As Introduced

132nd General Assembly Regular Session 2017-2018

H. B. No. 469

Representatives Schuring, Patton

A BILL

То	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	/
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	19

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credit" means all of the following:	20
(1) The job creation tax credit under section 122.17 of the Revised Code;	21 22
(2) The job retention tax credit under section 122.171 of the Revised Code;	23 24
(3) The historic preservation tax credit under section 149.311 of the Revised Code;	25 26
(4) The motion picture tax credit under section 122.85 of the Revised Code;	27 28
(5) The new markets tax credit under section 5725.33 of the Revised Code;	29 30
(6) The research and development credit under section 166.21 of the Revised Code;	31 32
(7) The small business investment credit under section 122.86 of the Revised Code;	33 34
(8) The transformational mixed use development credit under section 122.09 of the Revised Code.	35 36
Sec. 122.09. (A) As used in this section:	37
(1) "Development costs" means expenditures paid or	38
incurred by the property owner in completing a certified	39
transformational mixed use development project, including architectural or engineering fees paid or incurred in connection	40 41
with the project and expenses incurred before the date the	42
project is certified by the director of development services	43
under division (C) of this section.	44
(2) "Owner" means a person holding a fee simple or	45
<u>leasehold interest in real property</u> , including interests in real	46

property acquired through a capital lease arrangement. "Owner"	47
does not include the state or a state agency, or any political	48
subdivision as defined in section 9.23 of the Revised Code. For	49
the purpose of this division, "fee simple interest," "leasehold	50
interest," and "capital lease" shall be construed in accordance	51
with generally accepted accounting principles.	52
(3) "Project area" means all territory located within a	53
one-mile radius of the site of a transformational mixed use	54
development site.	55
(4) "Transformational mixed use development" means a site	56
not exceeding seven acres that integrates some combination of	57
retail, office, residential, hotel, recreation, structured	58
parking, and other uses and that includes at least one building	59
that is twenty or more stories in height.	60
(B) The owner of one or more parcels of land in this state	61
within which a transformational mixed use development is planned	62
may apply to the director for a tax credit certificate if the	63
estimated development costs to complete the project exceed four	64
hundred million dollars. Each application shall be filed in the	65
form and manner prescribed by the director and shall, at	66
minimum, include a development plan comprised of all of the	67
<pre>following information:</pre>	68
(1) A detailed description of the proposed	69
transformational mixed use development including site plans,	70
construction drawings, architectural renderings, or other means	71
sufficient to convey the appearance, size, purposes, capacity,	72
and scope of the project;	73
(2) A viable financial plan that estimates the development	74
costs to be incurred in the completion of the project and that	75

designates a source of financing or a strategy for obtaining	76
<pre>financing;</pre>	77
(3) An estimated schedule for the progression and	78
<pre>completion of the project;</pre>	79
(4) An assessment of the projected economic impact of the	80
project on the development site and the project area.	81
(C) If the director determines that the project described	82
in an application submitted under division (B) of this section	83
qualifies as a transformational mixed use development and	84
satisfies all other criteria prescribed by this section or by	85
rule of the director, the director may issue to the applicant a	86
written statement that certifies the project and preliminarily	87
approves a tax credit. The statement shall specify the estimated	88
amount of the credit, which shall equal ten per cent of the	89
development costs. The statement shall stipulate that receipt of	90
a tax credit certificate is contingent upon completion of the	91
transformational mixed use development as described in the	92
development plan submitted by the applicant under division (B)	93
of this section.	94
In determining whether or not to certify a project, the	95
director shall consider the potential impact of the	96
transformational mixed use development on the project area in	97
terms of architecture, accessibility to pedestrians, retail	98
entertainment and dining sales, job creation, property values,	99
connectivity, and revenue from sales, income, lodging, and	100
property taxes. If the director denies an application, the	101
director shall notify the applicant of the reason or reasons for	102
such determination. The director's determination is final, but	103
an applicant may revise and resubmit a previously denied	104
application.	105

(D) An applicant who is preliminarily approved for a tax	106
credit under this section shall provide the director with	107
sufficient evidence of reviewable progress within twelve months	108
after the date the applicant's project is certified. In	109
addition, the applicant shall provide the director with evidence	110
that the applicant has secured and closed on financing for the	111
project within eighteen months after such certification. If the	112
applicant fails to comply with the requirements of this	113
division, the director may rescind the approval of the	114
application. The director shall notify the applicant if the	115
approval has been rescinded. An applicant whose approval has	116
been rescinded may submit a new application for a tax credit	117
under division (B) of this section.	118
(E) An applicant who is preliminarily approved for a tax	119
credit under this section may sell or transfer the rights to	120
that credit to one or more persons for the purpose of raising	121
capital for the certified project. The applicant shall notify	122
the director upon selling or transferring the rights to the	123
credit. The notice shall identify the person or persons to which	124
the credit was sold or transferred and the credit amount sold or	125
transferred to each such person. Only the applicant may sell or	126
transfer a credit under this division. A credit may be divided	127
among multiple purchasers through more than one transaction but	128
once a particular credit amount is acquired by a person other	129
than the applicant it may not be sold or transferred again.	130
(F) (1) The applicant shall notify the director upon	131
completion of a certified transformational mixed use development	132
project. The notification shall include a third-party cost	133
certification by a certified public accountant of the actual	134
development costs attributed to the project. Upon receiving such	135
a notice, the director shall issue a tax credit certificate to	136

the applicant or to the person or persons to which the applicant	137
sold or transferred the rights to the credit under division (E)	138
of this section. The aggregate value of the certificates issued	139
by the director shall equal ten per cent of the actual	140
development costs attributed to the project. If the amount of	141
the credit is less than the credit amount estimated under	142
division (C) of this section because the actual development	143
costs are less than the estimated development costs and the	144
applicant has sold or transferred the rights to the credit to	145
more than one person, the director shall reduce the amount of	146
each tax credit certificate on a pro rata basis unless the	147
applicant requests an alternative allocation of the credit.	148
(2) Issuance of a tax credit certificate does not	149
represent a verification or certification by the director of the	150
amount of development costs for which a tax credit may be	151
claimed. The amount of development costs for which a tax credit	152
may be claimed is subject to inspection and examination by the	153
tax commissioner or employees of the commissioner under section	154
5703.19 of the Revised Code and any other applicable law.	155
(3) Upon the issuance of a tax credit certificate, the	156
director shall certify to the commissioner, in the form and	157
manner requested by the commissioner, the name of the applicant,	158
the name of each person to which a tax credit certificate was	159
issued, the actual amount of development costs attributed to the	160
project, the credit amount shown on each tax credit certificate,	161
and any other information required by the rules adopted under	162
this section.	163
(4) The person holding the rights to a tax credit	164
certificate issued under this section may claim a tax credit	165
under section 5725.35 or 5729.18 of the Revised Code.	166

(G) The director, after consultation with the tax	167
commissioner and in accordance with Chapter 119. of the Revised	168
Code, shall adopt rules that establish all of the following:	169
(1) Forms and procedures by which applicants may apply for	170
a transformational investment tax credit;	171
(2) Criteria for reviewing, evaluating, and approving	172
applications for certificates within the limitations prescribed_	173
by this section;	174
(3) Eligibility requirements for obtaining a tax credit	175
<pre>certificate under this section;</pre>	176
(4) The form of the tax credit certificate;	177
(5) Reporting requirements and monitoring procedures;	178
(6) Any other rules necessary to implement and administer	179
this section.	180
Sec. 5725.35. (A) There is allowed a credit against the	181
tax imposed by section 5725.18 of the Revised Code for an	182
insurance company subject to that tax that holds the rights to a	183
tax credit certificate issued under section 122.09 of the	184
Revised Code. The credit shall equal the dollar amount indicated	185
on the certificate. The credit shall be claimed in the calendar	186
year specified in the certificate and in the order required	187
under section 5725.98 of the Revised Code. If the credit exceeds	188
the amount of tax otherwise due in that year, the company may	189
carry forward the excess for not more than five ensuing years,	190
but the amount of the excess credit claimed against the tax for	191
any year shall be deducted from the balance carried forward to	192
the next year.	193
(B) An insurance company claiming a credit under this	194

section shall retain the tax credit certificate for four years	195
following the end of the last year in which the credit is	196
claimed, and shall make the certificate available for inspection	197
by the tax commissioner upon the request of the tax commissioner	198
during that period.	199
Sec. 5725.98. (A) To provide a uniform procedure for	200
calculating the amount of tax imposed by section 5725.18 of the	201
Revised Code that is due under this chapter, a taxpayer shall	202
claim any credits and offsets against tax liability to which it	203
is entitled in the following order:	204
(1) The credit for an insurance company or insurance	205
company group under section 5729.031 of the Revised Code;	206
(2) The credit for eligible employee training costs under	207
section 5725.31 of the Revised Code;	208
(3) The credit for purchasers of qualified low-income	209
community investments under section 5725.33 of the Revised Code;	210
(4) The nonrefundable job retention credit under division	211
(B) of section 122.171 of the Revised Code;	212
(5) The nonrefundable credit for contributing capital to a	213
transformational mixed use development project under section	214
5725.35 of the Revised Code;	215
(6) The offset of assessments by the Ohio life and health	216
insurance guaranty association permitted by section 3956.20 of	217
the Revised Code;	218
$\frac{(6)}{(7)}$ The refundable credit for rehabilitating a	219
historic building under section 5725.34 of the Revised Code.	220
$\frac{(7)}{(8)}$ The refundable credit for Ohio job retention under	221
former division (B)(2) or (3) of section 122 171 of the Revised	222

Code as those divisions existed before <u>September 29, 2015</u> , the	223
effective date of the amendment of this section by H.B. 64 of	224
the 131st general assembly;	225
$\frac{(8)}{(9)}$ The refundable credit for Ohio job creation under	226
section 5725.32 of the Revised Code;	227
$\frac{(9)}{(10)}$ The refundable credit under section 5725.19 of	228
the Revised Code for losses on loans made under the Ohio venture	229
capital program under sections 150.01 to 150.10 of the Revised	230
Code.	231
(B) For any credit except the refundable credits	232
enumerated in this section, the amount of the credit for a	233
taxable year shall not exceed the tax due after allowing for any	234
other credit that precedes it in the order required under this	235
section. Any excess amount of a particular credit may be carried	236
forward if authorized under the section creating that credit.	237
Nothing in this chapter shall be construed to allow a taxpayer	238
to claim, directly or indirectly, a credit more than once for a	239
taxable year.	240
Sec. 5729.18. (A) There is allowed a credit against the	241
tax imposed by section 5729.03 of the Revised Code for an	242
insurance company subject to that tax that holds the rights to a	243
tax credit certificate issued under section 122.09 of the	244
Revised Code. The credit shall equal the dollar amount indicated	245
on the certificate. The credit shall be claimed in the calendar	246
year specified in the certificate and in the order required	247
under section 5729.98 of the Revised Code. If the credit exceeds	248
the amount of tax otherwise due in that year, the company may	249
carry forward the excess for not more than five ensuing years,	250
but the amount of the excess credit claimed against the tax for	251
any year shall be deducted from the balance carried forward to	252

the next year.	253
(B) An insurance company claiming a credit under this	254
section shall retain the tax credit certificate for four years	255
following the end of the last year in which the credit is	256
claimed, and shall make the certificate available for inspection	257
by the tax commissioner upon the request of the tax commissioner	258
during that period.	259
Sec. 5729.98. (A) To provide a uniform procedure for	260
calculating the amount of tax due under this chapter, a taxpayer	261
shall claim any credits and offsets against tax liability to	262
which it is entitled in the following order:	263
(1) The credit for an insurance company or insurance	264
company group under section 5729.031 of the Revised Code;	265
(2) The credit for eligible employee training costs under	266
section 5729.07 of the Revised Code;	267
(3) The credit for purchases of qualified low-income	268
community investments under section 5729.16 of the Revised Code;	269
(4) The nonrefundable job retention credit under division	270
(B) of section 122.171 of the Revised Code;	271
(5) The nonrefundable credit for contributing capital to a	272
transformational mixed use development project under section	273
5729.18 of the Revised Code;	274
(6) The offset of assessments by the Ohio life and health	275
insurance guaranty association against tax liability permitted	276
by section 3956.20 of the Revised Code;	277
(6) (7) The refundable credit for rehabilitating a	278
historic building under section 5729 17 of the Revised Code	279

$\frac{(7)}{(8)}$ The refundable credit for Ohio job retention under	280
former division (B)(2) or (3) of section 122.171 of the Revised	281
Code as those divisions existed before September 29, 2015, the	282
effective date of the amendment of this section by H.B. 64 of	283
the 131st general assembly;	284
(8) (9) The refundable credit for Ohio job creation under	285
section 5729.032 of the Revised Code;	286
$\frac{(9)-(10)}{(10)}$ The refundable credit under section 5729.08 of	287
the Revised Code for losses on loans made under the Ohio venture	288
capital program under sections 150.01 to 150.10 of the Revised	289
Code.	290
(B) For any credit except the refundable credits	291
enumerated in this section, the amount of the credit for a	292
taxable year shall not exceed the tax due after allowing for any	293
other credit that precedes it in the order required under this	294
section. Any excess amount of a particular credit may be carried	295
forward if authorized under the section creating that credit.	296
Nothing in this chapter shall be construed to allow a taxpayer	297
to claim, directly or indirectly, a credit more than once for a	298
taxable year.	299
Section 2. That existing sections 107.036, 5725.98, and	300
5729 98 of the Revised Code are hereby repealed	301