

SUBJECT: Authorizing franchise and insurance tax credits for low-income housing

COMMITTEE: Ways & Means — favorable, without amendment

VOTE: 11 ayes — Meyer, Thierry, Button, Craddick, Gervin-Hawkins, Hefner,
Muñoz, Noble, Raymond, Shine, Turner

0 nays

WITNESSES: For — (*Registered, but did not testify*: Daniel Hodge, Fairway Management; Alex Johnson, InState Partners; Micah Rodriguez, ITEX; Alyse Meyer, LeadingAge Texas; Bill Kelly, Mayor’s Office, City of Houston; Nicholas Sabino, Monarch Private Capital; Leticia Van de Putte, Texas Affiliation of Affordable Housing Providers; David Mintz, Texas Apartment Association; Justin MacDonald, Scott Norman, Jr., Texas Association of Builders; Julia Parenteau, Texas Realtors)

Against — (*Registered, but did not testify*: Susan Stewart)

On — (*Registered, but did not testify*: Brad Reynolds and Nicholas Souza, Comptroller of Public Accounts)

DIGEST: HB 1058 would authorize franchise and insurance tax credits for taxable entities that owned an interest in qualified low-income housing developments. A qualified development would be a low-income housing project in the state that the Texas Department of Housing and Community Affairs (TDHCA) determined was eligible for a federal tax credit and that:

- was 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 a period required by TDHCA, was in compliance with all accessibility and adaptability requirements for a federal tax credit and Title 8 of the Civil Rights Act of 1968.

Franchise tax credit. HB 1058 would entitle a taxable entity to a low-income housing credit against the franchise tax if the entity owned a direct or indirect interest in a qualified development. In a year during a credit period, an entity could apply for an allocation certificate (a statement certifying that a development qualified for a credit) in connection with a development in which the entity owned an interest. TDHCA would be required to issue a certificate if the development was qualified, then determine the total amount of credits awarded and indicate the amount on the allocation certificate.

The amount of credits awarded would have to be the minimum amount necessary for the financial feasibility of the qualified development after considering any federal tax credit, within the limits established by the bill. The amount could not exceed the total federal tax credit awarded to an owner over the 10-year federal credit period.

The total amount of credits awarded in a year in connection with all qualified developments financed through tax exempt bonds could not exceed the sum of:

- 50 percent of the state housing credit ceiling (\$25 million annually);
- any unallocated credits for the preceding year; and
- any credit recaptured or otherwise returned to TDHCA.

The same limitations would apply to the total amount of credits awarded in a year in connection with all qualified developments not financed through tax exempt bonds.

The owners of a qualified development who intended to claim a credit could by agreement determine the portion that each owner was entitled to claim. If the owners did not agree, TDHCA would be required to determine the portions based on each owner's ownership interest in the development.

Insurance premium tax credit. HB 1058 would make an entity eligible

for a low-income housing credit against state insurance premium tax liability if the entity owned a direct or indirect interest in a qualified development. An entity would have to apply for the credit on or with the entity's tax report and submit with the application a copy of the allocation certificate issued in connection with the qualified development.

The following provisions would apply to both the insurance premium tax credit and the franchise tax credit.

Length of credit; amount limitation. The bill would require a taxable entity entitled to a credit to claim it in equal installments each year during the credit period. The total credit claimed for a report, including any carry forward or backward, could not exceed the amount of franchise tax or insurance tax, whichever was applicable, due for the report after any applicable credits.

Carry forward or backward. If a taxable entity was eligible for a credit that exceeded the limitations under the bill, the taxable entity could carry the unused credit back for up to three tax years or forward for up to 10 consecutive reports. A credit carryforward from a previous report would be considered used before the current year installment. A credit that was not used could not be refunded.

Recapture. The bill would require the comptroller to recapture the amount of a credit claimed on a report if, on the last day of a tax year, the amount of the qualified basis of the qualified development was less than the amount of the qualified basis as of the last day of the prior tax year. The comptroller would have to determine the amount required to be recaptured using a formula provided by the Internal Revenue Code as of January 1, 2023. A report would have to include any portion of credit required to be recaptured, the identity of the entity subject to recapture, and the amount of any credit previously allocated to that entity.

Allocation. If a taxable entity receiving a credit was a partnership, limited liability company, S corporation, or similar pass-through entity, the entity could allocate the credit to its partners, shareholders, members, or other

constituent taxable entities in any manner agreed upon by those entities. The bill would require a taxable entity that made such an allocation to certify to the comptroller the amount of credit allocated to each constituent taxable entity or notify the comptroller that it had delegated the duty of certification to a constituent taxable entity. Each constituent taxable entity would be entitled to claim the allocated amount, subject to restrictions. An allocation would not be a transfer for purposes of state law.

Report. By December 31 of each year, TDHCA would have to deliver a report to the Legislature that:

- specified the number of qualified developments for which allocation certificates were issued and the total number of units supported by the developments;
- described each qualified development for which an allocation certificate was issued, including the location, household type, resident demographic information, income levels served, and the authorized rents or set-asides for the development;
- included housing market and demographic information to demonstrate how the qualified developments were addressing the need for affordable housing in their communities; and
- analyzed any remaining disparities in the affordability of housing within those communities.

TDHCA would have to make the report available to the public.

Dates. TDHCA could begin issuing allocation certificates in an open cycle beginning on January 1, 2024. An entity could not carry back a credit to a tax year the report for which was originally due before January 1, 2026. The bill would take effect January 1, 2024, and would apply only to a tax report originally due on or after January 1, 2026.

SUPPORTERS
SAY:

HB 1058 would help address the affordable housing crisis in Texas by authorizing state low-income housing tax credits to complement the existing federal program. Many states have opted to address workforce

housing shortages by augmenting the federal low-income housing tax credit program with state tax credits for apartment developments that offer discounted rents. A state low-income housing tax credit program would incentivize private investment in affordable housing, which could lead to increased economic activity and job growth. Texas should use every available tool to ensure that the households that make up the state's workforce are not overburdened by the cost of rent so that the state can remain economically vibrant and competitive.

CRITICS
SAY:

No concerns identified.

NOTES:

According to the Legislative Budget Board, the bill would have no financial impact through fiscal 2024-25. However, upon full implementation of the bill, annual reductions in net tax revenue would reach \$25 million.