



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

Mackenzie Damon

### **Sub. H.B. 469**

132nd General Assembly  
(As Passed by the House)

**Reps.** Schuring, Patton, Anielski, Barnes, Dever, Holmes, Ingram, Lang, Lepore-Hagan, Miller, Rogers, Schaffer, Seitz, Sheehy, K. Smith, Strahorn, West

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### **BILL SUMMARY**

- Authorizes a nonrefundable insurance company tax credit for contributing capital for the construction of "transformational mixed use developments" (TMUDs), which are defined as multiple-purpose developments satisfying certain criteria.
  - Sets the credit at 10% of documented development costs and permits unclaimed credit to be carried over for five years.
  - Requires an insurance company intending to claim the credit to purchase the right to claim the credit from the property owner.
  - Establishes procedures by which the Director of Development Services may certify a development plan, monitor construction progress, and award tax credit certificates upon completion of the TMUD.
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### **CONTENT AND OPERATION**

#### **Transformational mixed used development (TMUD) credit**

The bill authorizes a new tax credit to assist property owners in raising capital for the construction of "transformational mixed use developments" (TMUDs), which the bill defines as multiple-purpose developments that include at least one large building and that are expected to have a "transformational economic impact" on the surrounding area. The nonrefundable credit equals 10% of the development costs associated with the TMUD. It may be claimed against the state's taxes on foreign and domestic insurance companies.

The credit would be awarded by the Director of Development Services through an application process initiated by the property owner. After receiving the property owner's application – in the form of a development plan – the Director may certify the TMUD as eligible for the credit if the substance of the plan meets the bill's eligibility criteria. If the project is certified, the property owner may sell or transfer the rights to "preliminarily approved" tax credits to one or more insurance companies in order to raise capital for the project. Once the TMUD is complete, the Director must issue tax credit certificates to the property owner or to the insurance companies that acquired the rights to the credit.

### **Submission of a development plan**

A property owner starts the process of obtaining a TMUD credit by preparing a development plan and submitting it to the Director of Development Services for certification.<sup>1</sup> A person holding a leasehold interest – including an interest acquired through a capital lease arrangement – qualifies as a "property owner" under the bill and, therefore, may submit a development plan for approval. The bill explicitly bars the state, state agencies, and political subdivisions from pursuing or receiving the credit.<sup>2</sup>

The development plan submitted by the property owner must include a detailed description of the proposed TMUD, an estimate of the associated development costs, a "viable" financial plan, a schedule for progression and completion of construction, an assessment of the anticipated economic impact, and evidence that state and local tax collections will increase by more than the estimated credit amount within five years following completion of the project. Site plans, construction drawings, and architectural renderings may be included in the development plan to convey the appearance, size, purposes, capacity, and scope of the proposed TMUD.<sup>3</sup>

The bill defines "development costs" as project-related expenses incurred by the property owner in connection with the TMUD, including expenses incurred before the project is certified by the Director. The bill specifically identifies architectural and engineering fees as development costs that may be included for the purpose of the credit.<sup>4</sup>

The bill specifies that the economic impact of the TMUD and the estimated increase in state and local tax collections are to be computed for a "project area"

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<sup>1</sup> R.C. 122.09(B).

<sup>2</sup> R.C. 122.09(A)(2).

<sup>3</sup> R.C. 122.09(B).

<sup>4</sup> R.C. 122.09(A)(1).

designated by the property owner. The project area must consist of all territory within a specified radius centered on the site of the TMUD. The radius circumscribing the project area must be at least ¼ of a mile, but not larger than one mile. The Director may require the owner to change the radius of the project area as a condition of certifying the TMUD.<sup>5</sup>

The bill stipulates that the estimated increase in state and local tax collections is to be computed by predicting the amount of state and local taxes that will be derived from economic activity within the TMUD and the project area over the five years following completion of the project and then subtracting the estimated amount of such taxes that would be derived during that period from economic activity within those areas if the TMUD was not completed.<sup>6</sup> The applicant must provide evidence that the estimated increased tax collections will exceed 10% of estimated development costs.

### **Eligibility criteria for development**

In evaluating a development plan, the Director must determine if the proposed TMUD meets the following eligibility criteria: (1) the estimated development costs associated with the project must exceed \$50 million,<sup>7</sup> (2) the development plan must include at least one building that is either 15 or more stories high or 350,000 or more square feet in floor area, (3) there must be more than one intended "use" associated with the project site, and (4) the development must be expected to have a "transformational economic impact" on the project area. The bill directly names retail, office, residential, hotel, recreation, and structured parking as potential uses that could be incorporated into a TMUD, but none of those uses is required and they are not the only uses that would qualify a project for the credit. The Director also must consider the potential impact of the project in terms of "architecture, accessibility to pedestrians, retail entertainment architecture, retail entertainment and dining sales, job creation, property values, connectivity, and revenue from sales, income, lodging, and property taxes" and the estimated increase in state and local tax collections for the project area.

If the Director approves the application, written notice is issued certifying the development plan and preliminarily approving a tax credit equal to 10% of the estimated development costs associated with the TMUD. After certification, the tax credit remains contingent upon completion of the TMUD as described in the

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<sup>5</sup> R.C. 122.09(A)(3), (B)(4), and (C).

<sup>6</sup> R.C. 122.09(A)(5) and (6).

<sup>7</sup> The bill does not require the final costs to exceed \$50 million, only that the plan's estimated costs exceed that amount.

development plan.<sup>8</sup> If the development plan does not satisfy all the eligibility criteria, the Director must deny the application. The denial must be issued in writing and must include the reason or reasons for the denial. The director's denial of a development plan is not subject to appeal but an applicant may revise and resubmit the plan at any time.<sup>9</sup>

## **Transferability**

A tax credit for a TMUD that has been certified by the Director is considered to be "preliminarily approved." The property owner may sell the credit to one or more persons to raise capital for the TMUD project. The credit may be divided among multiple purchasers or sold in parts, but once any part of the credit has been sold, that part may not be sold again. The property owner must notify the Director of each sale, the amount sold, and the identity of the purchaser.<sup>10</sup>

## **Progress reports**

The bill requires the property owner to report to the Director on the progress of the TMUD on at least three occasions following certification of the development plan. The first report is due within a year of the certification date and must include an updated schedule for the progression and completion of the project and "sufficient evidence of reviewable progress" concerning construction. The second report is due within 18 months of the certification date and must include evidence that financing has been secured and closed. The third report is due upon the completion of the TMUD and must include a certification of actual development costs prepared by a third-party certified public accountant (CPA).

If the property owner does not comply with the first two reporting requirements, the Director may rescind certification of the development plan and associated tax credits. Alternatively, the Director may extend the applicable reporting deadline. In either case, the Director must notify the property owner of the determination. Completion of the third reporting requirement prompts the Director to issue the tax credit certificates. The actual development costs reported upon completion of the TMUD are subject to inspection and examination by the Superintendent of Insurance.<sup>11</sup>

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<sup>8</sup> R.C. 122.09(C).

<sup>9</sup> R.C. 122.09(A)(4), (B), and (C).

<sup>10</sup> R.C. 122.09(E).

<sup>11</sup> R.C. 122.09(D) and (F)(2).



## **Tax credit certificates**

After receiving notice that the TMUD is complete, the Director must issue tax credit certificates in an aggregate amount that equals 10% of the actual development costs attributed to the TMUD, as reported by the third-party CPA. Tax credit certificates are issued to each insurance company that purchased a portion of the credit and, for any amount of credit not yet sold, to the property owner. If the actual development costs are less than the estimated development costs stipulated in the development plan, the aggregate value of the tax credit certificates awarded in connection with the TMUD are reduced accordingly. If portions of the tax credit were sold, each certificate is reduced pro rata to account for the deficiency unless the property owner prescribes an alternative method to allocate the reduced credit. If the actual development costs exceed the estimated development costs, the value of the credit is increased accordingly.

The bill requires the Director to send notice to the Superintendent of Insurance when the tax credit certificates are awarded. The notice must state the name of the property owner, the name of each person to whom a certificate was issued, the actual development costs attributed to the TMUD, and the credit amount shown on each certificate.<sup>12</sup>

## **Claiming the credit**

Any insurance company that receives a tax credit certificate may claim a credit against the state's taxes on foreign and domestic insurance companies. The credit is nonrefundable but, if it is not fully claimed in one year, the excess may be carried forward for up to five ensuing years.<sup>13</sup>

## **Rulemaking; budget reporting**

The bill requires the Director to adopt rules concerning the implementation and administration of the TMUD credit. The rules must include application forms and procedures, criteria for reviewing development plans for certification, eligibility requirements for obtaining a tax credit certificate, the form of the tax credit certificate, reporting requirements for certified projects, and monitoring procedures.<sup>14</sup>

The bill adds the credit to the list of business-related tax incentives that must be included in the Governor's executive budget proposal for the purpose of accounting for

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<sup>12</sup> R.C. 122.09(F).

<sup>13</sup> R.C. 122.09(F)(4), 5725.35, 5725.98, 5729.18, and 5729.98.

<sup>14</sup> R.C. 122.09(G).



the amount of credits that might be authorized or claimed in the fiscal biennium and the amount that remain outstanding thereafter.<sup>15</sup>

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## HISTORY

ACTION	DATE
Introduced	01-17-18
Reported, H. Gov't Accountability & Oversight	05-22-18
Passed House (91-0)	06-27-18

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<sup>15</sup> R.C. 107.036.

