

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

132nd General Assembly

**Regular Session
2017-2018**

Sub. H. B. No. 469

Representatives Schuring, Patton

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 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 rural growth investment credit under section 122.152 of the Revised Code;	35 36
<u>(9) The transformational mixed use development credit under section 122.09 of the Revised Code.</u>	37 38
<u>Sec. 122.09.</u> (A) As used in this section:	39
<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</u>	40 41 42 43 44 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 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. 75
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(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. 80
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(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: 84
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(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; 92
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(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; 97
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(3) An estimated schedule for the progression and completion of the project; 101
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(4) An assessment of the projected economic impact of the 103

project on the development site and a project area designated by 104
the owner; 105

(5) Evidence that estimated increased tax collections for 106
the designated project area will exceed ten per cent of the 107
estimated development costs reported under division (B)(2) of 108
this section. 109

(C) If the director determines that the project described 110
in an application submitted under division (B) of this section 111
qualifies as a transformational mixed use development and 112
satisfies all other criteria prescribed by this section or by 113
rule of the director, the director may issue to the applicant a 114
written statement that certifies the project and preliminarily 115
approves a tax credit. The statement shall specify the estimated 116
amount of the credit, which shall equal ten per cent of the 117
development costs. The statement shall stipulate that receipt of 118
a tax credit certificate is contingent upon completion of the 119
transformational mixed use development as described in the 120
development plan submitted by the applicant under division (B) 121
of this section. 122

In determining whether or not to certify a project, the 123
director shall consider (1) whether estimated increased tax 124
collections for the designated project area will exceed ten per 125
cent of the estimated development costs reported under division 126
(B)(2) of this section and (2) the potential impact of the 127
transformational mixed use development on the project area in 128
terms of architecture, accessibility to pedestrians, retail 129
entertainment and dining sales, job creation, property values, 130
connectivity, and revenue from sales, income, lodging, and 131
property taxes. The director may require an applicant, as a 132
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

<u>superintendent of insurance.</u>	195
<u>(3) Upon the issuance of a tax credit certificate, the</u>	196
<u>director shall certify to the superintendent of insurance the</u>	197
<u>name of the applicant, the name of each person to which a tax</u>	198
<u>credit certificate was issued, the actual amount of development</u>	199
<u>costs attributed to the project, the credit amount shown on each</u>	200
<u>tax credit certificate, and any other information required by</u>	201
<u>the rules adopted under this section.</u>	202
<u>(4) The person holding the rights to a tax credit</u>	203
<u>certificate issued under this section may claim a tax credit</u>	204
<u>under section 5725.35 or 5729.18 of the Revised Code.</u>	205
<u>(G) The director, in accordance with Chapter 119. of the</u>	206
<u>Revised Code, shall adopt rules that establish all of the</u>	207
<u>following:</u>	208
<u>(1) Forms and procedures by which applicants may apply for</u>	209
<u>a transformational investment tax credit;</u>	210
<u>(2) Criteria for reviewing, evaluating, and approving</u>	211
<u>applications for certificates within the limitations prescribed</u>	212
<u>by this section;</u>	213
<u>(3) Eligibility requirements for obtaining a tax credit</u>	214
<u>certificate under this section;</u>	215
<u>(4) The form of the tax credit certificate;</u>	216
<u>(5) Reporting requirements and monitoring procedures;</u>	217
<u>(6) Any other rules necessary to implement and administer</u>	218
<u>this section.</u>	219
<u>Sec. 5725.35. There is allowed a credit against the tax</u>	220
<u>imposed by section 5725.18 of the Revised Code for an insurance</u>	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
5725.35 of the Revised Code; 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
(7) <u>(8)</u> The refundable credit for rehabilitating a historic building under section 5725.34 of the Revised Code;	254 255
(8) <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
(9) <u>(10)</u> The refundable credit for Ohio job creation under section 5725.32 of the Revised Code;	261 262
(10) <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 credit certificate issued under section 122.09 of the Revised</u>	276 277 278 279

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
(7) <u>(8)</u> The refundable credit for rehabilitating a	309
historic building under section 5729.17 of the Revised Code;	310
(8) <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
(9) <u>(10)</u> The refundable credit for Ohio job creation under	316
section 5729.032 of the Revised Code;	317
(10) <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
Section 2. That existing sections 107.036, 5725.98, and	331
5729.98 of the Revised Code are hereby repealed.	332