

**As Reported by the House Government Accountability and Oversight  
Committee**

**CORRECTED VERSION**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**Sub. 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 credit" means all of the following:	19
(1) The job creation tax credit under section 122.17 of the Revised Code;	20
(2) The job retention tax credit under section 122.171 of the Revised Code;	21
(3) The historic preservation tax credit under section 149.311 of the Revised Code;	22
(4) The motion picture tax credit under section 122.85 of the Revised Code;	23
(5) The new markets tax credit under section 5725.33 of the Revised Code;	24
(6) The research and development credit under section 166.21 of the Revised Code;	25
(7) The small business investment credit under section 122.86 of the Revised Code;	26
(8) The rural growth investment credit under section 122.152 of the Revised Code;	27
<u>(9) The transformational mixed use development credit under section 122.09 of the Revised Code.</u>	28
<b><u>Sec. 122.09.</u></b> (A) As used in this section:	29
<u>(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</u>	30
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project is certified by the director of development services 45  
under division (C) of this section. 46

(2) "Owner" means a person holding a fee simple or 47  
leasehold interest in real property, including interests in real 48  
property acquired through a capital lease arrangement. "Owner" 49  
does not include the state or a state agency, or any political 50  
subdivision as defined in section 9.23 of the Revised Code. For 51  
the purpose of this division, "fee simple interest," "leasehold 52  
interest," and "capital lease" shall be construed in accordance 53  
with generally accepted accounting principles. 54

(3) "Project area" means all territory located within a 55  
radius of not less than one-fourth of one mile and not more than 56  
one mile centered on the site of a transformational mixed use 57  
development. 58

(4) "Transformational mixed use development" means a 59  
project that: 60

(a) Will have a transformational economic impact within 61  
the project area approved by the director of development 62  
services under division (C) of this section; 63

(b) Is a mixed use development that integrates some 64  
combination of retail, office, residential, recreation, 65  
structured parking, and other similar uses; and 66

(c) Includes at least one building that is fifteen or more 67  
stories in height or has a floor area of at least three hundred 68  
fifty thousand square feet. 69

(5) "Estimated increased tax collections" means the 70  
difference, if positive, of the amount of state and local taxes 71  
estimated to be derived from economic activity occurring within 72  
the area encompassing the proposed transformational mixed use 73

development and the project area designated under division (B) 74  
(4) or (C) of this section, as applicable, during the estimated 75  
completion period, minus the amount of such taxes estimated to 76  
be derived from such economic activity in that area during that 77  
period if the transformational mixed use project were not 78  
completed. 79

(6) "Estimated completion period" means the time period 80  
beginning on the day after the estimated completion of a 81  
transformational mixed use development and ending on the fifth 82  
anniversary of that day. 83

(B) The owner of one or more parcels of land in this state 84  
within which a transformational mixed use development is planned 85  
may apply to the director for a tax credit certificate if the 86  
estimated development costs to complete the project exceed fifty 87  
million dollars. Each application shall be filed in the form and 88  
manner prescribed by the director and shall, at minimum, include 89  
a development plan comprised of all of the following 90  
information: 91

(1) A detailed description of the proposed 92  
transformational mixed use development including site plans, 93  
construction drawings, architectural renderings, or other means 94  
sufficient to convey the appearance, size, purposes, capacity, 95  
and scope of the project; 96

(2) A viable financial plan that estimates the development 97  
costs to be incurred in the completion of the project and that 98  
designates a source of financing or a strategy for obtaining 99  
financing; 100

(3) An estimated schedule for the progression and 101  
completion of the project; 102

(4) An assessment of the projected economic impact of the project on the development site and a project area designated by the owner; 103  
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(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. 106  
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(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. 110  
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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 123  
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condition of certifying a project, to amend the application to 133  
change the radius circumscribing the project area, subject to 134  
the limits on the radius prescribed by division (A) (3) of this 135  
section. 136

If the director denies an application, the director shall 137  
notify the applicant of the reason or reasons for such 138  
determination. The director's determination is final, but an 139  
applicant may revise and resubmit a previously denied 140  
application. 141

(D) An applicant who is preliminarily approved for a tax 142  
credit under this section shall, within twelve months of the 143  
date the applicant's project is certified, provide the director 144  
with sufficient evidence of reviewable progress as it pertains 145  
to the construction of the project and an updated schedule for 146  
the progression and completion of the project. In addition, the 147  
applicant shall provide the director with evidence that the 148  
applicant has secured and closed on financing for the project 149  
within eighteen months after such certification. If the 150  
applicant does not comply with one or both of the reporting 151  
requirements within the time prescribed by this division, the 152  
director may rescind the approval of the application or extend 153  
the applicable deadline. If the director extends a reporting 154  
deadline, the director shall notify the applicant of the new 155  
deadline. If the director rescinds approval of the application, 156  
the director shall notify the applicant. An applicant whose 157  
approval has been rescinded may submit a new application for a 158  
tax credit under division (B) of this section. 159

(E) An applicant who is preliminarily approved for a tax 160  
credit under this section may sell or transfer the rights to 161  
that credit to one or more persons for the purpose of raising 162

capital for the certified project. The applicant shall notify 163  
the director upon selling or transferring the rights to the 164  
credit. The notice shall identify the person or persons to which 165  
the credit was sold or transferred and the credit amount sold or 166  
transferred to each such person. Only the applicant may sell or 167  
transfer a credit under this division. A credit may be divided 168  
among multiple purchasers through more than one transaction but 169  
once a particular credit amount is acquired by a person other 170  
than the applicant it may not be sold or transferred again. 171

(F) (1) The applicant shall notify the director upon 172  
completion of a certified transformational mixed use development 173  
project. The notification shall include a third-party cost 174  
certification by a certified public accountant of the actual 175  
development costs attributed to the project. Upon receiving such 176  
a notice, the director shall issue a tax credit certificate to 177  
the applicant or to the person or persons to which the applicant 178  
sold or transferred the rights to the credit under division (E) 179  
of this section. The aggregate value of the certificates issued 180  
by the director shall equal ten per cent of the actual 181  
development costs attributed to the project. If the amount of 182  
the credit is less than the credit amount estimated under 183  
division (C) of this section because the actual development 184  
costs are less than the estimated development costs and the 185  
applicant has sold or transferred the rights to the credit to 186  
more than one person, the director shall reduce the amount of 187  
each tax credit certificate on a pro rata basis unless the 188  
applicant requests an alternative allocation of the credit. 189

(2) Issuance of a tax credit certificate does not 190  
represent a verification or certification by the director of the 191  
amount of development costs for which a tax credit may be 192  
claimed. The amount of development costs for which a tax credit 193

may be claimed is subject to inspection and examination by the 194  
superintendent of insurance. 195

(3) Upon the issuance of a tax credit certificate, the 196  
director shall certify to the superintendent of insurance the 197  
name of the applicant, the name of each person to which a tax 198  
credit certificate was issued, the actual amount of development 199  
costs attributed to the project, the credit amount shown on each 200  
tax credit certificate, and any other information required by 201  
the rules adopted under this section. 202

(4) The person holding the rights to a tax credit 203  
certificate issued under this section may claim a tax credit 204  
under section 5725.35 or 5729.18 of the Revised Code. 205

(G) The director, in accordance with Chapter 119. of the 206  
Revised Code, shall adopt rules that establish all of the 207  
following: 208

(1) Forms and procedures by which applicants may apply for 209  
a transformational investment tax credit; 210

(2) Criteria for reviewing, evaluating, and approving 211  
applications for certificates within the limitations prescribed 212  
by this section; 213

(3) Eligibility requirements for obtaining a tax credit 214  
certificate under this section; 215

(4) The form of the tax credit certificate; 216

(5) Reporting requirements and monitoring procedures; 217

(6) Any other rules necessary to implement and administer 218  
this section. 219

**Sec. 5725.35. There is allowed a credit against the tax** 220

imposed by section 5725.18 of the Revised Code for an insurance 221  
company subject to that tax that holds the rights to a tax 222  
credit certificate issued under section 122.09 of the Revised 223  
Code. The credit shall equal the dollar amount indicated on the 224  
certificate. The credit shall be claimed in the calendar year 225  
specified in the certificate and in the order required under 226  
section 5725.98 of the Revised Code. If the credit exceeds the 227  
amount of tax otherwise due in that year, the company may carry 228  
forward the excess for not more than five ensuing years, but the 229  
amount of the excess credit claimed against the tax for any year 230  
shall be deducted from the balance carried forward to the next 231  
year. 232

**Sec. 5725.98.** (A) To provide a uniform procedure for 233  
calculating the amount of tax imposed by section 5725.18 of the 234  
Revised Code that is due under this chapter, a taxpayer shall 235  
claim any credits and offsets against tax liability to which it 236  
is entitled in the following order: 237

(1) The credit for an insurance company or insurance 238  
company group under section 5729.031 of the Revised Code; 239

(2) The credit for eligible employee training costs under 240  
section 5725.31 of the Revised Code; 241

(3) The credit for purchasers of qualified low-income 242  
community investments under section 5725.33 of the Revised Code; 243

(4) The nonrefundable job retention credit under division 244  
(B) of section 122.171 of the Revised Code; 245

(5) The nonrefundable credit for investments in rural 246  
business growth funds under section 122.152 of the Revised Code; 247

(6) The nonrefundable credit for contributing capital to a 248  
transformational mixed use development project under section 249

<u>5725.35 of the Revised Code;</u>	250
<u>(7)</u> The offset of assessments by the Ohio life and health insurance guaranty association permitted by section 3956.20 of the Revised Code;	251 252 253
<del>(7)</del> <u>(8)</u> The refundable credit for rehabilitating a historic building under section 5725.34 of the Revised Code;	254 255
<del>(8)</del> <u>(9)</u> 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;	256 257 258 259 260
<del>(9)</del> <u>(10)</u> The refundable credit for Ohio job creation under section 5725.32 of the Revised Code;	261 262
<del>(10)</del> <u>(11)</u> 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.	263 264 265 266
(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.	267 268 269 270 271 272 273 274 275
<u>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</u>	276 277 278

credit certificate issued under section 122.09 of the Revised 279  
Code. The credit shall equal the dollar amount indicated on the 280  
certificate. The credit shall be claimed in the calendar year 281  
specified in the certificate and in the order required under 282  
section 5729.98 of the Revised Code. If the credit exceeds the 283  
amount of tax otherwise due in that year, the company may carry 284  
forward the excess for not more than five ensuing years, but the 285  
amount of the excess credit claimed against the tax for any year 286  
shall be deducted from the balance carried forward to the next 287  
year. 288

**Sec. 5729.98.** (A) To provide a uniform procedure for 289  
calculating the amount of tax due under this chapter, a taxpayer 290  
shall claim any credits and offsets against tax liability to 291  
which it is entitled in the following order: 292

(1) The credit for an insurance company or insurance 293  
company group under section 5729.031 of the Revised Code; 294

(2) The credit for eligible employee training costs under 295  
section 5729.07 of the Revised Code; 296

(3) The credit for purchases of qualified low-income 297  
community investments under section 5729.16 of the Revised Code; 298

(4) The nonrefundable job retention credit under division 299  
(B) of section 122.171 of the Revised Code; 300

(5) The nonrefundable credit for investments in rural 301  
business growth funds under section 122.152 of the Revised Code; 302

(6) The nonrefundable credit for contributing capital to a 303  
transformational mixed use development project under section 304  
5729.18 of the Revised Code; 305

(7) The offset of assessments by the Ohio life and health 306

insurance guaranty association against tax liability permitted	307
by section 3956.20 of the Revised Code;	308
<del>(7)</del> <u>(8)</u> The refundable credit for rehabilitating a	309
historic building under section 5729.17 of the Revised Code;	310
<del>(8)</del> <u>(9)</u> The refundable credit for Ohio job retention under	311
former division (B) (2) or (3) of section 122.171 of the Revised	312
Code as those divisions existed before September 29, 2015, the	313
effective date of the amendment of this section by H.B. 64 of	314
the 131st general assembly;	315
<del>(9)</del> <u>(10)</u> The refundable credit for Ohio job creation under	316
section 5729.032 of the Revised Code;	317
<del>(10)</del> <u>(11)</u> The refundable credit under section 5729.08 of	318
the Revised Code for losses on loans made under the Ohio venture	319
capital program under sections 150.01 to 150.10 of the Revised	320
Code.	321
(B) For any credit except the refundable credits	322
enumerated in this section, the amount of the credit for a	323
taxable year shall not exceed the tax due after allowing for any	324
other credit that precedes it in the order required under this	325
section. Any excess amount of a particular credit may be carried	326
forward if authorized under the section creating that credit.	327
Nothing in this chapter shall be construed to allow a taxpayer	328
to claim, directly or indirectly, a credit more than once for a	329
taxable year.	330
<b>Section 2.</b> That existing sections 107.036, 5725.98, and	331
5729.98 of the Revised Code are hereby repealed.	332