

As Reported by the Senate Finance Committee

133rd General Assembly

Regular Session

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Sub. S. B. No. 39

Senator Schuring

Cosponsor: Senator Terhar

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 an insurance 3
premiums tax credit for capital contributions to 4
transformational mixed use development projects. 5

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

Section 1. That sections 107.036, 5725.98, and 5729.98 be 6
amended and sections 122.09, 5725.35, and 5729.18 of the Revised 7
Code be enacted to read as follows: 8

Sec. 107.036. (A) For each business incentive tax credit, 9
the main operating appropriations act shall contain a detailed 10
estimate of the total amount of credits that may be authorized 11
in each year, an estimate of the amount of credits expected to 12
be claimed in each year, and an estimate of the amount of 13
credits expected to remain outstanding at the end of the 14
biennium. The governor shall include such estimates in the state 15
budget submitted to the general assembly pursuant to section 16
107.03 of the Revised Code. 17

(B) As used in this section, "business incentive tax 18

credit" means all of the following:	19
(1) The job creation tax credit under section 122.17 of the Revised Code;	20 21
(2) The job retention tax credit under section 122.171 of the Revised Code;	22 23
(3) The historic preservation tax credit under section 149.311 of the Revised Code;	24 25
(4) The motion picture tax credit under section 122.85 of the Revised Code;	26 27
(5) The new markets tax credit under section 5725.33 of the Revised Code;	28 29
(6) The research and development credit under section 166.21 of the Revised Code;	30 31
(7) The small business investment credit under section 122.86 of the Revised Code;	32 33
(8) The rural growth investment credit under section 122.152 of the Revised Code;	34 35
<u>(9) The transformational mixed use development credit under section 122.09 of the Revised Code.</u>	36 37
<u>Sec. 122.09. (A) As used in this section:</u>	38
<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 project is certified by the director of development services under division (C) of this section. In the case of a certified</u>	39 40 41 42 43 44 45

transformational mixed use development project that is part of a 46
larger contiguous project that is planned to be completed in 47
phases, "development costs" include only expenditures associated 48
with the portion of the project that is certified by the 49
director and do not include expenditures incurred for other 50
phases of the project. 51

(2) "Owner" means a person or persons holding a fee simple 52
or leasehold interest in real property, including interests in 53
real property acquired through a capital lease arrangement. 54
"Owner" does not include the state or a state agency, or any 55
political subdivision as defined in section 9.23 of the Revised 56
Code. For the purpose of this division, "fee simple interest," 57
"leasehold interest," and "capital lease" shall be construed in 58
accordance with generally accepted accounting principles. 59

(3) "Transformational mixed use development" means a 60
project that consists of new construction or the redevelopment, 61
rehabilitation, expansion, or other improvement of vacant 62
buildings or structures, or a combination of the foregoing, and 63
that: 64

(a) Will have a transformational economic impact on the 65
development site and the surrounding area; 66

(b) Integrates some combination of retail, office, 67
residential, recreation, structured parking, and other similar 68
uses into one mixed use development; and 69

(c) Includes at least one new or previously vacant 70
building that is fifteen or more stories in height or has a 71
floor area of at least three hundred fifty thousand square feet 72
or two or more new buildings that are connected to each other, 73
are located on the same parcel or on contiguous parcels, and 74

that collectively have a floor area of at least three hundred 75
fifty thousand square feet. 76

"Transformational mixed use development" may include a 77
portion of a larger contiguous project that is planned to be 78
completed in phases as long as the phases collectively meet the 79
criteria described in division (A)(3) of this section. 80

(4) "Estimated increased tax collections" means the 81
difference, if positive, of the amount of state and local taxes 82
estimated to be derived from economic activity occurring within 83
the development site and the surrounding area during the 84
estimated completion period, minus the amount of such taxes 85
estimated to be derived from such economic activity in that site 86
and surrounding area during that period if the transformational 87
mixed use project were not completed. 88

(5) "Estimated completion period" means the time period 89
beginning on the day after the estimated completion of a 90
transformational mixed use development and ending on the fifth 91
anniversary of that day. 92

(6) "Insurance company" means a person subject to the tax 93
imposed under section 5725.18 or 5729.03 of the Revised Code. 94

(7) "Contribute capital" means to invest, loan, or donate 95
cash in exchange for an equity interest in an asset, a debt 96
instrument, or no consideration. 97

(B) The owner of one or more parcels of land in this state 98
within which a transformational mixed use development is planned 99
or an insurance company that contributes capital to be used in 100
the planning or construction of such a development may apply to 101
the director for a tax credit certificate if the estimated 102
development costs to complete the project plus, if applicable, 103

the estimated expenditures that have been or will be incurred to 104
complete all other contiguous phases of the project, exceed 105
fifty million dollars. Each application shall be filed in the 106
form and manner prescribed by the director and shall, at 107
minimum, include a development plan comprised of all of the 108
following information: 109

(1) A detailed description of the proposed 110
transformational mixed use development including site plans, 111
construction drawings, architectural renderings, or other means 112
sufficient to convey the appearance, size, purposes, capacity, 113
and scope of the project and, if applicable, previously 114
completed and future phases of the project; 115

(2) A viable financial plan that estimates the development 116
costs that have been or will be incurred in the completion of 117
the project and that designates a source of financing or a 118
strategy for obtaining financing; 119

(3) An estimated schedule for the progression and 120
completion of the project including, if applicable, previously 121
completed and future phases of the project; 122

(4) An assessment of the projected economic impact of the 123
project on the development site and the surrounding area; 124

(5) Evidence that estimated increased tax collections for 125
the development site and the surrounding area will exceed ten 126
per cent of the estimated development costs reported under 127
division (B) (2) of this section; 128

(6) If the applicant is an insurance company that is not 129
the property owner, the amount of the insurance company's 130
capital contribution to the development and the date on which it 131
was made; 132

(7) Evidence that the project will not be completed unless 133
the applicant receives the credit. 134

(C) If the director determines that (1) the project 135
described in an application submitted under division (B) of this 136
section qualifies as a transformational mixed use development 137
and satisfies all other criteria prescribed by this section or 138
by rule of the director, (2) the estimated increased tax 139
collections for the development site and the surrounding area 140
will exceed ten per cent of the estimated development costs 141
reported under division (B)(2) of this section, and (3) the 142
project will not be completed unless the applicant receives the 143
credit, the director may issue to the applicant a written 144
statement that certifies the project and preliminarily approves 145
a tax credit. The statement shall specify the estimated amount 146
of the credit, which shall equal ten per cent of the development 147
costs if the applicant is the property owner or, if the 148
applicant is an insurance company that contributed capital to 149
the development, ten per cent of such contribution. The 150
statement shall stipulate that receipt of a tax credit 151
certificate is contingent upon completion of the 152
transformational mixed use development as described in the 153
development plan submitted by the applicant under division (B) 154
of this section. 155

In determining whether or not to certify a project, the 156
director shall consider the potential impact of the 157
transformational mixed use development on the development site 158
and the surrounding area in terms of architecture, accessibility 159
to pedestrians, retail entertainment and dining sales, job 160
creation, property values, connectivity, and revenue from sales, 161
income, lodging, and property taxes. If the director denies an 162
application, the director shall notify the applicant of the 163

reason or reasons for such determination. The director's 164
determination is final, but an applicant may revise and resubmit 165
a previously denied application. 166

(D) An applicant that is preliminarily approved for a tax 167
credit under this section shall, within twelve months of the 168
date the project is certified, provide the director with 169
sufficient evidence of reviewable progress and an updated 170
schedule for the progression and completion of the project. In 171
addition, the applicant shall provide the director with evidence 172
that financing for the project is secured and closed within 173
eighteen months after such certification. If the applicant does 174
not comply with one or both of the reporting requirements within 175
the time prescribed by this division, the director may rescind 176
the approval of the application or extend the applicable 177
deadline. If the director extends a reporting deadline, the 178
director shall notify the applicant of the new deadline. If the 179
director rescinds approval of the application, the director 180
shall notify the applicant. If the director rescinds approval of 181
the application, the applicant may submit a new application for 182
a tax credit under division (B) of this section. 183

(E) An applicant that is the property owner and is 184
preliminarily approved for a tax credit under this section may 185
sell or transfer the rights to that credit to one or more 186
persons for the purpose of raising capital for the certified 187
project. The applicant shall notify the director upon selling or 188
transferring the rights to the credit. The notice shall identify 189
the person or persons to which the credit was sold or 190
transferred and the credit amount sold or transferred to each 191
such person. Only an applicant that owns the property may sell 192
or transfer a credit under this division. A credit may be 193
divided among multiple purchasers through more than one 194

transaction but once a particular credit amount is acquired by a 195
person other than the applicant it may not be sold or 196
transferred again. 197

(F) (1) The applicant shall notify the director upon 198
completion of a certified transformational mixed use development 199
project. The notification shall include a third-party cost 200
certification by a certified public accountant of the actual 201
development costs attributed to the project. Upon receiving such 202
a notice, the director shall issue a tax credit certificate to 203
the applicant or to the person or persons to which the applicant 204
sold or transferred the rights to the credit under division (E) 205
of this section. 206

(2) (a) Subject to division (F) (2) (c) of this section, if 207
the applicant is the property owner, the aggregate value of the 208
certificates issued by the director shall equal ten per cent of 209
the actual development costs attributed to the project. If the 210
amount of the credit is less than the credit amount estimated 211
under division (C) of this section because the actual 212
development costs are less than the estimated development costs 213
and the applicant has sold or transferred the rights to the 214
credit to more than one person, the director shall reduce the 215
amount of each tax credit certificate on a pro rata basis unless 216
the applicant requests an alternative allocation of the credit. 217

(b) Subject to division (F) (2) (c) of this section, if the 218
applicant is an insurance company that contributed capital to 219
the development, the value of the certificate shall equal ten 220
per cent of the insurance company's actual capital contribution. 221

(c) The aggregate value of all tax credit certificates 222
issued under divisions (F) (2) (a) and (b) of this section for the 223
same transformational mixed-use development shall not exceed ten 224

per cent of the actual development costs attributed to the 225
project. If a property owner and one or more insurance companies 226
both apply for and receive a tax credit under this section for 227
the same development, the full amount of the tax credit for 228
which the applicants are eligible shall be divided 229
proportionally. The value of the tax credit certificate issued 230
to each applicant that is an insurance company shall be computed 231
in the manner described in division (F)(2)(b) of this section. 232
The value of the tax credit certificate issued to the property 233
owner shall equal ten per cent of the property owner's actual 234
development costs less the sum of the capital contributions to 235
the development for which one or more insurance companies were 236
issued a tax credit certificate under this section. 237

(3) Issuance of a tax credit certificate does not 238
represent a verification or certification by the director of the 239
amount of development costs or capital contributions for which a 240
tax credit may be claimed. The amount of development costs or 241
capital contributions for which a tax credit may be claimed is 242
subject to inspection and examination by the superintendent of 243
insurance. 244

(4) Upon the issuance of a tax credit certificate, the 245
director shall certify to the superintendent of insurance the 246
name of the applicant, whether the applicant is the property 247
owner or an insurance company that contributed capital to the 248
development, the name of each person to which a tax credit 249
certificate was issued, the actual amount of development costs 250
attributed to the project, the credit amount shown on each tax 251
credit certificate, and any other information required by the 252
rules adopted under this section. 253

(5) The person that holds the rights to a tax credit 254

certificate issued under this section and that is an insurance 255
company may claim a tax credit under section 5725.35 or 5729.18 256
of the Revised Code. 257

(G) The director shall publish information about each 258
transformational mixed use development on the web site of the 259
development services agency not later than the first day of 260
August following certification of the project. The director 261
shall update the published information annually until the 262
project is complete and the credit or credits are fully claimed. 263
The published information shall include all of the following: 264

(1) The location of the transformational mixed use 265
development and the name by which it is known; 266

(2) The estimated schedule for progression and completion 267
of the project included in the development plan pursuant to 268
division (B) (3) of this section; 269

(3) The assessment of the projected economic impact of the 270
project included in the development plan pursuant to division 271
(B) (4) of this section; 272

(4) The evidence supporting the estimated increase in tax 273
collections for the development site and the surrounding area 274
included in the development plan pursuant to division (B) (5) of 275
this section, except that the director may omit any proprietary 276
or sensitive information included in such evidence; 277

(5) The estimated development costs that have been or will 278
be incurred in completion of the project and, if applicable, the 279
amount of the insurance company's capital contribution to the 280
development and the date on which it was made, as reported in 281
the development plan pursuant to divisions (B) (2) and (6) of 282
this section; 283

<u>(6) A copy of each report submitted to the director by the</u>	284
<u>applicant under division (D) of this section.</u>	285
<u>(H) The director, in accordance with Chapter 119. of the</u>	286
<u>Revised Code, shall adopt rules that establish all of the</u>	287
<u>following:</u>	288
<u>(1) Forms and procedures by which applicants may apply for</u>	289
<u>a transformational investment tax credit;</u>	290
<u>(2) Criteria for reviewing, evaluating, and approving</u>	291
<u>applications for certificates within the limitations prescribed</u>	292
<u>by this section;</u>	293
<u>(3) Eligibility requirements for obtaining a tax credit</u>	294
<u>certificate under this section;</u>	295
<u>(4) The form of the tax credit certificate;</u>	296
<u>(5) Reporting requirements and monitoring procedures;</u>	297
<u>(6) Any other rules necessary to implement and administer</u>	298
<u>this section.</u>	299
<u>Sec. 5725.35. There is allowed a credit against the tax</u>	300
<u>imposed by section 5725.18 of the Revised Code for an insurance</u>	301
<u>company subject to that tax that holds the rights to a tax</u>	302
<u>credit certificate issued under section 122.09 of the Revised</u>	303
<u>Code. The credit shall equal the dollar amount indicated on the</u>	304
<u>certificate. The credit shall be claimed in the calendar year</u>	305
<u>specified in the certificate and in the order required under</u>	306
<u>section 5725.98 of the Revised Code. If the credit exceeds the</u>	307
<u>amount of tax otherwise due in that year, the company may carry</u>	308
<u>forward the excess for not more than five ensuing years, but the</u>	309
<u>amount of the excess credit claimed against the tax for any year</u>	310
<u>shall be deducted from the balance carried forward to the next</u>	311

<u>year.</u>	312
Sec. 5725.98. (A) To provide a uniform procedure for	313
calculating the amount of tax imposed by section 5725.18 of the	314
Revised Code that is due under this chapter, a taxpayer shall	315
claim any credits and offsets against tax liability to which it	316
is entitled in the following order:	317
(1) The credit for an insurance company or insurance	318
company group under section 5729.031 of the Revised Code;	319
(2) The credit for eligible employee training costs under	320
section 5725.31 of the Revised Code;	321
(3) The credit for purchasers of qualified low-income	322
community investments under section 5725.33 of the Revised Code;	323
(4) The nonrefundable job retention credit under division	324
(B) of section 122.171 of the Revised Code;	325
(5) The nonrefundable credit for investments in rural	326
business growth funds under section 122.152 of the Revised Code;	327
(6) <u>The nonrefundable credit for contributing capital to a</u>	328
<u>transformational mixed use development project under section</u>	329
<u>5725.35 of the Revised Code;</u>	330
<u>(7)</u> The offset of assessments by the Ohio life and health	331
insurance guaranty association permitted by section 3956.20 of	332
the Revised Code;	333
(7) <u>(8)</u> The refundable credit for rehabilitating a	334
historic building under section 5725.34 of the Revised Code; ;	335
(8) <u>(9)</u> The refundable credit for Ohio job retention under	336
former division (B) (2) or (3) of section 122.171 of the Revised	337
Code as those divisions existed before September 29, 2015, the	338

effective date of the amendment of this section by H.B. 64 of 339
the 131st general assembly; 340

~~(9)~~ (10) The refundable credit for Ohio job creation under 341
section 5725.32 of the Revised Code; 342

~~(10)~~ (11) The refundable credit under section 5725.19 of 343
the Revised Code for losses on loans made under the Ohio venture 344
capital program under sections 150.01 to 150.10 of the Revised 345
Code. 346

(B) For any credit except the refundable credits 347
enumerated in this section, the amount of the credit for a 348
taxable year shall not exceed the tax due after allowing for any 349
other credit that precedes it in the order required under this 350
section. Any excess amount of a particular credit may be carried 351
forward if authorized under the section creating that credit. 352
Nothing in this chapter shall be construed to allow a taxpayer 353
to claim, directly or indirectly, a credit more than once for a 354
taxable year. 355

Sec. 5729.18. There is allowed a credit against the tax 356
imposed by section 5729.03 of the Revised Code for an insurance 357
company subject to that tax that holds the rights to a tax 358
credit certificate issued under section 122.09 of the Revised 359
Code. The credit shall equal the dollar amount indicated on the 360
certificate. The credit shall be claimed in the calendar year 361
specified in the certificate and in the order required under 362
section 5729.98 of the Revised Code. If the credit exceeds the 363
amount of tax otherwise due in that year, the company may carry 364
forward the excess for not more than five ensuing years, but the 365
amount of the excess credit claimed against the tax for any year 366
shall be deducted from the balance carried forward to the next 367
year. 368

Sec. 5729.98. (A) To provide a uniform procedure for	369
calculating the amount of tax due under this chapter, a taxpayer	370
shall claim any credits and offsets against tax liability to	371
which it is entitled in the following order:	372
(1) The credit for an insurance company or insurance	373
company group under section 5729.031 of the Revised Code;	374
(2) The credit for eligible employee training costs under	375
section 5729.07 of the Revised Code;	376
(3) The credit for purchases of qualified low-income	377
community investments under section 5729.16 of the Revised Code;	378
(4) The nonrefundable job retention credit under division	379
(B) of section 122.171 of the Revised Code;	380
(5) The nonrefundable credit for investments in rural	381
business growth funds under section 122.152 of the Revised Code;	382
(6) <u>The nonrefundable credit for contributing capital to a</u>	383
<u>transformational mixed use development project under section</u>	384
<u>5729.18 of the Revised Code;</u>	385
<u>(7)</u> The offset of assessments by the Ohio life and health	386
insurance guaranty association against tax liability permitted	387
by section 3956.20 of the Revised Code;	388
(7) <u>(8)</u> The refundable credit for rehabilitating a	389
historic building under section 5729.17 of the Revised Code;	390
(8) <u>(9)</u> The refundable credit for Ohio job retention under	391
former division (B) (2) or (3) of section 122.171 of the Revised	392
Code as those divisions existed before September 29, 2015, the	393
effective date of the amendment of this section by H.B. 64 of	394
the 131st general assembly;	395

(9) <u>(10)</u> The refundable credit for Ohio job creation under section 5729.032 of the Revised Code;	396 397
(10) <u>(11)</u> 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.	398 399 400 401
(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.	402 403 404 405 406 407 408 409 410
Section 2. That existing sections 107.036, 5725.98, and 5729.98 of the Revised Code are hereby repealed.	411 412
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:	413 414 415 416 417 418 419
The purpose of this bill is to foster economic development and increase tax collections for state and local governments.	420 421