
 5-50 to Subsection (e) of this section, for the first year the department
 5-51 issues allocation certificates or reserves credit amounts for the
 5-52 purpose of issuing allocation certificates, the department shall
 5-53 use \$5 million of the state housing credit ceiling to award credits
 5-54 to qualified developments to which this section applies.

5-55 (c) The owners of a qualified development to which this
 5-56 section applies who intend to apply for an allocation of credit
 5-57 under this section, or a representative of those owners, must
 5-58 notify the department of that intent before the deadline for the
 5-59 qualified development to be placed in service. If the owners or
 5-60 their representative provide the notice required by this
 5-61 subsection, the deadline for the qualified development to be placed
 5-62 in service is extended until:

5-63 (1) the deadline set by the department for submitting
 5-64 an application for an allocation under this section; or

5-65 (2) if an application for an allocation under this
 5-66 section is submitted before the deadline set by the department, the
 5-67 date the department issues a decision on the application.

5-68 (d) An applicant for an allocation of credit under this
 5-69 section must submit to the department:

6-1 (1) documents proving that the owners or developers of
6-2 the qualified development meet the land ownership requirement under
6-3 Subsection (a)(2);

6-4 (2) a financial analysis demonstrating that the
6-5 allocation is necessary to secure the financial feasibility of the
6-6 development as required by Subsection (a)(4); and

6-7 (3) any other documentation required by the department
6-8 to demonstrate that the qualified development meets the
6-9 requirements provided by Subsection (a).

6-10 (e) If the amount of state credits reserved under this
6-11 section is not fully allocated to qualified developments to which
6-12 this section applies, the department shall allocate the remaining
6-13 portion to qualified developments to which this section does not
6-14 apply.

6-15 (f) The department shall, in the qualified allocation plan,
6-16 determine the priorities and criteria for awarding credits under
6-17 this section if the amount of credits applied for exceeds the
6-18 maximum amount that may be awarded under this section.

6-19 SECTION 2. Subtitle B, Title 3, Insurance Code, is amended
6-20 by adding Chapter 233 to read as follows:

6-21 CHAPTER 233. CREDIT AGAINST CERTAIN TAXES FOR CERTAIN HOUSING
6-22 DEVELOPMENTS

6-23 SUBCHAPTER A. GENERAL PROVISIONS

6-24 Sec. 233.0001. DEFINITIONS. In this chapter:

6-25 (1) "Allocation certificate," "credit," and
6-26 "qualified development" have the meanings assigned by Section
6-27 171.551, Tax Code.

6-28 (2) "State premium tax liability" means any tax
6-29 liability incurred by an entity under Chapter 221, 222, 223, or 224.

6-30 SUBCHAPTER B. CREDIT

6-31 Sec. 233.0051. CREDIT. (a) An entity is eligible for a
6-32 credit against the entity's state premium tax liability in the
6-33 amount and under the limitations provided by this chapter if the
6-34 entity owns a direct or indirect interest in a qualified
6-35 development.

6-36 (b) An entity that claims a credit under this chapter is not
6-37 required to pay any additional retaliatory tax under Chapter 281 as
6-38 a result of claiming the credit.

6-39 Sec. 233.0052. LENGTH OF CREDIT; LIMITATIONS. (a) The
6-40 entity shall claim the credit in the manner provided by Section
6-41 171.556, Tax Code.

6-42 (b) The total credit claimed under this chapter for a
6-43 report, including any carry forward or backward described by
6-44 Subsection (c), may not exceed the amount of the entity's state
6-45 premium tax liability due for the report after any other applicable
6-46 credit.

6-47 (c) The entity may carry a surplus credit forward or
6-48 backward as provided by Section 171.557, Tax Code.

6-49 Sec. 233.0053. APPLICATION FOR CREDIT. (a) An entity must
6-50 apply for a credit under this chapter on or with the tax report for
6-51 the tax year for which the credit is claimed and submit with the
6-52 application a copy of the allocation certificate issued in
6-53 connection with the qualified development and any other information
6-54 required by Subchapter K, Chapter 171, Tax Code.

6-55 (b) The comptroller shall adopt a form for the application
6-56 for the credit. An entity must use this form in applying for the
6-57 credit.

6-58 Sec. 233.0054. RULES; PROCEDURES. The comptroller and the
6-59 Texas Department of Housing and Community Affairs, in consultation
6-60 with each other, shall adopt rules and procedures to implement,
6-61 administer, and enforce this chapter.

6-62 Sec. 233.0055. APPLICABLE PROVISIONS. The provisions of
6-63 Subchapter K, Chapter 171, Tax Code, relating to recapture,
6-64 allocation of credit, apportionment of credit, length of credit,
6-65 filing requirements after allocation, and compliance monitoring
6-66 apply to the credit authorized by this chapter.

6-67 SUBCHAPTER C. EXPIRATION OF AUTHORITY TO ALLOCATE CREDITS

6-68 Sec. 233.0101. EXPIRATION OF ALLOCATION AUTHORITY; USE OF
6-69 ALLOCATED CREDITS. (a) The authority of the Texas Department of

7-1 Housing and Community Affairs to reserve credit amounts and issue
7-2 allocation certificates for purposes of Subchapter K, Chapter 171,
7-3 Tax Code, and this chapter expires as provided by Section
7-4 171.565(a), Tax Code.

7-5 (b) An entity may claim a credit under this chapter on a tax
7-6 report as provided by Section 171.565(b), Tax Code.

7-7 SECTION 3. (a) The Texas Department of Housing and
7-8 Community Affairs may begin reserving credit amounts for the
7-9 purpose of issuing allocation certificates under Subchapter K,
7-10 Chapter 171, Tax Code, as added by this Act, in an open cycle
7-11 beginning on January 1, 2024.

7-12 (b) Except as provided by Subsection (c) of this section,
7-13 Subchapter K, Chapter 171, Tax Code, as added by this Act, and
7-14 Chapter 233, Insurance Code, as added by this Act, apply only to a
7-15 tax report originally due on or after January 1, 2026, and before
7-16 January 1, 2036.

7-17 (c) The expiration of the authority to allocate credits
7-18 under Subchapter K, Chapter 171, Tax Code, as added by this Act, in
7-19 accordance with Section 171.565, Tax Code, as added by this Act,
7-20 does not affect the carryforward of a credit under:

7-21 (1) Section 171.557, Tax Code, as added by this Act; or

7-22 (2) Section 233.0052(c), Insurance Code, as added by
7-23 this Act.

7-24 SECTION 4. This Act takes effect January 1, 2024.

7-25 * * * * *