As Reported by the House Government Accountability and Oversight Committee

CORRECTED VERSION

132nd General Assembly
Regular Session Sub. H. B. No. 469
2017-2018
Representatives Schuring, Patton

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 a nonrefundable insurance company tax credit for contributions of capital 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
(2) "Owner" means a person 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) "Project area" means all territory located within a radius of not less than one-fourth of one mile and not more than one mile centered on the site of a transformational mixed use development.

(4) "Transformational mixed use development" means a project that:

(a) Will have a transformational economic impact within the project area approved by the director of development services under division (C) of this section;

(b) Is a mixed use development that integrates some combination of retail, office, residential, recreation, structured parking, and other similar uses; and

(c) Includes at least one building that is fifteen or more stories in height or has a floor area of at least three hundred fifty thousand square feet.

(5) "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 area encompassing the proposed transformational mixed use project is certified by the director of development services under division (C) of this section.
development and the project area designated under division (B) (4) or (C) of this section, as applicable, during the estimated completion period, minus the amount of such taxes estimated to be derived from such economic activity in that area during that period if the transformational mixed use project were not completed.

(6) "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.

(B) The owner of one or more parcels of land in this state within which a transformational mixed use development is planned may apply to the director for a tax credit certificate if the estimated development costs to complete 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;

(2) A viable financial plan that estimates the development costs to 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;
(4) An assessment of the projected economic impact of the project on the development site and a project area designated by the owner;

(5) Evidence that estimated increased tax collections for the designated project area will exceed ten per cent of the estimated development costs reported under division (B)(2) of this section.

(C) If the director determines that 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, 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. 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 (1) whether estimated increased tax collections for the designated project area will exceed ten per cent of the estimated development costs reported under division (B)(2) of this section and (2) the potential impact of the transformational mixed use development on the project 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. The director may require an applicant, as a
condition of certifying a project, to amend the application to change the radius circumscribing the project area, subject to the limits on the radius prescribed by division (A)(3) of this section.

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 who is preliminarily approved for a tax credit under this section shall, within twelve months of the date the applicant's project is certified, provide the director with sufficient evidence of reviewable progress as it pertains to the construction of the project and an updated schedule for the progression and completion of the project. 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 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. An applicant whose approval has been rescinded may submit a new application for a tax credit under division (B) of this section.

(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.

(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. 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.

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

(3) Upon the issuance of a tax credit certificate, the director shall certify to the superintendent of insurance the name of the applicant, 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.

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

(G) 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 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 5725.32 of the Revised Code;

(10)–(11) 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;

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

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

(10) 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.