

**As Introduced**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**H. B. No. 469**

**Representatives Schuring, Patton**

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**A BILL**

To amend sections 107.036, 5725.98, and 5729.98 and 1  
to enact sections 122.09, 5725.35, and 5729.18 2  
of the Revised Code to authorize a nonrefundable 3  
insurance company tax credit for contributions 4  
of capital to transformational mixed use 5  
development projects. 6

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 107.036, 5725.98, and 5729.98 be 7  
amended and sections 122.09, 5725.35, and 5729.18 of the Revised 8  
Code be enacted to read as follows: 9

**Sec. 107.036.** (A) For each business incentive tax credit, 10  
the main operating appropriations act shall contain a detailed 11  
estimate of the total amount of credits that may be authorized 12  
in each year, an estimate of the amount of credits expected to 13  
be claimed in each year, and an estimate of the amount of 14  
credits expected to remain outstanding at the end of the 15  
biennium. The governor shall include such estimates in the state 16  
budget submitted to the general assembly pursuant to section 17  
107.03 of the Revised Code. 18

(B) As used in this section, "business incentive tax 19

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| credit" means all of the following:   | 20                                     |
| (1) The job creation tax credit under section 122.17 of<br>the Revised Code;  | 21<br>22                               |
| (2) The job retention tax credit under section 122.171 of<br>the Revised Code;  | 23<br>24                               |
| (3) The historic preservation tax credit under section<br>149.311 of the Revised Code;  | 25<br>26                               |
| (4) The motion picture tax credit under section 122.85 of<br>the Revised Code;  | 27<br>28                               |
| (5) The new markets tax credit under section 5725.33 of<br>the Revised Code;  | 29<br>30                               |
| (6) The research and development credit under section<br>166.21 of the Revised Code;  | 31<br>32                               |
| (7) The small business investment credit under section<br>122.86 of the Revised Code;   | 33<br>34                               |
| <u>(8) The transformational mixed use development credit<br/>under section 122.09 of the Revised Code.</u>  | 35<br>36                               |
| <b><u>Sec. 122.09. (A) As used in this section:</u></b>   | 37                                     |
| <u>(1) "Development costs" means expenditures paid or<br/>incurred by the property owner in completing a certified<br/>transformational mixed use development project, including<br/>architectural or engineering fees paid or incurred in connection<br/>with the project and expenses incurred before the date the<br/>project is certified by the director of development services<br/>under division (C) of this section.</u> | 38<br>39<br>40<br>41<br>42<br>43<br>44 |
| <u>(2) "Owner" means a person holding a fee simple or<br/>leasehold interest in real property, including interests in real</u>  | 45<br>46                               |

property acquired through a capital lease arrangement. "Owner" 47  
does not include the state or a state agency, or any political 48  
subdivision as defined in section 9.23 of the Revised Code. For 49  
the purpose of this division, "fee simple interest," "leasehold 50  
interest," and "capital lease" shall be construed in accordance 51  
with generally accepted accounting principles. 52

(3) "Project area" means all territory located within a 53  
one-mile radius of the site of a transformational mixed use 54  
development site. 55

(4) "Transformational mixed use development" means a site 56  
not exceeding seven acres that integrates some combination of 57  
retail, office, residential, hotel, recreation, structured 58  
parking, and other uses and that includes at least one building 59  
that is twenty or more stories in height. 60

(B) The owner of one or more parcels of land in this state 61  
within which a transformational mixed use development is planned 62  
may apply to the director for a tax credit certificate if the 63  
estimated development costs to complete the project exceed four 64  
hundred million dollars. Each application shall be filed in the 65  
form and manner prescribed by the director and shall, at 66  
minimum, include a development plan comprised of all of the 67  
following information: 68

(1) A detailed description of the proposed 69  
transformational mixed use development including site plans, 70  
construction drawings, architectural renderings, or other means 71  
sufficient to convey the appearance, size, purposes, capacity, 72  
and scope of the project; 73

(2) A viable financial plan that estimates the development 74  
costs to be incurred in the completion of the project and that 75

designates a source of financing or a strategy for obtaining 76  
financing; 77

(3) An estimated schedule for the progression and 78  
completion of the project; 79

(4) An assessment of the projected economic impact of the 80  
project on the development site and the project area. 81

(C) If the director determines that the project described 82  
in an application submitted under division (B) of this section 83  
qualifies as a transformational mixed use development and 84  
satisfies all other criteria prescribed by this section or by 85  
rule of the director, the director may issue to the applicant a 86  
written statement that certifies the project and preliminarily 87  
approves a tax credit. The statement shall specify the estimated 88  
amount of the credit, which shall equal ten per cent of the 89  
development costs. The statement shall stipulate that receipt of 90  
a tax credit certificate is contingent upon completion of the 91  
transformational mixed use development as described in the 92  
development plan submitted by the applicant under division (B) 93  
of this section. 94

In determining whether or not to certify a project, the 95  
director shall consider the potential impact of the 96  
transformational mixed use development on the project area in 97  
terms of architecture, accessibility to pedestrians, retail 98  
entertainment and dining sales, job creation, property values, 99  
connectivity, and revenue from sales, income, lodging, and 100  
property taxes. If the director denies an application, the 101  
director shall notify the applicant of the reason or reasons for 102  
such determination. The director's determination is final, but 103  
an applicant may revise and resubmit a previously denied 104  
application. 105

(D) An applicant who is preliminarily approved for a tax credit under this section shall provide the director with sufficient evidence of reviewable progress within twelve months after the date the applicant's project is certified. In addition, the applicant shall provide the director with evidence that the applicant has secured and closed on financing for the project within eighteen months after such certification. If the applicant fails to comply with the requirements of this division, the director may rescind the approval of the application. The director shall notify the applicant if the approval has been rescinded. An applicant whose approval has been rescinded may submit a new application for a tax credit under division (B) of this section. 106  
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(E) An applicant who is preliminarily approved for a tax credit under this section may sell or transfer the rights to that credit to one or more persons for the purpose of raising capital for the certified project. The applicant shall notify the director upon selling or transferring the rights to the credit. The notice shall identify the person or persons to which the credit was sold or transferred and the credit amount sold or transferred to each such person. Only the applicant may sell or transfer a credit under this division. A credit may be divided among multiple purchasers through more than one transaction but once a particular credit amount is acquired by a person other than the applicant it may not be sold or transferred again. 119  
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(F) (1) The applicant shall notify the director upon completion of a certified transformational mixed use development project. The notification shall include a third-party cost certification by a certified public accountant of the actual development costs attributed to the project. Upon receiving such a notice, the director shall issue a tax credit certificate to 131  
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the applicant or to the person or persons to which the applicant 137  
sold or transferred the rights to the credit under division (E) 138  
of this section. The aggregate value of the certificates issued 139  
by the director shall equal ten per cent of the actual 140  
development costs attributed to the project. If the amount of 141  
the credit is less than the credit amount estimated under 142  
division (C) of this section because the actual development 143  
costs are less than the estimated development costs and the 144  
applicant has sold or transferred the rights to the credit to 145  
more than one person, the director shall reduce the amount of 146  
each tax credit certificate on a pro rata basis unless the 147  
applicant requests an alternative allocation of the credit. 148

(2) Issuance of a tax credit certificate does not 149  
represent a verification or certification by the director of the 150  
amount of development costs for which a tax credit may be 151  
claimed. The amount of development costs for which a tax credit 152  
may be claimed is subject to inspection and examination by the 153  
tax commissioner or employees of the commissioner under section 154  
5703.19 of the Revised Code and any other applicable law. 155

(3) Upon the issuance of a tax credit certificate, the 156  
director shall certify to the commissioner, in the form and 157  
manner requested by the commissioner, the name of the applicant, 158  
the name of each person to which a tax credit certificate was 159  
issued, the actual amount of development costs attributed to the 160  
project, the credit amount shown on each tax credit certificate, 161  
and any other information required by the rules adopted under 162  
this section. 163

(4) The person holding the rights to a tax credit 164  
certificate issued under this section may claim a tax credit 165  
under section 5725.35 or 5729.18 of the Revised Code. 166

(G) The director, after consultation with the tax commissioner and in accordance with Chapter 119. of the Revised Code, shall adopt rules that establish all of the following: 167  
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(1) Forms and procedures by which applicants may apply for a transformational investment tax credit; 170  
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(2) Criteria for reviewing, evaluating, and approving applications for certificates within the limitations prescribed by this section; 172  
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(3) Eligibility requirements for obtaining a tax credit certificate under this section; 175  
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(4) The form of the tax credit certificate; 177

(5) Reporting requirements and monitoring procedures; 178

(6) Any other rules necessary to implement and administer this section. 179  
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**Sec. 5725.35.** (A) There is allowed a credit against the tax imposed by section 5725.18 of the Revised Code for an insurance company subject to that tax that holds the rights to a tax credit certificate issued under section 122.09 of the Revised Code. The credit shall equal the dollar amount indicated on the certificate. The credit shall be claimed in the calendar year specified in the certificate and in the order required under section 5725.98 of the Revised Code. If the credit exceeds the amount of tax otherwise due in that year, the company may carry forward the excess for not more than five ensuing years, but the amount of the excess credit claimed against the tax for any year shall be deducted from the balance carried forward to the next year. 181  
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(B) An insurance company claiming a credit under this 194

section shall retain the tax credit certificate for four years 195  
following the end of the last year in which the credit is 196  
claimed, and shall make the certificate available for inspection 197  
by the tax commissioner upon the request of the tax commissioner 198  
during that period. 199

**Sec. 5725.98.** (A) To provide a uniform procedure for 200  
calculating the amount of tax imposed by section 5725.18 of the 201  
Revised Code that is due under this chapter, a taxpayer shall 202  
claim any credits and offsets against tax liability to which it 203  
is entitled in the following order: 204

(1) The credit for an insurance company or insurance 205  
company group under section 5729.031 of the Revised Code; 206

(2) The credit for eligible employee training costs under 207  
section 5725.31 of the Revised Code; 208

(3) The credit for purchasers of qualified low-income 209  
community investments under section 5725.33 of the Revised Code; 210

(4) The nonrefundable job retention credit under division 211  
(B) of section 122.171 of the Revised Code; 212

(5) The nonrefundable credit for contributing capital to a 213  
transformational mixed use development project under section 214  
5725.35 of the Revised Code; 215

(6) The offset of assessments by the Ohio life and health 216  
insurance guaranty association permitted by section 3956.20 of 217  
the Revised Code; 218

~~(6)~~ (7) The refundable credit for rehabilitating a 219  
historic building under section 5725.34 of the Revised Code. 220

~~(7)~~ (8) The refundable credit for Ohio job retention under 221  
former division (B) (2) or (3) of section 122.171 of the Revised 222



Code as those divisions existed before September 29, 2015, the 223  
effective date of the amendment of this section by H.B. 64 of 224  
the 131st general assembly; 225

~~(8)~~ (9) The refundable credit for Ohio job creation under 226  
section 5725.32 of the Revised Code; 227

~~(9)~~ (10) The refundable credit under section 5725.19 of 228  
the Revised Code for losses on loans made under the Ohio venture 229  
capital program under sections 150.01 to 150.10 of the Revised 230  
Code. 231

(B) For any credit except the refundable credits 232  
enumerated in this section, the amount of the credit for a 233  
taxable year shall not exceed the tax due after allowing for any 234  
other credit that precedes it in the order required under this 235  
section. Any excess amount of a particular credit may be carried 236  
forward if authorized under the section creating that credit. 237  
Nothing in this chapter shall be construed to allow a taxpayer 238  
to claim, directly or indirectly, a credit more than once for a 239  
taxable year. 240

**Sec. 5729.18.** (A) There is allowed a credit against the 241  
tax imposed by section 5729.03 of the Revised Code for an 242  
insurance company subject to that tax that holds the rights to a 243  
tax credit certificate issued under section 122.09 of the 244  
Revised Code. The credit shall equal the dollar amount indicated 245  
on the certificate. The credit shall be claimed in the calendar 246  
year specified in the certificate and in the order required 247  
under section 5729.98 of the Revised Code. If the credit exceeds 248  
the amount of tax otherwise due in that year, the company may 249  
carry forward the excess for not more than five ensuing years, 250  
but the amount of the excess credit claimed against the tax for 251  
any year shall be deducted from the balance carried forward to 252

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| <u>the next year.</u>   | 253 |
| <u>(B) An insurance company claiming a credit under this</u>            | 254 |
| <u>section shall retain the tax credit certificate for four years</u>   | 255 |
| <u>following the end of the last year in which the credit is</u>        | 256 |
| <u>claimed, and shall make the certificate available for inspection</u> | 257 |
| <u>by the tax commissioner upon the request of the tax commissioner</u> | 258 |
| <u>during that period.</u>  | 259 |
| <b>Sec. 5729.98.</b> (A) To provide a uniform procedure for             | 260 |
| calculating the amount of tax due under this chapter, a taxpayer        | 261 |
| shall claim any credits and offsets against tax liability to            | 262 |
| which it is entitled in the following order:                            | 263 |
| (1) The credit for an insurance company or insurance                    | 264 |
| company group under section 5729.031 of the Revised Code;               | 265 |
| (2) The credit for eligible employee training costs under               | 266 |
| section 5729.07 of the Revised Code;                                    | 267 |
| (3) The credit for purchases of qualified low-income                    | 268 |
| community investments under section 5729.16 of the Revised Code;        | 269 |
| (4) The nonrefundable job retention credit under division               | 270 |
| (B) of section 122.171 of the Revised Code;                             | 271 |
| (5) <u>The nonrefundable credit for contributing capital to a</u>       | 272 |
| <u>transformational mixed use development project under section</u>     | 273 |
| <u>5729.18 of the Revised Code;</u>                                     | 274 |
| <u>(6)</u> The offset of assessments by the Ohio life and health        | 275 |
| insurance guaranty association against tax liability permitted          | 276 |
| by section 3956.20 of the Revised Code;                                 | 277 |
| <del>(6)</del> <u>(7)</u> The refundable credit for rehabilitating a    | 278 |
| historic building under section 5729.17 of the Revised Code.            | 279 |

~~(7)~~(8) The refundable credit for Ohio job retention under 280  
former division (B) (2) or (3) of section 122.171 of the Revised 281  
Code as those divisions existed before September 29, 2015, the 282  
effective date of the amendment of this section by H.B. 64 of 283  
the 131st general assembly; 284

~~(8)~~(9) The refundable credit for Ohio job creation under 285  
section 5729.032 of the Revised Code; 286

~~(9)~~(10) The refundable credit under section 5729.08 of 287  
the Revised Code for losses on loans made under the Ohio venture 288  
capital program under sections 150.01 to 150.10 of the Revised 289  
Code. 290

(B) For any credit except the refundable credits 291  
enumerated in this section, the amount of the credit for a 292  
taxable year shall not exceed the tax due after allowing for any 293  
other credit that precedes it in the order required under this 294  
section. Any excess amount of a particular credit may be carried 295  
forward if authorized under the section creating that credit. 296  
Nothing in this chapter shall be construed to allow a taxpayer 297  
to claim, directly or indirectly, a credit more than once for a 298  
taxable year. 299

**Section 2.** That existing sections 107.036, 5725.98, and 300  
5729.98 of the Revised Code are hereby repealed. 301