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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
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Office

**H.B. 765**  
**136<sup>th</sup> General Assembly**

## Bill Analysis

[Click here for H.B. 765's Fiscal Note](#)

**Version:** As Introduced

**Primary Sponsors:** Reps. A. White and Young

Zachary P. Bowerman, Attorney

### SUMMARY

- Modifies, as follows, the nonrefundable tax credit authorized against the insurance premiums tax, financial institutions tax, or income tax for investment in the development and construction of affordable single-family homes:
  - Allows certain private project developers to apply for the credit, rather than just local governments and quasi-public development entities.
  - Allows the credit to be claimed as homes are completed and sold rather than upon completion of the entire project.
  - Calculates the credit amount as 35% of development costs, or the amount necessary to fill an appraisal or affordability gap, rather than based on Ohio Housing Finance Agency appraisal.
  - Allows the credit to be claimed all at once instead of over ten years.
  - Eliminates certain continuing obligations and annual reporting requirements on the part of the project developer and provisions allowing recapture of tax credit amounts for noncompliance.

### DETAILED ANALYSIS

#### Single-family housing development credit

Continuing law authorizes a nonrefundable single-family housing development tax credit, which may be awarded by the Ohio Housing Finance Agency (OHFA) and taken against the domestic or foreign insurance premium tax, financial institutions tax, or income tax, for investment in the development and construction of affordable single-family homes. Under current law, to obtain a credit, a local government or quasi-public development entity, in partnership with a private “development team,” must submit an application to the OHFA executive director. Upon approving an application, OHFA reserves a credit for the applicant to be

awarded when the project is completed. The credit equals the amount by which the project's development costs exceed the fair market value of the project's completed homes. The applicant may allocate credits to taxpayers of the credit-eligible taxes who invest capital in the project. The total credit amount is claimed in equal increments over the ten years after the project's completion, and each project home is subject to an OHFA-prescribed affordability requirement for the ten years following its initial sale to a qualified buyer ("affordability period"). Continuing law prohibits OHFA from reserving any credits after June 30, 2027.

The bill makes several modifications to the credit, including requiring eligible developers to apply for the credit reservation, changing the timing and calculation of credit awards, eliminating continuing obligations during the affordability period, and adjusting annual reporting requirements and recapture provisions. These changes are described in detail below.

### **Application process**

Under current law, a county, township, municipal corporation, regional planning commission, community improvement corporation, economic development corporation, port authority, or county land reutilization corporation, i.e., a land bank, must own a project and apply for a credit reservation. The bill instead allows an "eligible developer" to own the project and apply for a credit reservation. An eligible developer is a nonprofit corporation, or limited partnership or limited liability company in which a general partner or the manager, respectively, is a nonprofit corporation, where the primary activity of that corporation is the development and preservation of affordable housing.<sup>1</sup>

### **Credit reservation and limits**

Upon approval for a credit reservation, continuing law requires OHFA to notify the applicant of the tax credit reservation amount. Under current law, that amount is limited to the amount by which the project's estimated development costs exceed the fair market value of the project's homes, as appraised by OHFA, subject to adjustment for actual development costs as they are certified at the time the credit is issued after completion of the project. The bill instead sets the reservation amount to 35% of the total estimated development costs included with the application.<sup>2</sup>

### **Project completion and claiming the credit**

The bill allows a developer to begin claiming the credit on individual dwellings as they are completed and sold rather than after the entire project is completed, as under current law. To do so, the owner notifies OHFA; providing a development cost certification, the purchase price of the dwelling, and any other certifications OHFA may require; and designating which tax the credit will be claimed against. After approving the cost certification, the bill requires OHFA to

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<sup>1</sup> R.C. 175.17(A)(6) and (11).

<sup>2</sup> R.C. 175.17(B)(1).

issue a tax credit certificate within 90 days. A certificate may aggregate the credits for multiple dwellings.<sup>3</sup>

Under current law, upon the original applicant's notification, OHFA is required to appraise the project's finished homes and, after approving the final cost certification, compute the amount of the tax credit. OHFA then issues an eligibility certificate to the applicant that states the amount of the credit, which is  $\frac{1}{10}$  of the amount issued in the initial certification. That credit amount may then be claimed in each year of the ten-year credit period listed on the certificate. The public-sector applicant may allocate all or a portion of the annual credit amount for any year of the credit period to one or more project investors or equity owners of a pass-through entity project investor.

The bill eliminates the credit period and credit allocation provisions, instead allowing the applicant to directly claim the credit in the year the certificate is issued, rather than incrementally over ten years. For each dwelling, the amount of the credit is the lesser of 35% of the development cost for the dwelling or the amount necessary to fill either the affordability gap or appraisal gap for the dwelling. The appraisal gap is the difference between initial purchase price of a single-family dwelling and the total development cost of the dwelling. The affordability gap is the difference between the purchase price of a single-family dwelling affordable to an individual having an annual income not more than the 120% of median income within the county from the total development cost of the dwelling ("affordable price").<sup>4</sup> Credit awards may not exceed the reservation amount, except that limit may be adjusted to account for increased costs or reduced construction. No credit shall be issued if the initial sale of a dwelling is not made to a qualified buyer, i.e., a person that will occupy the home as their primary dwelling and meets other requirements prescribed by OHFA rules, and, if addressing the affordability gap, an affordable price.<sup>5</sup> The bill requires OHFA to compute the amount of the tax credit in accordance with the bill for any credit reservations made before the bill's 90-day effective date.<sup>6</sup>

A person claiming the credit must submit a copy of the certificate with the person's tax return. The Tax Commissioner or Superintendent of Insurance may require a person to provide other documentation as may be necessary for verification.<sup>7</sup> Any unclaimed balance of the credit may be carried forward for five years under continuing law.

### **Transferring the credit**

Though the bill eliminates a provision that specifically allowed a government credit recipient to allocate the credit to a taxpayer, the bill replaces it with a broader provision allowing any person awarded a credit to transfer all or a portion of it to another person by providing written notice to the Tax Commissioner and Superintendent of Insurance. A transferee may claim

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<sup>3</sup> R.C. 175.17(D)(1).

<sup>4</sup> R.C. 175.17(A)(12) to (14).

<sup>5</sup> R.C. 175.17(D).

<sup>6</sup> R.C. 175.17(D)(4).

<sup>7</sup> R.C. 175.17(F)(1).

the credit against the same or a different tax or may transfer the credit to another person with proper notice, but each credit amount may ultimately be claimed only once.<sup>8</sup>

### **Continuing obligations and reporting requirements**

Continuing law requires the developer to maintain ownership of the homes throughout the development of the project, until they are sold to qualified buyers. Under current law, a qualified buyer must occupy a home constructed as part of a covered project as the buyer's primary residence for ten years, referred to as the "affordability period." During this period, the affordability of the home, as determined by OHFA by rule, is to be maintained and services are to be provided by the applicant's development team. Each year, a project's designated reporter must provide a list of each investor or equity owner that has been allocated a portion of the credit awarded for that year, the amount that has been allocated to each, the tax each portion will be claimed against, and the aggregate credit amount allocated.

The bill largely eliminates the servicing and reporting requirements on the project developer. OHFA is no longer authorized to adopt criteria by which a project development owner shall be responsible for any or all risk associated with a qualified project such as homeowner abandonment, default, or foreclosure. The bill also repeals provisions by which awarded credit amounts may be recaptured for noncompliance. OHFA may still require a member of the project development team to support maintaining affordability, such as by deed restriction, but also through additional methods such as subordinate compliance mortgage, or other filing of record.<sup>9</sup> The bill also reduces the affordability period during which the home must be occupied as primary dwelling to seven years and expressly authorizes OHFA rules to create exceptions for this requirement.<sup>10</sup>

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## **HISTORY**

Action	Date
Introduced	03-17-26

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ANHB0765IN-136/ks

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<sup>8</sup> R.C. 175.17(F)(2), 5725.37, 5726.60, 5729.20, and 5747.84.

<sup>9</sup> R.C. 175.17(G).

<sup>10</sup> R.C. 175.17(A)(7) and (C).