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Sub. S. B. No. 39

Senator Schuring
Cosponsors: Senators Terhar, Antonio, Craig, Dolan, Eklund, Fedor, Gavarone, Hackett, Hoagland, Huffman, S., Kunze, Lehner, Maharath, Manning, O’Brien, Williams, Wilson, Yuko

A BILL

To amend sections 107.036, 5725.98, and 5729.98 and to enact sections 122.09, 5725.35, and 5729.18 of the Revised Code to authorize an insurance premiums tax credit for capital contributions to transformational mixed use development projects.

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

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

Sec. 107.036. (A) For each business incentive tax credit, the main operating appropriations act shall contain a detailed estimate of the total amount of credits that may be authorized in each year, an estimate of the amount of credits expected to be claimed in each year, and an estimate of the amount of credits expected to remain outstanding at the end of the biennium. The governor shall include such estimates in the state budget submitted to the general assembly pursuant to section 107.03 of the Revised Code.
(B) As used in this section, "business incentive tax credit" means all of the following:

(1) The job creation tax credit under section 122.17 of the Revised Code;

(2) The job retention tax credit under section 122.171 of the Revised Code;

(3) The historic preservation tax credit under section 149.311 of the Revised Code;

(4) The motion picture tax credit under section 122.85 of the Revised Code;

(5) The new markets tax credit under section 5725.33 of the Revised Code;

(6) The research and development credit under section 166.21 of the Revised Code;

(7) The small business investment credit under section 122.86 of the Revised Code;

(8) The rural growth investment credit under section 122.152 of the Revised Code;

(9) The transformational mixed use development credit under section 122.09 of the Revised Code.

Sec. 122.09. (A) As used in this section:

(1) "Development costs" means expenditures paid or incurred by the property owner in completing a certified transformational mixed use development project, including architectural or engineering fees paid or incurred in connection with the project and expenses incurred before the date the project is certified by the director of development services.
under division (C) of this section. In the case of a certified transformational mixed use development project that is part of a larger contiguous project that is planned to be completed in phases, "development costs" include only expenditures associated with the portion of the project that is certified by the director and do not include expenditures incurred for other phases of the project.

(2) "Owner" means a person or persons holding a fee simple or leasehold interest in real property, including interests in real property acquired through a capital lease arrangement. "Owner" does not include the state or a state agency, or any political subdivision as defined in section 9.23 of the Revised Code. For the purpose of this division, "fee simple interest," "leasehold interest," and "capital lease" shall be construed in accordance with generally accepted accounting principles.

(3) "Transformational mixed use development" means a project that consists of new construction or the redevelopment, rehabilitation, expansion, or other improvement of vacant buildings or structures, or a combination of the foregoing, and that:

(a) Will have a transformational economic impact on the development site and the surrounding area;

(b) Integrates some combination of retail, office, residential, recreation, structured parking, and other similar uses into one mixed use development; and

(c) Includes at least one new or previously vacant building that is fifteen or more stories in height or has a floor area of at least three hundred fifty thousand square feet or two or more new buildings that are connected to each other,
are located on the same parcel or on contiguous parcels, and that collectively have a floor area of at least three hundred fifty thousand square feet.

"Transformational mixed use development" may include a portion of a larger contiguous project that is planned to be completed in phases as long as the phases collectively meet the criteria described in division (A)(3) of this section.

(4) "Estimated increased tax collections" means the difference, if positive, of the amount of state and local taxes estimated to be derived from economic activity occurring within the development site and the surrounding area during the estimated completion period, minus the amount of such taxes estimated to be derived from such economic activity in that site and surrounding area during that period if the transformational mixed use project were not completed.

(5) "Estimated completion period" means the time period beginning on the day after the estimated completion of a transformational mixed use development and ending on the fifth anniversary of that day.

(6) "Insurance company" means a person subject to the tax imposed under section 5725.18 or 5729.03 of the Revised Code.

(7) "Contribute capital" means to invest, loan, or donate cash in exchange for an equity interest in an asset, a debt instrument, or no consideration.

(B) The owner of one or more parcels of land in this state within which a transformational mixed use development is planned or an insurance company that contributes capital to be used in the planning or construction of such a development may apply to the director for a tax credit certificate if the estimated
development costs to complete the project plus, if applicable, the estimated expenditures that have been or will be incurred to complete all other contiguous phases of the project, exceed fifty million dollars. Each application shall be filed in the form and manner prescribed by the director and shall, at minimum, include a development plan comprised of all of the following information:

(1) A detailed description of the proposed transformational mixed use development including site plans, construction drawings, architectural renderings, or other means sufficient to convey the appearance, size, purposes, capacity, and scope of the project and, if applicable, previously completed and future phases of the project;

(2) A viable financial plan that estimates the development costs that have been or will be incurred in the completion of the project and that designates a source of financing or a strategy for obtaining financing;

(3) An estimated schedule for the progression and completion of the project including, if applicable, previously completed and future phases of the project;

(4) An assessment of the projected economic impact of the project on the development site and the surrounding area;

(5) Evidence that estimated increased tax collections for the development site and the surrounding area will exceed ten per cent of the estimated development costs reported under division (B)(2) of this section;

(6) If the applicant is an insurance company that is not the property owner, the amount of the insurance company's capital contribution to the development and the date on which it
was made;

(7) Evidence that the project will not be completed unless the applicant receives the credit.

(C) If the director determines that (1) the project described in an application submitted under division (B) of this section qualifies as a transformational mixed use development and satisfies all other criteria prescribed by this section or by rule of the director, (2) the estimated increased tax collections for the development site and the surrounding area will exceed ten per cent of the estimated development costs reported under division (B)(2) of this section, and (3) the project will not be completed unless the applicant receives the credit, the director may issue to the applicant a written statement that certifies the project and preliminarily approves a tax credit. The statement shall specify the estimated amount of the credit, which shall equal ten per cent of the development costs if the applicant is the property owner or, if the applicant is an insurance company that contributed capital to the development, ten per cent of such contribution. The statement shall stipulate that receipt of a tax credit certificate is contingent upon completion of the transformational mixed use development as described in the development plan submitted by the applicant under division (B) of this section.

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

(D) An applicant that is preliminarily approved for a tax credit under this section shall, within twelve months of the date the project is certified, provide the director with sufficient evidence of reviewable progress and an updated schedule for the progression and completion of the project. In addition, the applicant shall provide the director with evidence that financing for the project is secured and closed within eighteen months after such certification. If the applicant does not comply with one or both of the reporting requirements within the time prescribed by this division, the director may rescind the approval of the application or extend the applicable deadline. If the director extends a reporting deadline, the director shall notify the applicant of the new deadline. If the director rescinds approval of the application, the director shall notify the applicant. If the director rescinds approval of the application, the applicant may submit a new application for a tax credit under division (B) of this section.

(E) An applicant that is the property owner and 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 an applicant that owns the property 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.

(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 the applicant or to the person or persons to which the applicant sold or transferred the rights to the credit under division (E) of this section.

(2)(a) Subject to division (F)(2)(c) of this section, if the applicant is the property owner, the aggregate value of the certificates issued by the director shall equal ten per cent of the actual development costs attributed to the project. If the amount of the credit is less than the credit amount estimated under division (C) of this section because the actual development costs are less than the estimated development costs and the applicant has sold or transferred the rights to the credit to more than one person, the director shall reduce the amount of each tax credit certificate on a pro rata basis unless the applicant requests an alternative allocation of the credit.

(b) Subject to division (F)(2)(c) of this section, if the applicant is an insurance company that contributed capital to the development, the value of the certificate shall equal ten per cent of the insurance company’s actual capital contribution.

(c) The aggregate value of all tax credit certificates
issued under divisions (F)(2)(a) and (b) of this section for the same transformational mixed-use development shall not exceed ten per cent of the actual development costs attributed to the project. If a property owner and one or more insurance companies both apply for and receive a tax credit under this section for the same development, the full amount of the tax credit for which the applicants are eligible shall be divided proportionally. The value of the tax credit certificate issued to each applicant that is an insurance company shall be computed in the manner described in division (F)(2)(b) of this section. The value of the tax credit certificate issued to the property owner shall equal ten per cent of the property owner's actual development costs less the sum of the capital contributions to the development for which one or more insurance companies were issued a tax credit certificate under this section.

(3) Issuance of a tax credit certificate does not represent a verification or certification by the director of the amount of development costs or capital contributions for which a tax credit may be claimed. The amount of development costs or capital contributions for which a tax credit may be claimed is subject to inspection and examination by the superintendent of insurance.

(4) Upon the issuance of a tax credit certificate, the director shall certify to the superintendent of insurance the name of the applicant, whether the applicant is the property owner or an insurance company that contributed capital to the development, the name of each person to which a tax credit certificate was issued, the actual amount of development costs attributed to the project, the credit amount shown on each tax credit certificate, and any other information required by the rules adopted under this section.
(5) The person that holds the rights to a tax credit certificate issued under this section and that is an insurance company may claim a tax credit under section 5725.35 or 5729.18 of the Revised Code.

(G) The director shall publish information about each transformational mixed use development on the web site of the development services agency not later than the first day of August following certification of the project. The director shall update the published information annually until the project is complete and the credit or credits are fully claimed. The published information shall include all of the following:

(1) The location of the transformational mixed use development and the name by which it is known;

(2) The estimated schedule for progression and completion of the project included in the development plan pursuant to division (B)(3) of this section;

(3) The assessment of the projected economic impact of the project included in the development plan pursuant to division (B)(4) of this section;

(4) The evidence supporting the estimated increase in tax collections for the development site and the surrounding area included in the development plan pursuant to division (B)(5) of this section, except that the director may omit any proprietary or sensitive information included in such evidence;

(5) The estimated development costs that have been or will be incurred in completion of the project and, if applicable, the amount of the insurance company's capital contribution to the development and the date on which it was made, as reported in the development plan pursuant to divisions (B)(2) and (6) of
this section:

(6) A copy of each report submitted to the director by the applicant under division (D) of this section.

(H) The director, in accordance with Chapter 119. of the Revised Code, shall adopt rules that establish all of the following:

(1) Forms and procedures by which applicants may apply for a transformational investment tax credit;

(2) Criteria for reviewing, evaluating, and approving applications for certificates within the limitations prescribed by this section;

(3) Eligibility requirements for obtaining a tax credit certificate under this section;

(4) The form of the tax credit certificate;

(5) Reporting requirements and monitoring procedures;

(6) Any other rules necessary to implement and administer this section.

Sec. 5725.35. 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.

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

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

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

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

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

(5) The nonrefundable credit for investments in rural business growth funds under section 122.152 of the Revised Code;

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

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

(7)(8) The refundable credit for rehabilitating a historic building under section 5725.34 of the Revised Code;

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

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

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

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

Sec. 5729.18. There is allowed a credit against the tax imposed by section 5729.03 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 5729.98 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.
Sec. 5729.98. (A) To provide a uniform procedure for calculating the amount of tax due under this chapter, a taxpayer shall claim any credits and offsets against tax liability to which it is entitled in the following order:

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

(2) The credit for eligible employee training costs under section 5729.07 of the Revised Code;

(3) The credit for purchases of qualified low-income community investments under section 5729.16 of the Revised Code;

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

(5) The nonrefundable credit for investments in rural business growth funds under section 122.152 of the Revised Code;

(6) The nonrefundable credit for contributing capital to a transformational mixed use development project under section 5729.18 of the Revised Code;

(7) The offset of assessments by the Ohio life and health insurance guaranty association against tax liability permitted by section 3956.20 of the Revised Code;

(8) The refundable credit for rehabilitating a historic building under section 5729.17 of the Revised Code;

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

(9) (10) The refundable credit for Ohio job creation under section 5729.032 of the Revised Code;

(10) (11) The refundable credit under section 5729.08 of the Revised Code for losses on loans made under the Ohio venture capital program under sections 150.01 to 150.10 of the Revised Code.

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

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

Section 3. Pursuant to division (G) of section 5703.95 of the Revised Code, which states that any bill introduced in the House of Representatives or the Senate that proposes to enact or modify one or more tax expenditures should include a statement explaining the objectives of the tax expenditure or its modification and the sponsor's intent in proposing the tax expenditure or its modification:

The purpose of this bill is to foster economic development and increase tax collections for state and local governments.