

By: Lucio III

H.B. No. 2238

A BILL TO BE ENTITLED

AN ACT

relating to franchise tax and insurance premium tax credits for investment in certain communities; imposing a monetary penalty; authorizing fees.

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

SECTION 1. Title 2, Tax Code, is amended by adding Subtitle K to read as follows:

SUBTITLE K. CREDITS APPLICABLE TO MULTIPLE TAXES

CHAPTER 221. FRANCHISE TAX AND INSURANCE PREMIUM TAX CREDITS FOR INVESTMENT IN CERTAIN COMMUNITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 221.001. GENERAL DEFINITIONS. In this chapter:

(1) "Applicable percentage" means zero percent for the first two credit allowance dates, seven percent for the third credit allowance date, and eight percent for the next four credit allowance dates.

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

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

(B) the anniversary of that date in each of the six years immediately following that date.

(3) "Federal tax regulations" means regulations adopted under the Internal Revenue Code of 1986 that are applicable

1 to the tax year to which the provisions of the code in effect on
2 September 1, 2017, applied.

3 (4) "Franchise tax" means the tax imposed under
4 Chapter 171.

5 (5) "Internal Revenue Code" means the Internal Revenue
6 Code of 1986 in effect on September 1, 2017, excluding any changes
7 made by federal law after that date, but including any regulations
8 adopted under that code that are applicable to the tax year to which
9 the provisions of the code in effect on that date applied.

10 (6) "Investing entity" means an entity, including a
11 taxable entity as defined by Section 171.0002 and an entity that
12 incurs state premium tax liability, that makes or holds a qualified
13 equity investment.

14 (7) "Issuer" means a qualified community development
15 entity, or a subsidiary or affiliate of a qualified community
16 development entity, that issues a qualified equity investment.

17 (8) "Low-income community" has the meaning assigned by
18 Section 45D, Internal Revenue Code.

19 (9) "Metropolitan statistical area" means a core base
20 statistical area associated with at least one urbanized area that
21 has a population of at least 90,000. A metropolitan statistical
22 area comprises the central county or counties containing the core,
23 plus adjacent outlying counties having a high degree of social and
24 economic integration with the central county or counties as
25 measured through commuting.

26 (10) "Purchase price" means the amount paid to the
27 issuer for a qualified equity investment.

1 (11) "Report" means a franchise tax report, an
2 insurance premium tax report, or a report under Subchapter H, as
3 applicable.

4 (12) "Rural allocation" means the allocation
5 described by Section 221.154(c)(1).

6 (13) "Rural area" means a county in this state with a
7 population less than 90,000.

8 (14) "State premium tax liability" means any premium
9 tax liability incurred under Chapter 221, 222, 223, 223A, or 224,
10 Insurance Code.

11 (15) "Statewide low-income community allocation"
12 means the allocation described by Section 221.154(c)(4).

13 (16) "Texas education allocation" means the
14 allocation described by Section 221.154(c)(2).

15 (17) "Texas seaport allocation" means the allocation
16 described by Section 221.154(c)(3).

17 Sec. 221.002. DEFINITION: LONG-TERM DEBT SECURITY. (a) In
18 this chapter, "long-term debt security" means a debt instrument
19 issued by a qualified community development entity, at par value or
20 a premium, with an original maturity date not earlier than the
21 seventh year after the date on which the debt instrument is issued,
22 with no acceleration of repayment, amortization, or prepayment
23 features before its original maturity date.

24 (b) The qualified community development entity that issues
25 a long-term debt security may not make cash interest payments on the
26 security during the period beginning on the date on which the
27 security is issued and ending on the final credit allowance date in

an amount that exceeds the cumulative operating income, as defined by federal tax regulations adopted under Section 45D, Internal Revenue Code, of the qualified community development entity for that period before giving effect to the interest expense of the long-term debt security.

(c) This section does not limit the holder's ability to accelerate payments on a long-term debt security in situations in which the issuer has defaulted on covenants designed to ensure compliance with this chapter or Section 45D, Internal Revenue Code.

Sec. 221.003. DEFINITION: QUALIFIED ACTIVE LOW-INCOME COMMUNITY BUSINESS. (a) In this chapter, "qualified active low-income community business" has the meaning assigned by Section 45D, Internal Revenue Code, and Section 1.45D-1 of the federal tax regulations.

(b) A business is considered a qualified active low-income community business for the duration of the qualified community development entity's investment in, or loan to, the business if the entity reasonably expects, at the time it makes the investment or loan, that the business will continue to satisfy the requirements for being a qualified active low-income community business throughout the entire period of the investment or loan.

Sec. 221.004. DEFINITION: QUALIFIED COMMUNITY DEVELOPMENT ENTITY. In this chapter, "qualified community development entity" has the meaning assigned by Section 45D, Internal Revenue Code, provided that the entity has entered into, for the current year or a prior year with an allocation effective date on or after July 1, 2016, an allocation agreement with the Community Development

Financial Institutions Fund of the United States Department of the Treasury with respect to credits authorized by Section 45D, Internal Revenue Code, that includes this state in the service area specified in the allocation agreement. The term includes a subsidiary or affiliate of a qualified community development entity and any other qualified community development entity that is controlled by or under common control with a qualified community development entity.

Sec. 221.005. DEFINITION: QUALIFIED EQUITY INVESTMENT. (a) An investment is a "qualified equity investment" for purposes of this chapter if:

(1) the investment is an equity investment in, or long-term debt security issued by, a qualified community development entity;

(2) the investment is acquired on or after October 1, 2017, at its original issuance solely in exchange for cash, except as provided by Subsection (b);

(3) not later than the 20th month after the date of issuance at least 85 percent of the investment's purchase price is used by the issuer to make qualified low-income community investments in this state; and

(4) the investment is designated by the issuer as a qualified equity investment under this section and is certified by the comptroller as not exceeding the limitations provided by Section 221.154.

(b) A qualified equity investment includes an investment that does not satisfy the requirements of Subsection (a)(2) if the

1 investment was a qualified equity investment in the hands of a prior
2 holder.

3 Sec. 221.006. DEFINITION: QUALIFIED LOW-INCOME COMMUNITY
4 INVESTMENT. In this chapter, "qualified low-income community
5 investment" means an equity investment in, or loan to, a qualified
6 active low-income community business made by a qualified community
7 development entity.

8 Sec. 221.007. DEFINITION: RURAL COMMUNITY DEVELOPMENT
9 ENTITY. In this chapter, "rural community development entity" means
10 a qualified community development entity:

11 (1) whose allocation agreement with the Community
12 Development Financial Institutions Fund of the United States
13 Department of the Treasury requires the entity to invest at least 25
14 percent of that allocation in rural areas; or

15 (2) that demonstrates to the comptroller in writing
16 that the entity or its affiliates invested at least 25 percent of
17 the entity's most recent federal allocation outside the boundaries
18 of a metropolitan statistical area.

19 Sec. 221.008. RULES. The comptroller shall adopt rules
20 necessary to implement this chapter.

21 Sec. 221.009. REVIEW BY COMPTROLLER. The comptroller shall
22 review the qualified low-income community investments of a
23 qualified community development entity not later than the sixth
24 month after each anniversary of the investment. In conducting the
25 review, the comptroller shall ensure that the qualified community
26 development entity has made and maintained the qualified low-income
27 community investments required under Sections 221.201(a)(3) and

1 (4) to avoid recapture of a credit claimed in connection with a
2 qualified equity investment.

3 SUBCHAPTER B. FRANCHISE TAX CREDIT

4 Sec. 221.051. ELIGIBILITY FOR CREDIT. An investing entity
5 is eligible for a credit against the tax imposed under Chapter 171
6 in the amount provided by this subchapter and under the conditions
7 and limitations provided by this chapter.

8 Sec. 221.052. QUALIFICATION. An investing entity is
9 eligible for a credit if the investing entity holds a qualified
10 equity investment on a credit allowance date.

11 Sec. 221.053. AMOUNT OF CREDIT; LIMITATION. (a) The amount
12 of credit for a report is equal to the credit accrued, as determined
13 under Subsection (b), on each credit allowance date:

14 (1) that occurs during the period on which the report
15 is based; and

16 (2) on which the investing entity holds the qualified
17 equity investment.

18 (b) The amount of credit accrued on a credit allowance date
19 equals the applicable percentage for the credit allowance date
20 multiplied by the purchase price paid to the issuer of the qualified
21 equity investment.

22 (c) The total credit claimed for a report, including the
23 amount of any carryforward under Section 221.054, may not exceed
24 the amount of franchise tax due for the report after applying all
25 other applicable tax credits.

26 (d) Credits may be applied to the investing entity's
27 estimated or final tax payments for the applicable period.

1 Sec. 221.054. CARRYFORWARD. If an investing entity is
2 eligible for a credit that exceeds the limitation under Section
3 221.053(c), the investing entity may carry the unused credit
4 forward for not more than 20 consecutive reports. Credits,
5 including credit carryforwards, are considered to be used in the
6 following order:

- 7 (1) a credit carryforward under this subchapter; and
8 (2) a current year credit.

9 Sec. 221.055. ASSIGNMENT PROHIBITED. (a) Except as
10 provided by Subsection (b), an investing entity may not convey,
11 assign, or transfer the credit allowed under this subchapter to
12 another entity.

13 (b) A partnership, limited liability company, S
14 corporation, or other pass-through entity for federal income tax
15 purposes may allocate the credit to the entity's partners, members,
16 or shareholders for their direct use in accordance with an
17 agreement between the partners, members, or shareholders.

18 SUBCHAPTER C. INSURANCE PREMIUM TAX CREDIT

19 Sec. 221.101. ELIGIBILITY FOR CREDIT. An investing entity
20 is eligible for a credit against the entity's state premium tax
21 liability in the amount provided by this subchapter and under the
22 conditions and limitations provided by this chapter.

23 Sec. 221.102. QUALIFICATION. An investing entity is
24 eligible for a credit if the investing entity holds a qualified
25 equity investment on a credit allowance date.

26 Sec. 221.103. AMOUNT OF CREDIT; LIMITATION. (a) The amount
27 of credit for a tax year is equal to the credit accrued, as

determined under Subsection (b), on each credit allowance date:

(1) that occurs during the tax year; and

(2) on which the investing entity holds the qualified equity investment.

(b) The amount of credit accrued on a credit allowance date equals the applicable percentage for the credit allowance date multiplied by the purchase price paid to the issuer of the qualified equity investment.

(c) The total credit claimed for a tax year, including the amount of any carryforward under Section 221.104, may not exceed the amount of state premium tax liability due for the tax year after applying all other applicable tax credits.

(d) Credits may be applied to the investing entity's estimated or final tax payments for the tax year.

Sec. 221.104. CARRYFORWARD. If an investing entity is eligible for a credit that exceeds the limitation under Section 221.103(c), the investing entity may carry the unused credit forward for not more than 20 consecutive tax reports. Credits, including credit carryforwards, are considered to be used in the following order:

(1) a credit carryforward under this subchapter; and

(2) a current year credit.

Sec. 221.105. ASSIGNMENT PROHIBITED. (a) Except as provided by Subsection (b), an investing entity may not convey, assign, or transfer the credit allowed under this subchapter to another entity.

(b) A partnership, limited liability company, S

1 corporation, or other pass-through entity for federal income tax
2 purposes may allocate the credit to the entity's partners, members,
3 or shareholders for their direct use in accordance with an
4 agreement between the partners, members, or shareholders.

5 Sec. 221.106. RETALIATORY TAX. (a) An entity claiming a
6 credit under this subchapter is not required to pay any additional
7 retaliatory tax levied under Chapter 281, Insurance Code, as a
8 result of claiming that credit.

9 (b) In addition to the exclusion provided by Subsection (a),
10 an entity claiming a credit under this subchapter is not required to
11 pay any additional tax that may arise as a result of claiming that
12 credit.

13 SUBCHAPTER D. CERTIFICATION AS QUALIFIED EQUITY INVESTMENT

14 Sec. 221.151. APPLICATION FOR CERTIFICATION AS QUALIFIED
15 EQUITY INVESTMENT. (a) A qualified community development entity
16 that seeks to have an equity investment or long-term debt security
17 certified as a qualified equity investment eligible for credits
18 under this chapter must apply to the comptroller as provided by this
19 section.

20 (b) The comptroller shall provide an application date each
21 year for applications under Subsection (a). The date may not be
22 later than October 2. The comptroller shall consider all
23 applications received on or before the application date to be
24 received simultaneously on the application date.

25 (c) An application under this section must include the
26 following:

27 (1) evidence of the applicant's certification as a

1 qualified community development entity, including evidence of the
2 service area of the entity that includes this state;

3 (2) a copy of an allocation agreement executed by the
4 applicant, or its controlling entity, and the Community Development
5 Financial Institutions Fund of the United States Department of the
6 Treasury;

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

11 (4) a description of the amount and structure of the
12 equity investment or long-term debt security proposed to be
13 certified;

14 (5) examples of the types of qualified active
15 low-income community businesses in which the applicant, its
16 controlling entity, or affiliates of its controlling entity have
17 invested under the federal New Markets Tax Credit Program or a state
18 new markets tax credit program, including written proof that the
19 applicant or an affiliate has made at least one qualified
20 low-income community investment or a similar loan to a business in a
21 low-income census tract in this state;

22 (6) evidence that:

23 (A) the entity qualifies as a rural community
24 development entity, if the entity is applying for a rural
25 allocation;

26 (B) the entity or the entity's affiliate has
27 previously made at least one qualified low-income community

1 investment that would meet the investment requirements for a Texas
2 education allocation, if the entity is applying for a Texas
3 education allocation; or

4 (C) the entity or the entity's affiliate has
5 previously made at least one qualified low-income community
6 investment that would meet the investment requirements for a Texas
7 seaport allocation, if the entity is applying for a Texas seaport
8 allocation;

9 (7) a nonrefundable application fee of \$5,000 to be
10 paid to the comptroller; and

11 (8) the refundable performance deposit required by
12 Subchapter F.

13 Sec. 221.152. ACTION ON APPLICATION. (a) Not later than
14 the 30th day after the date an application under Section 221.151 is
15 received, the comptroller shall grant or deny the application in
16 full or part.

17 (b) If the comptroller denies the application, the
18 comptroller shall inform the applicant of the denial.

19 (c) If the comptroller denies an application because the
20 application is incomplete, the applicant may, not later than the
21 15th day after the date the applicant receives notice under
22 Subsection (b), provide additional information required by the
23 comptroller to complete the application. The comptroller shall
24 consider an application completed under this subsection to be
25 completed on the date the application was initially submitted.

26 (d) If an applicant does not complete an application in the
27 time required under Subsection (c), the application is finally

1 denied and the applicant must submit a new application if the
2 applicant wishes to reapply. The comptroller shall determine the
3 application date for the new application without regard to the
4 previously denied application.

5 Sec. 221.153. CERTIFICATION OF QUALIFIED EQUITY
6 INVESTMENT. (a) If an application under Section 221.151 is
7 granted, the comptroller shall certify the proposed equity
8 investment or long-term debt security as a qualified equity
9 investment that is eligible for credits under this chapter, subject
10 to Section 221.154.

11 (b) The comptroller shall provide written notice of the
12 certification to the qualified community development entity.

13 (c) The certification of a qualified equity investment is
14 effective on the date the comptroller provides notice under
15 Subsection (b).

16 Sec. 221.154. LIMIT ON CERTIFIED INVESTMENTS. (a) Subject
17 to Subsections (b) and (c), the comptroller shall limit the amount
18 of qualified equity investments that may be certified under Section
19 221.153 to an amount the comptroller estimates will result in not
20 more than:

21 (1) \$60 million in credits being claimed under this
22 chapter in any state fiscal year; and

23 (2) \$300 million in total credits being claimed under
24 this chapter.

25 (b) The comptroller shall estimate the amounts under
26 Subsection (a) without regard to the carryforward provisions under
27 Sections 221.054 and 221.104.

1 (c) The comptroller shall allocate 25 percent, or as nearly
2 as possible to 25 percent, of the amount available under Subsection
3 (a) for each of the following:

4 (1) a rural allocation, which may be used only by
5 rural community development entities to make qualified low-income
6 community investments in rural areas;

7 (2) a Texas education allocation, which may be used
8 only to make qualified low-income community investments in
9 nonprofit or for-profit entities offering primary, secondary, or
10 higher education in low-income communities in this state;

11 (3) a Texas seaport allocation, which may be used only
12 to make qualified low-income community investments in businesses
13 operating at a port, harbor, or municipality:

14 (A) accessible to seagoing ships that are limited
15 to 35 miles from the coastline; and

16 (B) located in a low-income community in this
17 state; and

18 (4) a statewide low-income community allocation,
19 which may be used to make qualified low-income community
20 investments in any low-income community in this state.

21 (d) A qualified community development entity may apply in a
22 single application for and receive certification of qualified
23 equity investments in more than one allocation category under
24 Subsection (c).

25 (e) Subject to Subsection (f), if a pending application
26 cannot be fully certified due to the limit specified by Subsection
27 (a) or (c), the comptroller shall certify the portion that can be

certified.

(f) The comptroller shall certify qualified equity investments in the order in which applications are received by the comptroller. Applications received on or before the application date provided under Section 221.151(b) are considered to have been received simultaneously on the application date. For applications that are complete and received on or before the application date provided under Section 221.151(b) and for which the total amounts requested cannot be certified because of the limit specified by Subsection (a) or (c), the comptroller shall certify qualified equity investments in each allocation category under Subsection (c) on a pro rata basis based on the ratio of the amount of qualified equity investments available in an allocation category to the total amount of qualified equity investments requested in that allocation category.

Sec. 221.155. TRANSFER OF INVESTMENT AUTHORITY. A qualified community development entity whose application for certification of a qualified equity investment is approved under this subchapter may transfer all or a portion of its certified qualified equity investment authority to its controlling entity or to a qualified community development entity controlled by or under common control with the transferring entity, if the transferring entity:

(1) provides the information required in the application under Section 221.151(c) with respect to the recipient of the transfer; and

(2) notifies the comptroller of the transfer not later

1 than the 30th day after the date of the transfer.

2 Sec. 221.156. ISSUANCE OF QUALIFIED EQUITY INVESTMENT; FEE.

3 (a) Not later than the 20th month after the date the qualified
4 community development entity receives notice of certification, the
5 entity or a recipient of a transfer under Section 221.155 shall
6 issue the qualified equity investment and receive cash in the
7 amount certified.

8 (b) The qualified community development entity or a
9 recipient of a transfer under Section 221.155 must provide the
10 comptroller with evidence of the receipt of the cash investment not
11 later than the 10th business day after the date the cash investment
12 is received.

13 (c) At the time the qualified community development entity
14 or a recipient of a transfer under Section 221.155 issues the
15 qualified equity investment, the qualified community development
16 entity or transfer recipient shall pay to the comptroller a fee
17 equal to 20 basis points, or 0.2 percent, of the amount issued.
18 Fees collected under this subsection may be appropriated only to
19 pay the cost of preparing a report under Section 221.352.

20 Sec. 221.157. LAPSE OF CERTIFICATION. (a) If the qualified
21 community development entity or a recipient of a transfer under
22 Section 221.155 does not issue the qualified equity investment and
23 receive the cash investment before the 20th month after the date the
24 certification notice is received as required by Section 221.156,
25 the certification lapses and the qualified community development
26 entity or recipient of the transfer may not accept an equity
27 investment or issue a long-term debt security as a qualified equity

investment without reapplying to the comptroller for certification.

(b) If a certification lapses under this section, the comptroller shall reissue the previously certified amount, giving preference to an applicant for reissuance of certification whose proposed amount for certification was previously certified in a reduced amount under Section 221.154. If more than one applicant for reissuance of certification had its proposed amount reduced, the comptroller shall reissue the certified amount to those applicants on a pro rata basis, subject to the limits specified by Section 221.154.

(c) After reissuing certifications under Subsection (b), the comptroller shall reissue any certified amounts remaining to applicants in amounts determined by the comptroller, subject to the limits specified by Section 221.154.

SUBCHAPTER E. RECAPTURE OF CREDIT

Sec. 221.201. RECAPTURE. (a) Subject to Section 221.202, the comptroller shall recapture the amount of a credit claimed on a franchise tax report filed under Chapter 171 or a premium tax report filed under Chapter 221, 222, 223, 223A, or 224, Insurance Code, from the investing entity 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 chapter is recaptured under Section 45D, Internal Revenue Code, in which case the comptroller's recapture must 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 the qualified equity investment is issued, in which case the comptroller's recapture must be proportionate to the amount of the redemption or repayment with respect to the qualified equity investment;

(3) the issuer fails to invest an amount equal to 85 percent of the purchase price of the qualified equity investment in qualified low-income community investments in this state not later than the 20th month after the date the qualified equity investment is issued, in which case the comptroller's recapture may not exceed the amount of tax credits associated with the portion of the purchase price received but not invested on the date of the recapture; or

(4) the issuer fails to maintain an amount of investment equal to 85 percent of the purchase price of the qualified equity investment in qualified low-income community investments in this state until the last credit allowance date for the qualified equity investment, in which case the comptroller's recapture may not exceed the amount of tax credits associated with the portion of the purchase price received but not maintained in qualified low-income community investments on the date of recapture.

(b) For purposes of this chapter, a qualified low-income community investment is 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

1 original investment, exclusive of any profits realized, in another
2 qualified low-income community investment not later than the 12th
3 month after the date the issuer receives the capital.

4 (c) An issuer is not required to reinvest capital returned
5 from a qualified low-income community investment after the sixth
6 anniversary of the date the qualified equity investment whose
7 proceeds were used to make the qualified low-income community
8 investment was issued. The qualified low-income community
9 investment is considered held by the issuer through the seventh
10 anniversary of the date the qualified equity investment was issued.

11 (d) Periodic amounts received during a calendar year as
12 repayment of principal on a loan that is a qualified low-income
13 community investment shall be treated as continuously invested in a
14 qualified low-income community investment if the amounts are
15 reinvested in one or more qualified low-income community
16 investments not later than the last day of the following calendar
17 year.

18 (e) After the seventh anniversary of the date a qualified
19 equity investment is issued, the qualified community development
20 entity may request that the comptroller certify that tax credits
21 associated with the qualified equity investment are not subject to
22 recapture under this section.

23 (f) Not later than the 60th day after the date the
24 comptroller receives a request under Subsection (e), the
25 comptroller shall:

26 (1) certify in writing to the qualified community
27 development entity that tax credits associated with the qualified

equity investment are not subject to recapture and that the qualified community development entity has satisfied all the requirements of this chapter; or

(2) notify the qualified community development entity that tax credits associated with the qualified equity investment are subject to recapture and that the qualified community development entity has not satisfied the requirements of this chapter and shall provide a written explanation of the reason for that determination.

(g) After the comptroller certifies under Subsection (f)(1) that tax credits associated with a qualified equity investment are not subject to recapture:

(1) the comptroller may not recapture any tax credits associated with that qualified equity investment; and

(2) the qualified community development entity is not subject to regulation by the comptroller or to the reporting requirements under Section 221.351 in connection with that qualified equity investment.

Sec. 221.202. NOTICE OF NONCOMPLIANCE. (a) The comptroller shall notify a qualified community development entity and an investing entity that has claimed a credit on a report if the credit is subject to recapture under Section 221.201.

(b) The comptroller may not recapture a credit under this subchapter if the qualified community development entity cures the noncompliance described by Section 221.201 before the 90th day after the date the qualified community development entity receives notice under Subsection (a).

SUBCHAPTER F. SECURITY FOR PERFORMANCE

Sec. 221.251. SECURITY REQUIRED. (a) Not later than the 14th day after the date a qualified equity investment is certified under Subchapter D, the qualified community development entity that received investment authority for the qualified equity investment must deposit \$500,000 with the comptroller as a refundable performance deposit to be deposited as required by Section 221.254.

(b) This section applies regardless of whether the investment authority is for a rural allocation, a Texas education allocation, a Texas seaport allocation, or a statewide low-income community allocation.

Sec. 221.252. FAILURE TO PROVIDE SECURITY: LOSS OF CERTIFICATION. The comptroller shall revoke the certification of the qualified equity investment of a qualified community development entity that fails to make a deposit under Section 221.251.

Sec. 221.253. FORFEITURE OF SECURITY. (a) A qualified community development entity that makes a performance deposit under Section 221.251 forfeits the deposit in its entirety if:

(1) the qualified community development entity or any qualified community development entity to which a transfer is made under Section 221.155 fails to issue the total amount of qualified equity investments certified by the comptroller and receive cash in the amount certified under Section 221.153 not later than the date specified by Section 221.156; or

(2) subject to Subsection (b), the qualified community development entity or a qualified community development entity to

1 which a transfer is made under Section 221.155 that issues a
2 qualified equity investment certified under Section 221.153 fails
3 to make or maintain the investment required under Sections
4 221.201(a)(3) and (4) to avoid recapture of a tax credit claimed in
5 connection with the qualified equity investment.

6 (b) A deposit is not subject to forfeiture under Subsection
7 (a)(2) if the qualified community development entity cures the
8 noncompliance before the 90th day after the date the qualified
9 community development entity receives notice under Subsection (c).

10 (c) The comptroller shall notify a qualified community
11 development entity that made a deposit under Section 221.251 in
12 writing if the deposit is subject to forfeiture under this section.

13 Sec. 221.254. NEW MARKETS PERFORMANCE GUARANTEE FUND. (a)
14 The new markets performance guarantee fund is an interest-bearing
15 fund outside the state treasury with the comptroller. The fund
16 consists of money the comptroller deposits under Subsection (b).
17 The comptroller shall administer the fund.

18 (b) The comptroller shall deposit a performance deposit
19 made under Section 221.251 to the credit of the new markets
20 performance guarantee fund. The deposit must remain on deposit with
21 the fund until the comptroller determines that:

22 (1) the qualified community development entity has
23 complied with the provisions of this chapter; or

24 (2) the deposit has been forfeited and will be
25 deposited in accordance with Section 221.256.

26 Sec. 221.255. RELEASE OF SECURITY. (a) Not earlier than
27 the 30th day after the date the requirements that must be satisfied

1 to avoid forfeiture of a deposit as described by Section 221.253 are
2 satisfied, a qualified community development entity that made the
3 deposit may request a refund of the deposit from the comptroller.

4 (b) The comptroller shall refund the deposit or, if
5 applicable, give notice of noncompliance as described by Section
6 221.253 not later than the 30th day after the date of receiving a
7 request under Subsection (a).

8 Sec. 221.256. DEPOSIT OF FORFEITED SECURITY. The
9 comptroller shall deposit in the general revenue fund a deposit
10 forfeited under Section 221.253.

11 SUBCHAPTER G. EVALUATION OF BUSINESS BY COMPTROLLER

12 Sec. 221.301. EVALUATION REQUIRED. (a) Except as provided
13 by Subsection (c), a qualified community development entity or a
14 recipient of a transfer under Section 221.155 must, before making
15 an investment in a business, request a written opinion from the
16 comptroller as to whether:

17 (1) the business in which the qualified community
18 development entity proposes to invest would qualify as a qualified
19 active low-income community business under Section 221.003; and

20 (2) the location where the qualified community
21 development entity proposes to invest would meet the location
22 requirements for a rural allocation, a Texas education allocation,
23 or a Texas seaport allocation, as applicable.

24 (b) Not later than the 10th business day after the date of
25 the receipt of a request under Subsection (a), the comptroller
26 shall make the requested determinations and issue the written
27 opinion, including explanations for the determinations.

1 (c) A qualified community development entity or a recipient
2 of a transfer under Section 221.155 may, but is not required to,
3 request a written opinion under Subsection (a) before making an
4 investment in a business if the qualified community development
5 entity or transfer recipient concurrently makes a federal qualified
6 low-income community investment in the business.

7 Sec. 221.302. CONSIDERATION OF FEDERAL TAX LAWS. In
8 issuing a written opinion and making other determinations under
9 this chapter, the comptroller shall consider Section 45D, Internal
10 Revenue Code, and the federal tax regulations issued under that
11 code, to the extent that those provisions are applicable.

12 SUBCHAPTER H. REPORTING

13 Sec. 221.351. REPORT TO COMPTROLLER. (a) Except as
14 provided by this subsection, a qualified community development
15 entity that issues a qualified equity investment under Section
16 221.156 shall submit an annual report to the comptroller not later
17 than the fifth business day after the anniversary of a credit
18 allowance date applicable to the investment. The qualified
19 community development entity is not required to submit any report
20 under this subsection after the annual report following the final
21 credit allowance date.

22 (b) The report must:

23 (1) provide evidence that the qualified community
24 development entity has made and maintained the investment required
25 under Sections 221.201(a)(3) and (4) to avoid recapture of a credit
26 claimed in connection with the qualified equity investment;

27 (2) include one or more bank statements for the

1 qualified community development entity that reflect each qualified
2 low-income community investment made by the qualified community
3 development entity in connection with the qualified equity
4 investment;

5 (3) state the name, location, and industry code of
6 each qualified active low-income community business receiving a
7 qualified low-income community investment in connection with the
8 qualified equity investment;

9 (4) state the number of employment positions created
10 and retained as a result of each qualified low-income community
11 investment made in connection with the qualified equity investment;

12 (5) state whether the qualified community development
13 entity has been subject to a recapture of any amount of a federal
14 tax credit available under Section 45D, Internal Revenue Code, with
15 respect to the qualified equity investment; and

16 (6) include a copy of the most recent annual report
17 submitted by the qualified community development entity to the
18 United States Department of the Treasury regarding Section 45D,
19 Internal Revenue Code.

20 (c) A qualified community development entity that fails to
21 submit a report to the comptroller within the time prescribed by
22 Subsection (a) shall pay to the comptroller a penalty equal to the
23 sum of:

24 (1) \$25,000; and

25 (2) \$5,000 for each day the report is not submitted
26 after the date the report is due under Subsection (a).

27 Sec. 221.352. COMPTROLLER'S REPORT TO LEGISLATURE. (a)

The comptroller shall contract with an independent researcher at a center for research established under Section 1.005, Education Code, to prepare a biennial report with respect to the implementation of this chapter.

(b) The report must include:

(1) the number of qualified community development entities holding certified qualified equity investments;

(2) the amount of qualified equity investments of each qualified community development entity;

(3) the investments each qualified community development entity has made in qualified active low-income community businesses as of the most recent annual report submitted to the comptroller by the qualified community development entity;

(4) the total amount of credits earned under this chapter;

(5) the performance of each qualified community development entity with respect to reporting requirements imposed by this chapter;

(6) with respect to each qualified active low-income community business in which a qualified community development entity has invested:

(A) the classification of the qualified active low-income community business according to the industrial sector and the size of the business;

(B) the total number of jobs created by the qualified low-income community investment and the average wages paid for the jobs; and

1 (C) the total number of jobs retained as a result
2 of the qualified low-income community investment and the average
3 wages paid for the jobs; and

4 (7) an analysis of the effect implementation of this
5 chapter has had during the period covered by the report on:

6 (A) economic activity in this state; and

7 (B) state tax revenue.

8 (c) The comptroller shall file the report with the governor,
9 the lieutenant governor, and the speaker of the house of
10 representatives not later than December 15 of each even-numbered
11 year.

12 SECTION 2. (a) As soon as practicable after the effective
13 date of this Act, the comptroller of public accounts shall adopt
14 rules necessary to implement the provisions of Chapter 221, Tax
15 Code, as added by this Act.

16 (b) The comptroller of public accounts shall provide an
17 initial application date under Section 221.151(b), Tax Code, as
18 added by this Act, of October 2, 2017.

19 SECTION 3. Subchapter B, Chapter 221, Tax Code, as added by
20 this Act, applies only to a report under Chapter 171, Tax Code,
21 originally due on or after January 1, 2018.

22 SECTION 4. Subchapter C, Chapter 221, Tax Code, as added by
23 this Act, applies only to a tax report originally due on or after
24 January 1, 2018.

25 SECTION 5. This Act takes effect September 1, 2017.