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SUMMARY

Transformational mixed use development (TMUD) tax credit

- Authorizes a nonrefundable insurance premiums tax credit for capital contributions to the construction of “transformational mixed use developments” (TMUDs).
- Bases the credit amount and when it is awarded on the property owner’s development costs or the insurance company’s capital contribution and the increase in state and local tax collections at the project site and in the surrounding area.
- Limits the tax credits awarded for the same project to the lesser of \$40 million or 10% of the property owner’s development costs or the insurance company’s capital contribution, and permits unclaimed credit amounts to be carried forward for up to five years.
- Establishes an alternative procedure by which the full credit amount – 10% of development costs or 10% of the capital contribution – may be awarded regardless of the increase in tax collections.
- Allows insurance companies to apply directly for the credit or to purchase the right to claim the credit from the property owner.
- Establishes procedures by which the Tax Credit Authority (TCA) may evaluate and rank applications, certify a development plan, monitor construction progress, and award tax credit certificates upon completion of the TMUD.
- Limits the credits to \$100 million for each of FY 2020 to FY 2023, and disallows the issuance of credits thereafter.

- Reserves \$20 million in each fiscal year for projects not located within ten miles of a city with a population greater than 100,000.

Campaign contribution tax credit

- Reinstates the nonrefundable income tax credit for contributions made to the campaign committees of candidates for statewide office.
- Specifies that the amount of the credit equals the full amount of the contribution, up to \$50 (or \$100 for joint filers).

Commercial real estate broker liens

- Extends the time allowed and expands the delivery options for the following:
 - A broker providing a copy of a lien affidavit to an owner and prospective transferee to perfect a lien;
 - An owner serving written notice of demand on a broker to enforce a lien;
 - A broker providing an owner with a copy of the lien release or satisfaction.
- Requires, as opposed to permits, a court to assess costs and attorney’s fees on nonprevailing parties in a suit to enforce a lien.
- Expands the costs a court is required to assess when a broker prevails in a suit to enforce a lien.

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DETAILED ANALYSIS

Transformational mixed used development (TMUD) credit

The act authorizes a tax credit to assist property owners in raising capital for the completion of “transformational mixed use developments” (TMUDs), which the act defines as multiple-purpose construction projects that meet certain minimum building height, square footage, or payroll criteria and that are expected to have a “transformational economic impact” on the surrounding area. A TMUD project may include the construction of new buildings or the redevelopment, rehabilitation, expansion, or other improvement of vacant buildings or structures. A TMUD project may be a stand-alone development or part of a larger contiguous development that is to be completed in phases.

The credit is awarded by the Tax Credit Authority (TCA) through an application process initiated by either the property owner or an insurance company that contributes capital to the TMUD project. After receiving the application – in the form of a development plan – the TCA may certify the TMUD and preliminarily approve the credit if the plan meets the act’s eligibility criteria. The amount of the credit depends, in part, on the development costs associated with the TMUD if the applicant is the property owner, or the amount of the capital contribution if the applicant is an insurance company and, in part, on the increase in tax collections at the project site and the surrounding area. More than one person may apply for, and receive a tax credit for the same project, but the total amount of tax credits awarded for that project must not exceed 10% of the development costs incurred by the property owner. The credit is nonrefundable and may be claimed against Ohio’s taxes on foreign and domestic insurance companies.

A property owner who is preliminarily approved for a tax credit may sell or transfer the right to claim the credit to one or more insurance companies to raise capital for the project. Once a credit is awarded to or acquired by an insurance company, no further sale or transfer is permitted. Once the TMUD is complete, the TCA must issue tax credit certificates to the property owner and to the insurance companies that applied for or acquired the rights to the credit.

Submission of a development plan

A property owner or an insurance company starts the process of obtaining a TMUD credit by preparing a development plan and submitting it to the TCA for certification.¹ A person holding a leasehold interest – including an interest acquired through a capital lease arrangement – qualifies as a property owner under the act and, therefore, may submit a development plan for approval. The act expressly bars the state, state agencies, and political subdivisions from pursuing or receiving the credit.²

The development plan must include the following:

- The location of the development site;
- An indication of whether it is located within ten miles of a municipality having a population greater than 100,000 (referred to by the act as a “major city”);
- 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 the project;
- An assessment of the anticipated economic impact;
- Evidence that state and local tax collections will increase by more than 10% of the estimated development costs; and
- Evidence that the project will not be completed unless the credit is awarded.

If the applicant is an insurance company, the development plan must also include the amount of the insurance company’s capital contribution and the date on which it was, or will be made. 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. If the work described in the development plan is part of a larger contiguous project, the development plan must also include an estimate of the schedule for the progression and completion of the previous and future phases of the project.³

The act 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 TCA. For projects completed in phases, only the expenses associated with the portion of the project that is certified by the TCA are considered development costs.

¹ R.C. 122.09(B).

² R.C. 122.09(A)(2).

³ R.C. 122.09(A)(8) and (B).

Architectural and engineering fees are expressly identified by the act as development costs that may be included in determining eligibility for, and computing the amount of the credit.⁴

Under the act, the estimated increase in state and local tax collections is computed by predicting the amount of state and local taxes that will be derived from economic activity within the TMUD and the surrounding area from the time the project is certified until the fifth anniversary of its completion (called the “completion period”), 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. The act does not define what constitutes the “surrounding area” of a TMUD.⁵

An insurance company that applies to the TCA for a tax credit (as opposed to acquiring the credit from a property owner) must contribute cash to a TMUD in the form of an investment, loan, or donation. The contribution may be in exchange for an equity interest in an asset or a debt instrument, or may be for no consideration. An insurance company is any person subject to Ohio’s taxes on foreign or domestic insurance companies.⁶

Project eligibility criteria

In evaluating a development plan, the TCA must first determine if the proposed project meets certain eligibility criteria prescribed by the act. As indicated in the table below, these criteria depend, in part, on whether the project is located within ten miles of a major city.

TMUD Eligibility Criteria	
Located within ten miles of major city	Not located within ten miles of a major city
Estimated development costs associated with the project plus, if applicable, estimated expenditures that have been or will be incurred to complete other contiguous phases of the development, exceed \$50 million.	No minimum investment requirement.
Includes at least one new or previously vacant building that: <ul style="list-style-type: none"> ▪ Is 15 or more stories high; ▪ Is 350,000 or more square feet; or ▪ Upon completion of the project, will be the site of jobs accounting for at least \$4 million in annual payroll. 	Includes at least one new or previously vacant building that is: <ul style="list-style-type: none"> ▪ Two or more stories high; or ▪ 75,000 or more square feet.

⁴ R.C. 122.09(A)(1).

⁵ R.C. 122.09(A)(4) and (5).

⁶ R.C. 122.09(A)(6) and (7).

TMUD Eligibility Criteria

-OR-

Includes two or more new or existing buildings that are:

- Connected to one another;
- Located on the same parcel, or on contiguous parcels; and
- Collectively, are 350,000 or more square feet.

-OR-

Includes two or more new buildings that are:

- Located on the same parcel, or on contiguous parcels; and
- Collectively, are 75,000 or more square feet.

All projects, regardless of location

Estimated increase in tax collections during the completion period exceeds 10% of estimated development costs for the project.

More than one intended use is associated with the project site.

Transformational economic impact occurs on the project site and the surrounding area.

Project would not be completed if not for receiving the credit.

The act 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 act does not require that the final costs associated with a project located within ten miles of a major city exceed \$50 million; only that the estimated costs for such a project described in the development plan exceed that amount.

The “increase in tax collections” is the difference (if positive) between (1) the amount of state and local taxes derived from economic activity occurring at the project site and the surrounding area during the completion period, and (2) the amount of such taxes that are estimated to have been collected in the same area over the same period of time if the project were not completed.⁷

Evaluation of development plans

Generally, in determining whether to certify eligible projects and preliminarily approve the associated tax credits, the TCA must consider the potential impact of the TMUD in terms of “architecture, accessibility to pedestrians, retail entertainment and dining sales, job creation, property values, connectivity, and revenue from sales, income, lodging, and property taxes.” If

⁷ R.C. 122.09(A)(3), (A)(4), and (C)(1).

the cumulative amount of tax credits requested by applicants exceeds the amount that the TCA is authorized to approve (see “**Credit caps and sunset**,” below), the TCA must rank qualified applications based on which proposed projects present the best combination of economic value and transformational economic impact. Certifications are awarded in that order, starting with the proposed project that presents the best such combination. The TCA must consider the following factors in ranking applications:

- The projected increase in tax collections during the completion period as a percentage of the total amount of estimated tax credits that would be preliminarily approved for the project;
- The economic impact of the project on the development site and the surrounding area;
- The impact of the project in terms of architecture, accessibility to pedestrians, retail entertainment and dining sales, job creation, property values, and connectivity; and
- The speediness of the schedule for completing the project and obtaining the economic and community benefits.

The ranking process is conducted separately for projects within ten miles of a major city and for those outside that radius. The TCA may interview applicants as part of the evaluation and ranking processes.⁸

Credit caps and sunset

The act limits the total amount of tax credits that may be preliminarily approved by the TCA to \$100 million per fiscal year, through FY 2023. Of that amount, no more than \$80 million per fiscal year may be preliminarily approved for projects located within ten miles of a major city. The maximum amount of tax credits that may be preliminarily approved for any one project is \$40 million. The TCA may not certify projects or preliminarily approve credits after June 30, 2023.⁹

Certification and preliminary approval

Upon approval of an application, the TCA must issue a statement to the applicant certifying the project described in the development plan as a TMUD and preliminarily approving the tax credit requested for that project. The statement must specify the estimated amount of the tax credit, which is generally computed as follows:

- If the applicant is an insurance company, 10% of the company’s capital contribution;
- If the applicant is the property owner, 10% of the estimated development costs for the project minus any estimated credits preliminarily approved for insurance companies contributing capital to the same project.

⁸ R.C. 122.09(A)(3), (C)(1), and (C)(6).

⁹ R.C. 122.09(C)(5).

The TCA may reduce the estimated credit amounts as a condition of certifying the project if doing so is necessary to comply with the credit caps. However, the estimated credit amount cannot be reduced, or further reduced after the statement certifying the project and preliminarily approving the tax credit has been issued. After certification, the tax credit remains contingent upon completion of the TMUD as described in the development plan. The credit amount is subject to change based on actual development costs and, unless the TCA grants a request by the property owner for the alternative computation method (described below), the increase in tax collections at the project site and in the surrounding area calculated upon completion of the project and in the years that follow.

If the development plan does not satisfy all the eligibility criteria, or if the application is denied for other reasons, the TCA must send written notice to the applicant specifying the reasons for the denial. The TCA's denial of a development plan is final but an applicant may revise and resubmit the plan at any time.¹⁰

Transferability

If the applicant is the property owner, they may sell preliminarily approved credits to one or more insurance companies 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.

If the applicant is an insurance company, the credit may not be sold or transferred.¹¹

Progress report

The act requires the property owner, within one year of the date the project is certified, to submit to the TCA an updated schedule for the progression and completion of the project and documentation sufficient to demonstrate that construction has begun. If the property owner does not submit the updated schedule on a timely basis or if construction has not commenced within one year of certification, the TCA must rescind certification of the project and preliminary approval of the associated tax credits. Notice of rescission must be sent to the property owner and to each insurance company that is preliminarily approved for a tax credit associated with the project.¹²

Completion of project

The property owner must notify the TCA upon completion of a certified TMUD project. The notification must be accompanied by a report – prepared by a third-party certified public accountant (CPA) – that enumerates the actual development costs incurred in completing the

¹⁰ R.C. 122.09(C).

¹¹ R.C. 122.09(E).

¹² R.C. 122.09(D).

project. The reported costs are subject to inspection and examination by the Superintendent of Insurance.

Receiving the notice and report prompts the TCA to issue tax credit certificates to each person who owns the rights to a credit associated with the project – including applicants that were preliminarily approved and insurance companies that acquired a credit from the property owner. The aggregate value of the tax credit certificates associated with a completed project must not exceed either (1) 10% of the actual development costs incurred by the property owner, or (2) the sum of all estimated credit amounts preliminarily approved by the TCA. When the TCA issues one or more tax credit certificates, it must notify the Superintendent of Insurance of the following information:

- The name of each recipient;
- Whether the recipient is the property owner, an insurance company that contributed capital to the project, or an insurance company that acquired the credit from the property owner;
- The credit amount shown on the certificate; and
- Any other information required by rule.¹³

Credit amount

Standard computation method

Unless the property owner is approved for the alternative computation method (described below), the value of a tax credit certificate issued upon completion of the project is determined as follows:

Standard Computation Method	
Recipient	Credit amount
Property owner ¹⁴	<p>The lesser of the following, minus any credit amounts sold by the property owner to insurance companies to generate capital for the project:</p> <ul style="list-style-type: none"> ▪ 10% of adjusted development costs (see “Adjusted development costs,” below); ▪ 5% of adjusted development costs plus any amount by which the property owner’s share of the increase in tax collections since the date the project was certified exceeds 5% of the adjusted development costs; ▪ Estimated credit amount for which the property owner was preliminarily approved.

¹³ R.C. 122.09(G)(1), (G)(3), (K), (L), and (M).

¹⁴ R.C. 122.09(H)(1).

Standard Computation Method	
Insurance company (acquired credit from property owner) ¹⁵	<p>The amount specified in the sale or transfer or, if the tax credits awarded to the property owner for the project are less than the estimated credit amount for which the property owner was preliminarily approved, either of the following:</p> <ul style="list-style-type: none"> ▪ The amount specified in the sale or transfer, reduced on a pro rata basis; ▪ An amount computed through another allocation method prescribed by the property owner.
Insurance company (contributed capital to project) ¹⁶	<p>The lesser of the following:</p> <ul style="list-style-type: none"> ▪ 10% of its capital contribution to the project; ▪ 5% of the capital contribution plus any amount by which the insurance company's share of the increase in tax collections since the date the project was certified exceed 5% of the capital contribution; ▪ The estimated credit amount for which the insurance company was preliminarily approved.

Adjusted development costs

The term "adjusted development costs" is used to account for projects for which both the property owner and one or more insurance companies are preliminarily approved for a tax credit. In those cases, the full amount of development costs is divided proportionally between the property owner and those insurance companies, thereby preventing situations in which two or more applicants claim a credit for the same portion of the development costs. The property owner's apportionment (referred to as adjusted development costs) equals the total development costs incurred in the project minus the capital contributions of insurance companies that are preliminarily approved for a credit.¹⁷

Increase in tax collections

After receiving notice that a project is completed, the increase in tax collections is determined by the TCA, in consultation with the Tax Commissioner and the tax administrator of any municipality that levies an income tax at the project site or in the surrounding area. The act requires the Commissioner and municipal tax administrators to provide the TCA with any information that is necessary to determine the increase in tax collections. If more than one applicant is preliminarily approved for a credit for the same project, the increase in tax collections is divided proportionally, based on the relationship each applicant's capital

¹⁵ R.C. 122.09(G)(3).

¹⁶ R.C. 122.09(H)(2).

¹⁷ R.C. 122.09(A)(10).

contribution or adjusted development costs, as applicable, bears to the total amount of development costs attributed to the project.¹⁸

Upon request of the property owner, the TCA must update the increase in tax collections to reflect additional gains in state and local tax revenues after completion of the project. The property owner initiates the update process by submitting a written request to the TCA within 30 days following the anniversary of the date the project was completed. The property owner may submit such a request in any or all of the five years following completion of the project.

The updated increase in tax collections is determined in the same manner as when the project was completed – the TCA consults with the Commissioner and the tax administrator of any municipal corporation that levies an income tax at the project site or in the surrounding area. If the TCA determines that the value of the tax credit certificates issued in connection with the project would have been greater if computed using the updated increase in tax collections, it must issue a new tax credit certificate to each recipient accounting for the difference. The cumulative amount of tax credits awarded for a TMUD project – including any additional credits awarded following an update of the increase in tax collections – must not exceed 10% of the development costs incurred by the property owner or the aggregate amount of estimated tax credits that were preliminarily approved for the TMUD project. If the maximum credit amount has not been awarded following the fifth anniversary of the date the project was completed, the remainder is forfeited.¹⁹

Alternative computation method

At any time after a TMUD project is certified and before it is complete, the property owner may request that the TCA issue tax credit certificates based on an alternative computation method. Under this alternative method, no portion of the credit is dependent upon the increase in tax collections. All recipients receive the full credit amount immediately upon completion of the project. The TCA must grant such a request if it determines, and a third party engaged by the TCA at the expense of the property owner affirms, that it is “reasonably certain” that the increase in tax collections will exceed 10% of the development costs estimated in the development plan for the project within one year after completion of the project.²⁰

If the TCA grants a request for the alternative computation method, there is no need to determine the increase in tax collections following completion of the project or in the five years that follow. Instead, the TCA determines the credit amount issued to each recipient as follows:

¹⁸ R.C. 122.09(A)(11), (A)(12), and (G)(2).

¹⁹ R.C. 122.09(J) and (K).

²⁰ R.C. 122.09(F).

Alternative Computation Method	
Recipient	Credit amount
Property owner ²¹	10% of development costs incurred in completion of the project, minus any credit amounts sold by the property owner to insurance companies to generate capital for the project.
Insurance company (acquired from property owner) ²²	The amount specified in the sale or transfer or, if the tax credits awarded to the property owner for the project are less than the estimated credit amount for which the property owner was preliminarily approved, either of the following: <ul style="list-style-type: none"> ▪ The amount specified in the sale or transfer, reduced on a pro rata basis; ▪ An amount computed through another allocation method prescribed by the property owner.
Insurance company (contributed capital to project) ²³	10% of the capital contribution to the project.

As under the standard computation method, the cumulative amount of tax credits issued under the alternative computation method is capped at the lesser of (1) 10% of the development costs incurred by the property owner, or (2) the sum of all estimated credit amounts approved by the TCA in connection with the project.²⁴

Claiming the credit

Any insurance company that receives a tax credit certificate, either by purchasing the right to claim it from the property owner or by making a capital contribution to a TMUD, 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.²⁵ Only insurance companies may claim a TMUD credit.

Publication of project information

The act requires the TCA to publish the following information about each TMUD: (1) the location of the project and the name by which it is known, (2) the estimated schedule for

²¹ R.C. 122.09(I)(1).

²² R.C. 122.09(I)(1).

²³ R.C. 122.09(I)(2).

²⁴ R.C. 122.09(K).

²⁵ R.C. 122.09(M), 5725.35, 5725.98, 5729.18, and 5729.98.

progression and completion of the project, (3) the assessment of the projected economic impact of the project, (4) the evidence supporting the estimated increase in tax collections, (5) the estimated development costs and, if the applicant is an insurance company, the amount of the capital contribution to the project, and (6) a copy of each progress report concerning the project.

The information must be posted on the Development Services Agency's website by the first day of August following the certification of the project. Once posted, it must be updated at least once each year until the project is complete and all of the associated tax credits are claimed. In the case of the evidence supporting the estimated increase in tax collections, the TCA may omit any proprietary or sensitive information.²⁶

Rulemaking; budget reporting

The act requires the Director of Development Services to adopt rules concerning the implementation and administration of the TMUD credit. The rules must include application forms and procedures, application deadlines (if any), criteria for reviewing development plans for certification, procedures for ranking applications, timing and frequency by which projects are certified, eligibility requirements for obtaining a tax credit certificate, the form of the tax credit certificate, procedures for computing the increase in tax collections, reporting requirements for certified projects, and monitoring procedures. The rules must be adopted by July 29, 2021, and the TCA must begin accepting applications within 30 days after the rules are adopted. The first projects must be certified within 45 days after the TCA begins accepting applications.²⁷

The act 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 the amount of credits that might be authorized or claimed in the fiscal biennium and the amount that remain outstanding thereafter.²⁸

Campaign contribution tax credit

The act reinstates the nonrefundable income tax credit for contributions made to the campaign committees of candidates for statewide office. The credit was repealed by H.B. 166 of the 133rd General Assembly for taxable years beginning in or after 2019. However, the repeal was then delayed for one year by S.B. 26 of the 133rd General Assembly. The act reenacts an identical credit for taxable years beginning in 2020, or thereafter. Therefore, the credit continues, without interruption, as if it were never repealed.

As under prior law, the credit equals the full amount of a taxpayer's monetary contribution, up to \$50 (or \$100 for joint filers). It applies only to contributions made to the campaign committees of candidates for Governor, Lieutenant Governor, Secretary of State,

²⁶ R.C. 122.09(N).

²⁷ R.C. 122.09(O); Section 3.

²⁸ R.C. 107.036.

Auditor of State, Treasurer of State, Attorney General, State Board of Education, Chief Justice or Justice of the Supreme Court, or General Assembly.²⁹

Commercial real estate broker liens

Under Ohio law, unchanged by the act, licensed real estate brokers have lien rights in transactions involving commercial real estate. A broker that enters into a written contract for services related to selling, leasing, or conveying any interest in commercial real estate has a lien on that commercial real estate. The act revises the process for perfecting (properly recording and thereby establishing the lienholder's priority against other creditors), enforcing, and releasing and satisfying these liens.³⁰

Perfection

Continuing law, changed in part by the act, requires that in order for a broker to perfect a lien, the broker must take certain actions, including filing a lien affidavit with the county recorder and providing a copy of the lien affidavit to the owner and prospective transferee, where known, on the day the lien affidavit is recorded. The broker must do so either by personal delivery or by certified mail, return receipt requested. The act extends the time to do so to three days and expands the delivery options to also include commercial carrier service or any other method that includes written evidence of receipt.³¹

Enforcement

Continuing law allows the owner to demand that the broker commence a suit to enforce the broker's lien by serving a written notice of demand on the broker by personal delivery or by certified mail, return receipt requested. The act expands the delivery options to also include commercial carrier service or any other method that includes written evidence of receipt.³²

In a court action based on a broker's lien, the law authorized, but did not require, the court to assess the nonprevailing parties with costs and reasonable attorney's fees. If the court made the assessment, the law required the court to equitably apportion the assessed costs and attorney's fees among all responsible nonprevailing parties. The act, instead, requires the court to assess the nonprevailing parties with *all* costs and reasonable attorney's fees. If the broker prevails, the act requires the costs and fees to include all those incurred by the broker to perfect and enforce the lien, including any litigation costs and any prejudgment interest. The act further requires any prejudgment interest to be equitably apportioned along with the other assessed costs and fees.³³

²⁹ R.C. 5747.29 and 5747.98; Sections 4 and 6.

³⁰ R.C. 1311.86 through 1311.93.

³¹ R.C. 1311.87(B)(6).

³² R.C. 1311.88(B).

³³ R.C. 1311.88(C).

Release and satisfaction

In order to remove a broker's lien, continuing law requires that a broker record with the county recorder a written release or satisfaction of the lien. A satisfaction, when recorded, indicates that the underlying claim has been satisfied. Under the prior law, on the day the release or satisfaction is recorded, the broker was required to provide the owner with a copy of the release or satisfaction by personal delivery or by certified mail, return receipt requested. The act extends the time to do so to three days and expands the delivery options to also include commercial carrier service or any other method that includes written evidence of receipt.³⁴

HISTORY

Action	Date
Introduced	02-12-19
Reported, S. Finance	06-06-19
Passed Senate (32-1)	06-26-19
Reported, H. Economic and Workforce Development	11-19-20
Passed House (84-1)	12-08-20
Senate concurred in House amendments (28-2)	12-09-20

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³⁴ R.C. 1311.90(B).