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Substitute Bill Comparative Synopsis

Sub. S.B. 39

133rd General Assembly

House Economic and Workforce Development

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This table summarizes the substantive differences between S.B. 39 As Passed by the Senate, I_133_0488-7, I_133_2340-1, and I_133_2340-1 with the amendments adopted by the House Economic and Workforce Development Committee (AM_133_1932, AM_133_1933, AM_133_1953, AM_133_1967, and AM_133_1983). It addresses only the topics on which the four versions differ substantively. It does not list topics on which the bills are substantively the same.

As Passed by the Senate	Previous Substitute Bill (I_133_0488-7)	Latest Substitute Bill (I_133_2340-1)	Latest Substitute Bill (I_133_2340-1), with Amendments
Credit administration			
Director of Development Services administers credit application process, monitors progress of approved transformational mixed use development (TMUD) projects, issues tax credit certificates, and publishes	Same as Senate version.	The Tax Credit Authority (TCA) is charged with all of the same administrative duties previously ascribed to the Director other than rulemaking (see below). (R.C. 122.09.)	Same as I_133_2340-1.

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information about each TMUD. <i>(R.C. 122.09.)</i>			
Project and credit caps			
No limitation on the number of certified TMUD projects, the total amount of tax credits approved annually, or the amount of tax credits approved for each project.	Limits the number of TMUD projects that may be certified (and preliminarily approved for a tax credit) to four projects per fiscal year.	No limitation on number of certified TMUD projects.	Same as I_133_2340-1.
	No annual or per-project limitations on tax credit amounts.	Limits the total amount of tax credits to \$100 million for each of FY 2020, FY 2021, and FY 2022.	Same as I_133_2340-1, but also allows for \$100 million in credits for FY 2023 <i>(AM_133_1983)</i> .
No similar provision.	No similar provision.	Limits the tax credit for any one project to \$40 million.	Same as I_133_2340-1.
No similar provision.	Allows the Director of Development Services to reallocate unused certifications from prior years and certifications that are rescinded. <i>(R.C. 122.09(C)(2).)</i>	Reserves \$20 million in tax credits for projects not located within ten miles of a “major city” (a city with a population greater than 100,000). <i>(R.C. 122.09(C)(5).)</i>	Same as I_133_2340-1.
		No similar provision; unused credit allocation authority does not carry over to later years.	

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Application process			
No similar provision.	No similar provision.	Requires the application for preliminary approval of a TMUD to indicate whether the project is located within ten miles of a major city. <i>(R.C. 122.09(B)(1).)</i>	Same as I_133_2340-1.
No similar provision.	No similar provision.	No similar provision.	Expressly allows the TCA to interview the applicant for the tax credit as part of the application approval process <i>(AM_133_1933)</i> .
Project eligibility criteria			
<p>To qualify for certification and for preliminary approval of a tax credit, a project must generally meet all of the following criteria:</p> <ul style="list-style-type: none"> ▪ Estimated development costs associated with the project plus, if applicable, the estimated expenditures that have been or will be incurred to complete other contiguous phases of the development must exceed \$50 million; 	Same as Senate-passed version.	<p>Similar to Senate-passed version, but establishes alternative eligibility criteria for projects not located within ten miles of a “major city” (a city with a population greater than 100,000):</p> <ul style="list-style-type: none"> ▪ Waives the \$50 million minimum investment requirement; ▪ Reduces the minimum specifications for the new or previously vacant building or buildings included in the project to 	<p>Similar to I_133_2340-1, with the following changes:</p> <ul style="list-style-type: none"> ▪ Waives the building size and height requirements for projects located within ten miles of a major city if the building will be a site for jobs accounting for at least \$4 million in annual payroll. <i>(AM_133_1932.)</i> ▪ Reduces the building height requirement for projects not located

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<ul style="list-style-type: none"> ▪ Include one new or previously vacant building that is 15 or more stories high or 350,000 or more square feet, or include two or more new buildings that are connected and that are collectively 350,000 or more square feet; ▪ More than one intended use for the project site; ▪ Transformational economic impact on the project site and surrounding area; ▪ Increased tax collections in excess of 10% of development costs; and ▪ Project would not be completed if not for the tax credit. <p><i>(R.C. 122.09(A)(3) and (C).)</i></p>		<p>(1) four or more stories, (2) 75,000 square feet, or (3) two or more buildings that are located on the same parcel or on contiguous parcels and collectively have a floor area of 75,000 or more square feet.</p> <p>Retains all other credit qualification criteria with respect to those projects. <i>(R.C. 122.09(A)(3), (B)(1), and (C)(1).)</i></p>	<p>within ten miles of a major city from four to two stories. <i>(AM_133_1967.)</i></p>

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Ranking applications			
No similar provision.	If there are more tax credit applications than there are project certifications available, qualified applications are ranked based on which proposed projects present the best combination of economic value and transformational impact. Certifications are awarded in that order, starting with the proposed project that presents the best such combination. (R.C. 122.09(C)(2).)	Similar to I_133_0488-7, except that the application ranking process is used when the tax credit applications cumulatively request more credits than the TCA is authorized to approve. Ranking is done separately for projects within ten miles of a major city and for those outside such a radius. (R.C. 122.09(C)(6).)	Same as I_133_2340-1.
Credit amount			
The credit equals 10% of documented development costs or, if the applicant is an insurance company contributing capital to the project, 10% of the capital contribution. The full credit amount is awarded upon completion of the project. (R.C. 122.09(F).)	The credit amount and when it is awarded depend, in part, on the increase in tax collections at the project site and the surrounding area. A credit equal to 5% of documented development costs or 5% of an insurance company's capital contribution (whichever is applicable) is issued upon completion of the project.	Similar to I_133_0488-7, except that the increase in tax collections is computed by the TCA and the total amount of the tax credit awarded to an applicant is capped at the estimated credit amount specified in the TCA's statement certifying the project and preliminarily approving the credit (generally, 10% of estimated development costs).	Same as I_133_2340-1, and also establishes an alternative procedure by which the property owner may request that the full credit amount – equal to 10% of the documented development costs or, in the case of an insurance company that contributed capital to the development, 10% of the capital contribution – be awarded immediately upon completion of

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	<p>The remainder of the credit – up to an additional 5% – is awarded if, when, and to the extent that the increase in tax collections exceeds 5% of development costs. The applicant may receive some or all of the remaining credit amount on the date the project is completed and they may reapply for any portion of the credit that has yet to be awarded on the first, second, third, fourth, and fifth anniversaries of that date.</p> <p>If the full 10% credit has not been awarded following the fifth anniversary of the date the project is completed, the remainder is forfeited.</p> <p>The increase in tax collections is computed by the Director in consultation with the Tax Commissioner and the tax administrators of any municipal corporations that levy an income tax on the project site or the surrounding area. <i>(R.C. 122.09(F), (G), and (H).)</i></p>	<p>Also specifies the following:</p> <ul style="list-style-type: none"> ▪ If both the property owner and an insurance company are preliminarily approved for the credit, the property owner’s credit is based on “adjusted development costs” – the full amount of development costs attributed to the project minus the capital contributions of the insurance company or companies that were preliminarily approved in connection with the same project; ▪ If more than one applicant is approved for a credit in connection with the same project, the increase in tax collections is divided proportionally, based on the relationship each applicant’s capital contribution or adjusted development costs, as 	<p>the project, instead of an immediate 5% credit with the remaining 5% contingent on performance measures in terms of new tax collections generated.</p> <p>The request for the alternative computation may be granted only if the TCA determines with reasonable certainty that the new tax collections will exceed 10% of development costs within one year after the project is complete. <i>(AM_133_1953.)</i></p>

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		<p>applicable, bears to the total amount of development costs attributed to the project.</p> <p>These modifications ensure that the development costs and increases in tax collections are properly apportioned among the credit applicants and that two or more applicants are not awarded a credit for the same portion of such costs or collections. (R.C. 122.09(A)(10), (A)(11), (A)(12), (F), (G), and (H).)</p>	
Completion period			
<p>The increase in tax collections is computed based on the five years following completion of the project – referred to by the bill as the “completion period.” (R.C. 122.09(A)(4) and (5).)</p>	<p>Same, but extends the completion period backward to the date the project is certified. (R.C. 122.09(A)(4) and (5).)</p>	<p>Same as I_133_0488-7.</p>	<p>Same as I_133_0448-7.</p>
Progress and reporting requirements			
<p>Requires a person that is preliminarily approved for the tax credit to provide the Director of Development Services with</p>	<p>Eliminates the 18-month reporting requirement and modifies the 12-month reporting requirement by replacing</p>	<p>Same as I_133_0488-7, except that progress and completion reports are sent to the TCA rather than the Director. The TCA is</p>	<p>Same as I_133_2340-1, except requires the property owner (rather than the credit applicant) to submit documentation</p>

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<p>sufficient evidence of reviewable progress and an updated schedule for completion of the project within 12 months of the date the project is certified. The person must submit evidence that financing has been secured and closed within 18 months of the certification date.</p> <p>The Director is allowed, but not required, to rescind certification of the project if either or both of the reporting requirements are not timely met. <i>(R.C. 122.09(D).)</i></p> <p>The person that is preliminarily approved for a tax credit, regardless of whether that person is the property owner or an insurance company, is required to notify the Director upon completion of the project. <i>(R.C. 122.09(F).)</i></p>	<p>“sufficient evidence with reviewable progress” with “documentation sufficient to demonstrate that construction has begun.”</p> <p>Requires the Director to rescind certification of the project if the reporting requirement is not timely met. <i>(R.C. 122.09(D).)</i></p> <p>The property owner is required to notify the Director upon completion of the project. <i>(R.C. 122.09(F).)</i></p>	<p>required to rescind certification of the project if reporting requirements are not timely met. <i>(R.C. 122.09(D) and (F).)</i></p>	<p>sufficient to demonstrate that construction has begun within 12 months of the date the project is certified <i>(AM_133_1953).</i></p>
Sunset			
No sunset date.	No sunset date.	Terminates authority for approval of credits on June 30, 2022 <i>(R.C. 122.09(C)(5)(a)).</i>	Extends sunset date by one year, to June 30, 2023 <i>(AM_133_1983).</i>

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Rulemaking			
Requires the Director of Development Services to adopt rules on a number of topics concerning the administration of the tax credit. <i>(R.C. 122.09(H).)</i>	Adds the following to the list of topics that must be addressed by rules: --Application deadlines (if any); --Procedure for ranking applications; --Timing and frequency by which projects are certified; and --Procedure for computing the increase in tax collections. <i>(R.C. 122.09(L).)</i>	Same as I_133_0488-7. Director retains rulemaking duties even though the credit is otherwise administered by the TCA. <i>(R.C. 122.09(L).)</i>	Same as I_133_2340-1.
Historic building rehabilitation tax credit			
No similar provision.	Increases the amount of the existing-law tax credit for rehabilitating a historic building if the building is in a rural area (defined under existing law for other purposes as a county having a population less than 200,000) from 25% to 35% of qualified rehabilitation expenditures. The credit remains 25% of qualified rehabilitation expenditures for	No similar provision.	No similar provision.

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	<p>buildings not located in rural areas.</p> <p>Retains the same per-project tax credit caps for all rehabilitation projects, regardless of location (\$25 million for catalytic projects and \$5 million for all others). Also retains the \$60 million overall cap on the tax credits approved each fiscal year. (R.C. 149.311, 5725.34, 5726.52, 5729.17, and 5747.76.)</p>		
Commercial real estate broker liens			
No similar provision.	No similar provision.	Requires a broker, in order to perfect a commercial real estate broker lien, to provide a copy of the lien affidavit to the owner and prospective transferee (where known) within three days of recording the lien affidavit by personal delivery or by certified mail, commercial carrier service, or any other method that includes written evidence of receipt (R.C. 1311.87(B)(6)).	Same as I_133_2340-1.

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		<p>Allows the owner to demand that the broker commence a suit to enforce a broker's lien by serving written notice of demand by personal delivery or by certified mail, commercial carrier service, or any other method that includes written evidence of receipt.</p> <p>Provides that a lien is extinguished if the broker does not commence suit within 28 days after receipt of the notice of demand.</p> <p>In an action based on a broker's lien, requires a court to assess the nonprevailing parties with all costs and reasonable attorney's fees incurred by the prevailing parties. If the broker prevails, requires the assessed costs and attorney's fees to include all those incurred by the broker to perfect and enforce the broker lien including any litigation costs and any prejudgment fees. Requires the court to equitably apportion the assessed costs, attorney's fees, and prejudgment interest among all responsible</p>	

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		nonprevailing parties. (<i>R.C. 1311.88.</i>) Requires a broker, within three days of the recording of the release or satisfaction, to provide the owner with a copy of the release or satisfaction by personal delivery or by certified mail, commercial carrier service, or any other method that includes written evidence of receipt (<i>R.C. 1311.89.</i>)	