

BILL ANALYSIS

Senate Research Center
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S.B. 1116
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties who serve individuals experiencing homelessness and other vulnerable populations dealing with housing instability struggle with providing long-term, affordable housing for these individuals. According to the United States Interagency Council on Homelessness, the most successful model for housing these individuals is Permanent Supportive Housing, which provides housing as well as services designed to build independent living and tenancy skills, assistance with integrating into the community, and connections to community-based health care, treatment, and employment services.

The most common way to provide permanent supportive housing units is through the Low Income Housing Tax Credit program. From 2012–2018, 10 developments received tax credit awards totaling 914 units. According to the Texas Homeless Network, more than 25,000 Texans were experiencing homelessness based on the January 2018 Point-in-Time Count. There is a significant gap between the permanent supportive housing units being created and the need for these units.

Interested parties believe the best way to create more permanent supportive housing units is by having a mechanism to allow for more private investment in these developments.

S.B. 1116 provides for a state tax credit system that would be administered by the Texas State Affordable Housing Corporation (TSAHC) and the comptroller of public accounts of the State of Texas. TSAHC would have the ability to certify developments as permanent supportive housing eligible and award credits that could be assigned to an entity with an insurance premium tax liability under Chapter 222 of the Insurance Code. The total credits available would be capped at \$5 million annually.

As proposed, S.B. 1116 amends current law relating to insurance premium tax credits for the construction or rehabilitation of a supportive housing property.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas State Affordable Housing Corporation (TSAHC) in SECTION 1 (Section 234.004, Insurance Code) of this bill.

Rulemaking authority is expressly granted to TSAHC and the comptroller of public accounts of the State of Texas in SECTION 1 (Section 234.010, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle B, Title 3, Insurance Code, by adding Chapter 234, as follows:

CHAPTER 234. PREMIUM TAX CREDIT FOR CONSTRUCTION OR REHABILITATION OF SUPPORTIVE HOUSING PROPERTY

Sec. 234.001. DEFINITIONS. Defines "corporation" as the Texas State Affordable Housing Corporation (TSAHC) and defines "eligible costs and expenses," "state premium tax liability," and "supportive housing property" for purposes of this chapter.

Sec. 234.002. ELIGIBILITY FOR CREDIT. Provides that an entity is eligible to apply for and claim a credit against state premium tax liability in the amount and under the conditions and limitations provided by this chapter.

Sec. 234.003. QUALIFICATION. (a) Provides that an entity is eligible for a credit for eligible costs and expenses incurred in the construction or rehabilitation of a supportive housing property as provided by this chapter if the supportive housing property is placed in service on or after September 1, 2019, and the total amount of the eligible costs and expenses incurred by the entity exceeds \$5,000.

(b) Authorizes an entity to receive a credit under this chapter regardless of whether the entity incurs state premium tax liability.

Sec. 234.004. CERTIFICATION OF ELIGIBILITY. (a) Requires the entity that constructed or rehabilitated the supportive housing property, before applying for, claiming, selling, or assigning a credit under this chapter, to request from TSAHC a certificate of eligibility on which TSAHC certifies that the costs and expenses incurred meet the definition of eligible costs and expenses. Requires the entity to include with the entity's request information on the property that is sufficient for TSAHC to determine whether the property meets the definition of a supportive housing property.

(b) Requires TSAHC to issue a certificate of eligibility to an entity that has incurred eligible costs and expenses as provided by this chapter. Requires the certificate to confirm that the property to which the eligible costs and expenses relate is supportive housing property and to estimate the date the supportive housing property will be placed in service.

(c) Requires TSAHC by rule to prescribe procedures by which TSAHC is authorized to allocate credits under this chapter. Prohibits TSAHC from certifying eligible costs and expenses that exceed the annual limit provided by Section 234.005(d).

(d) Requires the entity to forward the certificate of eligibility and the following documentation to the comptroller of public accounts of the State of Texas (comptroller) to apply for the tax credit:

(1) an audited cost report issued by a certified public accountant, as defined by Section 901.002 (General Definitions), Occupations Code, that itemizes the eligible costs and expenses incurred in the construction or rehabilitation of the supportive housing property by the entity; and

(2) an attestation of the total eligible costs and expenses incurred by the entity in the construction or rehabilitation of the supportive housing property.

(e) Authorizes the comptroller, for purposes of approving the tax credit under Subsection (d), to rely on the audited cost report provided by the entity that requested the tax credit.

(f) Requires an entity that sells or assigns a credit under this chapter to another entity to provide a copy of the certification of eligibility, together with the audited cost report, to the purchaser or assignee.

Sec. 234.005. AMOUNT OF CREDIT; LIMITATIONS. (a) Prohibits the total amount of the credit under this chapter with respect to the construction or rehabilitation of a single supportive housing property that is authorized to be claimed from exceeding 20 percent of the total eligible costs and expenses incurred in the construction or rehabilitation of the supportive housing property.

(b) Prohibits the total credit that is authorized to be claimed on a report, including the amount of any carryforward under Section 234.006, from exceeding the amount of state premium tax liability due for the report after any other applicable tax credits.

(c) Authorizes eligible costs and expenses to only be counted once in determining the amount of the tax credit available, and prohibits more than one entity from claiming a credit for the same eligible costs and expenses.

(d) Prohibits the total amount of tax credits that are authorized to be claimed by all entities under this chapter from exceeding \$5 million in a state fiscal year.

Sec. 234.006. CARRYFORWARD. (a) Authorizes an entity, if the entity is eligible for a credit that exceeds the limitation under Section 234.005(b), to carry the unused credit forward for not more than five consecutive reports.

(b) Provides that a carryforward is considered the remaining portion of a credit that cannot be claimed in the current year because of the limitation under Section 234.005(b).

Sec. 234.007. APPLICATION FOR CREDIT; CLAIMING CREDIT. (a) Requires an entity to apply for a credit under this chapter on a form promulgated by the comptroller for that purpose.

(b) Requires an entity to include with the application a copy of the certificate of eligibility issued by TSAHC as required by Section 234.004(d) and any other information required by the comptroller to sufficiently demonstrate the entity is eligible for the credit and to determine the amount of the credit.

(c) Provides that the burden of establishing eligibility for and the value of the credit is on the entity.

(d) Requires the comptroller to issue a credit certificate to an entity the comptroller determines is eligible for a credit under this chapter indicating that the entity is the owner of the credit and the amount of credit available to the entity.

(e) Authorizes an entity to claim a credit under this chapter on or with the report due under Section 222.005 (Tax Report). Requires the entity to include with each report on which a credit is claimed the certificate issued by the comptroller under Subsection (d).

Sec. 234.008. SALE OR ASSIGNMENT OF CREDIT. (a) Authorizes an entity that incurs eligible costs and expenses to sell or assign all or part of the credit that is authorized to be claimed for those costs and expenses to one or more entities, and authorizes any entity to which all or part of the credit is sold or assigned to sell or assign all or part of the credit to another entity. Provides that there is no limit on the total number of transactions for the sale or assignment of all or part of the total credit authorized under this chapter, but provides that collectively all transfers are subject to the maximum total limits provided by Section 234.005.

(b) Requires an entity that sells or assigns a credit under this section and the entity to which the credit is sold or assigned, not later than the 30th day after the date of the sale or assignment, to jointly submit written notice of the sale or assignment to the comptroller on a form promulgated by the comptroller. Requires the notice to include certain information.

(c) Provides that the sale or assignment of a credit in accordance with this section does not extend the period for which a credit is authorized to be carried forward and does not increase the total amount of the credit that is authorized to be claimed. Prohibits another entity, after an entity claims a credit for eligible costs

and expenses, from using the same costs and expenses as the basis for claiming a credit.

(d) Authorizes a credit earned or purchased by, or assigned to, a partnership, limited liability company, S corporation, or other pass-through entity, notwithstanding the requirements of this chapter, to be allocated to the partners, members, or shareholders of that entity and claimed under this chapter in accordance with the provisions of any agreement among the partners, members, or shareholders and without regard to the ownership interest of the partners, members, or shareholders in the supportive housing property, provided that the entity that claims the credit is required to be subject to the tax imposed under Chapter 222 (Life, Health, and Accident Insurance Premium Tax).

Sec. 234.009. RETALIATORY TAX. Provides that an entity that claims a credit under this chapter is not required to pay any additional retaliatory tax levied under Chapter 281 (Retaliatory Provisions) as a result of the credit.

Sec. 234.010. RULES. Requires TSAHC and the comptroller to adopt rules necessary to implement this chapter.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2019.