

**As Introduced**

**133rd General Assembly  
Regular Session  
2019-2020**

**S. B. No. 39**

**Senator Schuring  
Cosponsor: Senator Terhar**

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**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 an insurance 3  
premiums tax credit for capital contributions to 4  
transformational mixed use development projects. 5

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 107.036, 5725.98, and 5729.98 be 6  
amended and sections 122.09, 5725.35, and 5729.18 of the Revised 7  
Code be enacted to read as follows: 8

**Sec. 107.036.** (A) For each business incentive tax credit, 9  
the main operating appropriations act shall contain a detailed 10  
estimate of the total amount of credits that may be authorized 11  
in each year, an estimate of the amount of credits expected to 12  
be claimed in each year, and an estimate of the amount of 13  
credits expected to remain outstanding at the end of the 14  
biennium. The governor shall include such estimates in the state 15  
budget submitted to the general assembly pursuant to section 16  
107.03 of the Revised Code. 17

(B) As used in this section, "business incentive tax 18

credit" means all of the following:	19
(1) The job creation tax credit under section 122.17 of the Revised Code;	20 21
(2) The job retention tax credit under section 122.171 of the Revised Code;	22 23
(3) The historic preservation tax credit under section 149.311 of the Revised Code;	24 25
(4) The motion picture tax credit under section 122.85 of the Revised Code;	26 27
(5) The new markets tax credit under section 5725.33 of the Revised Code;	28 29
(6) The research and development credit under section 166.21 of the Revised Code;	30 31
(7) The small business investment credit under section 122.86 of the Revised Code;	32 33
(8) The rural growth investment credit under section 122.152 of the Revised Code;	34 35
<u>(9) The transformational mixed use development credit under section 122.09 of the Revised Code.</u>	36 37
<b><u>Sec. 122.09. (A) As used in this section:</u></b>	38
<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 under division (C) of this section.</u>	39 40 41 42 43 44 45

(2) "Owner" means a person holding a fee simple or leasehold interest in real property, including interests in real property acquired through a capital lease arrangement. "Owner" does not include the state or a state agency, or any political subdivision as defined in section 9.23 of the Revised Code. For the purpose of this division, "fee simple interest," "leasehold interest," and "capital lease" shall be construed in accordance with generally accepted accounting principles. 46  
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(3) "Project area" means all territory located within a radius of not less than one-fourth of one mile and not more than one mile centered on the site of a transformational mixed use development. 54  
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(4) "Transformational mixed use development" means a project that: 58  
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(a) Will have a transformational economic impact within the project area approved by the director of development services under division (C) of this section; 60  
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(b) Is a mixed use development that integrates some combination of retail, office, residential, recreation, structured parking, and other similar uses; and 63  
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(c) Includes at least one building that is fifteen or more stories in height or has a floor area of at least three hundred fifty thousand square feet. 66  
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(5) "Estimated increased tax collections" means the difference, if positive, of the amount of state and local taxes estimated to be derived from economic activity occurring within the area encompassing the proposed transformational mixed use development and the project area designated under division (B) (4) or (C) of this section, as applicable, during the estimated 69  
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completion period, minus the amount of such taxes estimated to 75  
be derived from such economic activity in that area during that 76  
period if the transformational mixed use project were not 77  
completed. 78

(6) "Estimated completion period" means the time period 79  
beginning on the day after the estimated completion of a 80  
transformational mixed use development and ending on the fifth 81  
anniversary of that day. 82

(B) The owner of one or more parcels of land in this state 83  
within which a transformational mixed use development is planned 84  
may apply to the director for a tax credit certificate if the 85  
estimated development costs to complete the project exceed fifty 86  
million dollars. Each application shall be filed in the form and 87  
manner prescribed by the director and shall, at minimum, include 88  
a development plan comprised of all of the following 89  
information: 90

(1) A detailed description of the proposed 91  
transformational mixed use development including site plans, 92  
construction drawings, architectural renderings, or other means 93  
sufficient to convey the appearance, size, purposes, capacity, 94  
and scope of the project; 95

(2) A viable financial plan that estimates the development 96  
costs to be incurred in the completion of the project and that 97  
designates a source of financing or a strategy for obtaining 98  
financing; 99

(3) An estimated schedule for the progression and 100  
completion of the project; 101

(4) An assessment of the projected economic impact of the 102  
project on the development site and a project area designated by 103

the owner; 104

(5) Evidence that estimated increased tax collections for 105  
the designated project area will exceed ten per cent of the 106  
estimated development costs reported under division (B) (2) of 107  
this section. 108

(C) If the director determines that the project described 109  
in an application submitted under division (B) of this section 110  
qualifies as a transformational mixed use development and 111  
satisfies all other criteria prescribed by this section or by 112  
rule of the director, the director may issue to the applicant a 113  
written statement that certifies the project and preliminarily 114  
approves a tax credit. The statement shall specify the estimated 115  
amount of the credit, which shall equal ten per cent of the 116  
development costs. The statement shall stipulate that receipt of 117  
a tax credit certificate is contingent upon completion of the 118  
transformational mixed use development as described in the 119  
development plan submitted by the applicant under division (B) 120  
of this section. 121

In determining whether or not to certify a project, the 122  
director shall consider (1) whether estimated increased tax 123  
collections for the designated project area will exceed ten per 124  
cent of the estimated development costs reported under division 125  
(B) (2) of this section and (2) the potential impact of the 126  
transformational mixed use development on the project area in 127  
terms of architecture, accessibility to pedestrians, retail 128  
entertainment and dining sales, job creation, property values, 129  
connectivity, and revenue from sales, income, lodging, and 130  
property taxes. The director may require an applicant, as a 131  
condition of certifying a project, to amend the application to 132  
change the radius circumscribing the project area, subject to 133

the limits on the radius prescribed by division (A) (3) of this 134  
section. 135

If the director denies an application, the director shall 136  
notify the applicant of the reason or reasons for such 137  
determination. The director's determination is final, but an 138  
applicant may revise and resubmit a previously denied 139  
application. 140

(D) An applicant who is preliminarily approved for a tax 141  
credit under this section shall, within twelve months of the 142  
date the applicant's project is certified, provide the director 143  
with sufficient evidence of reviewable progress as it pertains 144  
to the construction of the project and an updated schedule for 145  
the progression and completion of the project. In addition, the 146  
applicant shall provide the director with evidence that the 147  
applicant has secured and closed on financing for the project 148  
within eighteen months after such certification. If the 149  
applicant does not comply with one or both of the reporting 150  
requirements within the time prescribed by this division, the 151  
director may rescind the approval of the application or extend 152  
the applicable deadline. If the director extends a reporting 153  
deadline, the director shall notify the applicant of the new 154  
deadline. If the director rescinds approval of the application, 155  
the director shall notify the applicant. An applicant whose 156  
approval has been rescinded may submit a new application for a 157  
tax credit under division (B) of this section. 158

(E) An applicant who is preliminarily approved for a tax 159  
credit under this section may sell or transfer the rights to 160  
that credit to one or more persons for the purpose of raising 161  
capital for the certified project. The applicant shall notify 162  
the director upon selling or transferring the rights to the 163

credit. The notice shall identify the person or persons to which 164  
the credit was sold or transferred and the credit amount sold or 165  
transferred to each such person. Only the applicant may sell or 166  
transfer a credit under this division. A credit may be divided 167  
among multiple purchasers through more than one transaction but 168  
once a particular credit amount is acquired by a person other 169  
than the applicant it may not be sold or transferred again. 170

(F) (1) The applicant shall notify the director upon 171  
completion of a certified transformational mixed use development 172  
project. The notification shall include a third-party cost 173  
certification by a certified public accountant of the actual 174  
development costs attributed to the project. Upon receiving such 175  
a notice, the director shall issue a tax credit certificate to 176  
the applicant or to the person or persons to which the applicant 177  
sold or transferred the rights to the credit under division (E) 178  
of this section. The aggregate value of the certificates issued 179  
by the director shall equal ten per cent of the actual 180  
development costs attributed to the project. If the amount of 181  
the credit is less than the credit amount estimated under 182  
division (C) of this section because the actual development 183  
costs are less than the estimated development costs and the 184  
applicant has sold or transferred the rights to the credit to 185  
more than one person, the director shall reduce the amount of 186  
each tax credit certificate on a pro rata basis unless the 187  
applicant requests an alternative allocation of the credit. 188

(2) Issuance of a tax credit certificate does not 189  
represent a verification or certification by the director of the 190  
amount of development costs for which a tax credit may be 191  
claimed. The amount of development costs for which a tax credit 192  
may be claimed is subject to inspection and examination by the 193  
superintendent of insurance. 194

(3) Upon the issuance of a tax credit certificate, the 195  
director shall certify to the superintendent of insurance the 196  
name of the applicant, the name of each person to which a tax 197  
credit certificate was issued, the actual amount of development 198  
costs attributed to the project, the credit amount shown on each 199  
tax credit certificate, and any other information required by 200  
the rules adopted under this section. 201

(4) The person holding the rights to a tax credit 202  
certificate issued under this section may claim a tax credit 203  
under section 5725.35 or 5729.18 of the Revised Code. 204

(G) The director, in accordance with Chapter 119. of the 205  
Revised Code, shall adopt rules that establish all of the 206  
following: 207

(1) Forms and procedures by which applicants may apply for 208  
a transformational investment tax credit; 209

(2) Criteria for reviewing, evaluating, and approving 210  
applications for certificates within the limitations prescribed 211  
by this section; 212

(3) Eligibility requirements for obtaining a tax credit 213  
certificate under this section; 214

(4) The form of the tax credit certificate; 215

(5) Reporting requirements and monitoring procedures; 216

(6) Any other rules necessary to implement and administer 217  
this section. 218

**Sec. 5725.35.** There is allowed a credit against the tax 219  
imposed by section 5725.18 of the Revised Code for an insurance 220  
company subject to that tax that holds the rights to a tax 221  
credit certificate issued under section 122.09 of the Revised 222



<u>Code. The credit shall equal the dollar amount indicated on the</u>	223
<u>certificate. The credit shall be claimed in the calendar year</u>	224
<u>specified in the certificate and in the order required under</u>	225
<u>section 5725.98 of the Revised Code. If the credit exceeds the</u>	226
<u>amount of tax otherwise due in that year, the company may carry</u>	227
<u>forward the excess for not more than five ensuing years, but the</u>	228
<u>amount of the excess credit claimed against the tax for any year</u>	229
<u>shall be deducted from the balance carried forward to the next</u>	230
<u>year.</u>	231
<b>Sec. 5725.98.</b> (A) To provide a uniform procedure for	232
calculating the amount of tax imposed by section 5725.18 of the	233
Revised Code that is due under this chapter, a taxpayer shall	234
claim any credits and offsets against tax liability to which it	235
is entitled in the following order:	236
(1) The credit for an insurance company or insurance	237
company group under section 5729.031 of the Revised Code;	238
(2) The credit for eligible employee training costs under	239
section 5725.31 of the Revised Code;	240
(3) The credit for purchasers of qualified low-income	241
community investments under section 5725.33 of the Revised Code;	242
(4) The nonrefundable job retention credit under division	243
(B) of section 122.171 of the Revised Code;	244
(5) The nonrefundable credit for investments in rural	245
business growth funds under section 122.152 of the Revised Code;	246
(6) <u>The nonrefundable credit for contributing capital to a</u>	247
<u>transformational mixed use development project under section</u>	248
<u>5725.35 of the Revised Code;</u>	249
<u>(7) The offset of assessments by the Ohio life and health</u>	250

insurance guaranty association permitted by section 3956.20 of the Revised Code;	251 252
<del>(7)</del> <u>(8)</u> The refundable credit for rehabilitating a historic building under section 5725.34 of the Revised Code;	253 254
<del>(8)</del> <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;	255 256 257 258 259
<del>(9)</del> <u>(10)</u> The refundable credit for Ohio job creation under section 5725.32 of the Revised Code;	260 261
<del>(10)</del> <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.	262 263 264 265
(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.	266 267 268 269 270 271 272 273 274
<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 Code. The credit shall equal the dollar amount indicated on the</u>	275 276 277 278 279

certificate. The credit shall be claimed in the calendar year 280  
specified in the certificate and in the order required under 281  
section 5729.98 of the Revised Code. If the credit exceeds the 282  
amount of tax otherwise due in that year, the company may carry 283  
forward the excess for not more than five ensuing years, but the 284  
amount of the excess credit claimed against the tax for any year 285  
shall be deducted from the balance carried forward to the next 286  
year. 287

**Sec. 5729.98.** (A) To provide a uniform procedure for 288  
calculating the amount of tax due under this chapter, a taxpayer 289  
shall claim any credits and offsets against tax liability to 290  
which it is entitled in the following order: 291

(1) The credit for an insurance company or insurance 292  
company group under section 5729.031 of the Revised Code; 293

(2) The credit for eligible employee training costs under 294  
section 5729.07 of the Revised Code; 295

(3) The credit for purchases of qualified low-income 296  
community investments under section 5729.16 of the Revised Code; 297

(4) The nonrefundable job retention credit under division 298  
(B) of section 122.171 of the Revised Code; 299

(5) The nonrefundable credit for investments in rural 300  
business growth funds under section 122.152 of the Revised Code; 301

(6) The nonrefundable credit for contributing capital to a 302  
transformational mixed use development project under section 303  
5729.18 of the Revised Code; 304

(7) The offset of assessments by the Ohio life and health 305  
insurance guaranty association against tax liability permitted 306  
by section 3956.20 of the Revised Code; 307

<del>(7)</del> <u>(8)</u> The refundable credit for rehabilitating a	308
historic building under section 5729.17 of the Revised Code;	309
<del>(8)</del> <u>(9)</u> The refundable credit for Ohio job retention under	310
former division (B) (2) or (3) of section 122.171 of the Revised	311
Code as those divisions existed before September 29, 2015, the	312
effective date of the amendment of this section by H.B. 64 of	313
the 131st general assembly;	314
<del>(9)</del> <u>(10)</u> The refundable credit for Ohio job creation under	315
section 5729.032 of the Revised Code;	316
<del>(10)</del> <u>(11)</u> The refundable credit under section 5729.08 of	317
the Revised Code for losses on loans made under the Ohio venture	318
capital program under sections 150.01 to 150.10 of the Revised	319
Code.	320
(B) For any credit except the refundable credits	321
enumerated in this section, the amount of the credit for a	322
taxable year shall not exceed the tax due after allowing for any	323
other credit that precedes it in the order required under this	324
section. Any excess amount of a particular credit may be carried	325
forward if authorized under the section creating that credit.	326
Nothing in this chapter shall be construed to allow a taxpayer	327
to claim, directly or indirectly, a credit more than once for a	328
taxable year.	329
<b>Section 2.</b> That existing sections 107.036, 5725.98, and	330
5729.98 of the Revised Code are hereby repealed.	331
<b>Section 3.</b> Pursuant to division (G) of section 5703.95 of	332
the Revised Code, which states that any bill introduced in the	333
House of Representatives or the Senate that proposes to enact or	334
modify one or more tax expenditures should include a statement	335
explaining the objectives of the tax expenditure or its	336

modification and the sponsor's intent in proposing the tax	337
expenditure or its modification:	338
The purpose of this bill is to foster economic development	339
and increase tax collections for state and local governments.	340