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S.B. 39
(l_133_0488-7)
133rd General Assembly

Fiscal Note & Local Impact Statement

Click here for S.B. 39's Bill Analysis

Version: In House Economic and Workforce Development

Primary Sponsors: Sen. Schuring

Local Impact Statement Procedure Required: Yes

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Highlights

- Nonrefundable tax credits authorized by the bill would reduce receipts from the state foreign and domestic insurance premium taxes, which are deposited into the GRF.
- The number of projects that may be approved is limited to four per fiscal year, but each such project would result in revenue losses of $5 million or more. The aggregate revenue losses may be up to $20 million per year or more, but could be less if fewer than four projects per year were approved, the "increase in tax collections" as defined by the bill were less than projected, or actual project costs turned out to be less than estimated costs.
- Because the credits are nonrefundable, the revenue losses in any one fiscal year are limited by the taxpayer's tax liability in the year claimed. Unused tax credits can be carried forward for five years.
- A credit cannot be claimed until the project is completed, so revenue losses are unlikely before FY 2021.
- The GRF would bear 96.68% of any revenue loss beginning in FY 2022 under current law. Any reduction in total GRF tax receipts would also reduce the amount distributed to the Local Government Fund (LGF, 1.66%) and Public Library Fund (PLF, 1.66%). Any reduction to the LGF and PLF would decrease distributions from the funds to counties, municipalities, townships, public libraries, and other political subdivisions in the state.
- The bill may increase the Development Services Agency's administrative costs for certification of transformational mixed-use development projects and application and approval processes for awarding the tax credits.

Detailed Analysis

Tax credit for transformational mixed-use development

The bill specifies that the owner of one or more parcels of land in Ohio within which a transformational mixed-use development is planned, or an insurance company that contributes capital to be used in the planning or construction of such a development, may apply to the Director of the Development Services Agency (DSA) for a transformational mixed-use development project tax credit certificate if the estimated development costs[1] to complete the project exceed $50 million. The application must be filed in the form and manner prescribed by the Director, and must include a development plan. The bill defines "transformational mixed-use development" to mean a project that consists of new construction or the redevelopment, rehabilitation, expansion, or other improvement of vacant buildings or structures, or a combination of the foregoing, and that (1) will have a transformational economic impact on the development site and the surrounding area, (2) integrates some combination of retail, office, residential, recreation, structured parking, and other similar uses into one mixed-use development, and (3) includes at least one new building or previously vacant building that is 15 or more stories in height or has a floor area of at least 350,000 square feet or two or more new buildings that are connected to each other, are located on the same parcel or on contiguous parcels, and that collectively have a floor area of at least 350,000 square feet. A transformational mixed-use development may include a portion of a larger contiguous project that is planned to be completed in phases as long as the phases collectively meet the criteria listed in the bill.

If the Director determines that (1) the project qualifies as a transformational mixed-use development, satisfying all other criteria prescribed by the bill or by rule, (2) the estimated "increase in tax collections" as defined by the bill will exceed 10% of the estimated development costs for the project reported in the application's financial plan, and (3) the project will not be completed unless the applicant receives the credit, the Director may issue to the applicant a statement that certifies the project and preliminarily approves a tax credit. The bill specifies that the Director could only certify up to four transformational mixed-use development projects in each fiscal year.[2] The amount of the preliminarily approved credit is 10% of the development costs if the applicant is the property owner or, if the applicant is an insurance company that contributed capital to the development, 10% of such contribution. Award of the tax credit is contingent upon completion of the transformational mixed-use development. The bill specifies certain conditions that the Director must consider in

[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 before the date the project is certified by the Director. If the project is completed in phases, "development costs" include only expenditures associated with the portion of the project that is certified by the Director.

[2] However, the Director may reallocate unused certifications from a prior fiscal year or certifications that are rescinded for new applicants.

determining whether or not to certify a project. The Director's determination is final, but an applicant may revise and resubmit a previously denied application.[3]

The credit may be claimed against the foreign and domestic insurance premium taxes, in the calendar year specified in the certificate. If the credit exceeds the amount of tax otherwise due in that year, the company is allowed to carry forward the excess for not more than five years.

Under the bill, an applicant who is the property owner and is preliminarily approved for a tax credit may sell or transfer the rights to that credit to one or more persons for the purpose of raising capital for the certified project. The bill requires such applicant to notify the Director upon selling or transferring the rights to the credit.[4]

The bill requires the property owner that is preliminarily approved to notify the Director upon completion of a project. The Director must determine the "increase in tax collections" since the date the project was certified, in consultation with the Tax Commissioner and the tax administrator of any municipal corporation that levies an income tax within the project site and the surrounding area. The Tax Commissioner and such tax administrators must provide the Director with any information that is necessary to determine the increase in tax collections. The Director must issue a tax credit certificate to each applicant, or to any persons to whom such an applicant sold or transferred the rights to the credit. The value of the credit is the lesser of (1) 10% of the actual project development costs (or 10% of an insurance company's actual capital contribution), or (2) 5% of those costs plus any amount by which the increase in tax collections exceeds 5% of the development costs.

The amount of development costs or capital contributions for which a tax credit may be claimed is subject to inspection and examination by the Superintendent of Insurance. The bill requires the Director to certify to the Superintendent the name of the applicant, whether the applicant is the property owner or an insurance company that contributed capital to the development, the name of each person to which a tax credit certificate was issued, the actual amount of development costs attributed to the project, the credit amount shown on each tax credit certificate, and any other information required by the rules adopted under this bill.

The Director is required to publish certain information about each transformational mixed-use development on the agency's website by August 1 following certification of the project and update the published information annually until the project is complete and the credit or credits are fully claimed. The Director is also required to adopt certain rules related to the transformational investment tax credit program and any other rules necessary to implement and administer the bill's requirements.

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[3] The Director is also authorized to rescind the approval of an application that is preliminarily approved for a tax credit and required to send a notice of the rescission to the applicant, if the applicant does not provide an updated schedule and demonstrate the required progress in completing the project. An applicant that receives such notice of rescission may submit a new application concerning the same project.

[4] The notice must identify the person or persons to which the credit was sold or transferred and the credit amount sold or transferred to each such person. The bill specifies that only an applicant that owns the property may sell or transfer a credit.

Fiscal effect

The bill would reduce revenue from the state foreign and domestic insurance premiums taxes. Revenue from these taxes is deposited into the GRF. The amount of revenue loss would depend on the number of approved projects, contributions to those projects, and the size of taxpayers' liabilities. Under the terms of the bill, each approved project would result in revenue losses of $5 million (equal to 10% of $50 million) or more, though the per-project amount could be less if the "increase in tax collections" was less than expected or if actual project costs were less than expected. The limitation to four approved projects per fiscal year would limit aggregate revenue losses to $20 million or more per fiscal year, though again the revenue losses may be reduced under the terms of the bill; the revenue losses could of course be higher if larger projects were approved. Because the credit is nonrefundable, the loss is limited by each taxpayer's tax liability. The revenue loss may be spread over up to six fiscal years, the initial year it is claimed and up to five subsequent years.

Because the project must be completed before the tax credit may be claimed, the revenue loss is unlikely to appear before FY 2021. Under current law, the Local Government Fund (LGF) and Public Library Fund (PLF) would each receive transfers of 1.66% of GRF tax revenue starting in FY 2022, meaning that they will each bear a portion of the revenue loss: about $0.3 million for each fund for $20 million worth of tax credits. Any reduction to the LGF would reduce allocations to counties, municipalities, townships, and other local government entities. Any reductions to the PLF would decrease allocations to public libraries.

The bill would increase DSA's administrative costs to certify transformational mixed-use development projects and administer application and approval processes for awarding tax credits related to such projects. Any increase in such costs may be paid from line item 195649, Business Assistance Programs (Fund 4510); operating costs of the Office of Strategic Business Investments of DSA are currently funded by this line item.[5] The bill may increase the Department of Insurance's administrative costs related to inspection and examination associated with such tax credits. Any increase in such costs may be paid from the Department of Insurance Operating Fund (Fund 5540).[6] The bill may increase costs for the Department of Taxation and for municipal income tax administrators to research the amount of increase in tax collections that may be due to a project.

Historic building rehabilitation tax credit

The bill specifies that if the historic building under the historic rehabilitation tax credit program is located in a rural area the tax credit for rehabilitating such building equals 35% of the qualified rehabilitation expenditures. Because the bill does not make any changes to the aggregate value of tax credits that can be approved for the purpose of the program, $60 million per fiscal year, this provision would likely have no direct fiscal effect on the state and local governments.

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[5] Line item 195649 is used to pay for administrative expenses associated with the operation of various loan programs offered by DSA and overseen by the Office of Strategic Business Investments. Fund 4510 is funded by loan commitment fees and Facilities Establishment Fund reimbursements approved by the Controlling Board; application fees and penalties are collected through tax credit programs.

[6] Fund 5540 receives funding primarily from fees paid by insurance agents and by insurance companies.

Synopsis of Fiscal Effect Changes

The adopted substitute bill (l_133_0488-7) limits the number of transformational mixed-use development projects that can be approved in a fiscal year to four; the As Introduced version does not limit the number of approved projects per year. The As Introduced bill provides that the amount of the actual tax credits awarded for a project would be 10% of the project's actual development costs; the substitute bill provides that the credit amount is the lesser of that amount or 5% of the project costs (or capital contribution) plus the difference between the increase in tax collections from the project and 5% of the project costs (or capital contribution). The substitute bill therefore places limits on the revenue losses that were not in the As Introduced version of the bill.

The bill also modifies the current historic rehabilitation tax credit program, but that change likely has no direct fiscal effect on the state or local governments.

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