OHIO LEGISLATIVE SERVICE COMMISSION

www.lsc.ohio.gov

Office of Research and Drafting

Legislative Budget Office

S.B. 39
(l_133_2340-3)
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

Ruhaiza Ridzwan, Senior Economist

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.
- Under the bill, the aggregate revenue losses for all preliminarily approved projects may not exceed $100 million per year for FYs 2020, 2021, 2022, and 2023. A credit cannot be claimed until the project, or a portion of a large project that is planned to be completed in phases, is completed, so revenue losses are unlikely before FY 2022.
- 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.
- 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 related to application filings of transformational mixed-use development projects and assisting the Tax Credit Authority with 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 Tax Credit Authority[1] for certification and preliminary approval of a transformational mixed-use development project tax credit.[2] The application must be filed in the form and manner prescribed by the Director of the Development Services Agency (DSA), 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) satisfies certain criteria listed in the bill regarding the physical size of the project or a specified payroll requirement. 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 Authority 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, (3) the project will not be completed unless the applicant receives the credit, and (4) if the development site is located within ten miles of a major city, the estimated development costs to complete the project plus, if applicable, the estimated expenditures that have been or will be incurred to complete all other contiguous phases of the project, exceed $50 million, the Authority may issue to the applicant a statement that certifies the project and preliminarily approves a tax credit.

The bill does not specify a limit to the number of transformational mixed-use development projects that the Authority could certify in a fiscal year.[3] But the Authority is prohibited from certifying any projects after June 30, 2023, and the Authority is not allowed to preliminarily approve more than $100 million of estimated tax credits in each of FYs 2020, 2021, 2022, and 2023. Not more than $80 million of estimated tax credits in each such fiscal year may be preliminarily approved in connection with projects that are located within ten miles of a major city, and not more than $40 million of estimated tax credits may be preliminarily approved in connection with a single project.

---

[1] Currently, the Tax Credit Authority consists of the Director of the Development Services Agency, two members appointed by the Governor, one member appointed by the President of the Senate, and one member appointed by the Speaker of the House of Representatives. The Director serves as the Chairperson of the Authority.

[2] "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 Authority. If the project is completed in phases, "development costs" include only expenditures associated with the portion of the project that is certified by the Authority.

[3] The Authority may also reallocate unused certifications from a prior fiscal year or certifications that are rescinded for new applicants.

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 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.[4]

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.[5]

After a project is certified and before it is completed, a property owner that is preliminarily approved may request that the value of the tax credit certificates awarded in connection with the project be computed using an alternative method for the purpose of receiving the entire 10% of tax credit. The Authority is required to grant the request if the Authority determines that it is reasonably certain that the increase in tax collections will exceed 10% of the estimated development costs within one year after the project is completed and the determination is affirmed by a third party engaged by the Authority and at the expense of the property owner. Otherwise, the Authority must deny the request to use the alternative method to compute such tax credit and the Authority must compute the amount of each credit awarded in connection with the project using a standard method below. The Authority's determination must be delivered in writing and is final and not appealable.

The bill requires the property owner that is preliminarily approved to notify the Tax Authority upon completion of a project, including a report prepared by a third-party certified public accountant that contains a detailed accounting of the actual development costs attributed to the project. The Authority must determine the "increase in tax collections" since the date the project was certified unless the Authority has previously granted a request by the property owner to compute such credit using the alternative method, 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

[4] The Authority 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 property owner and each insurance company that is preliminarily approved for a tax credit in connection with the project, if the property owner does not provide an updated schedule and demonstrate the required progress in completing the project. A property owner that receives such notice of rescission may submit a new application concerning the same project.

[5] 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.

administrators must provide the Authority with any information that is necessary to determine the increase in tax collections. The Authority 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 using the standard method is the lesser of (1) 10% of the actual project development costs (or 10% of an insurance company's actual capital contribution), (2) 5% of those costs plus any amount by which the increase in tax collections exceeds 5% of the development costs, or (3) the estimated credit amount that was preliminarily approved.

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 Authority 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 Authority is required to publish certain information about each transformational mixed-use development on the DSA 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 of DSA is 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. The bill specifies deadlines related to such rules.

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. The aggregate revenue losses for all projects approved during each of FYs 2020, 2021, 2022, and 2023 is limited to $100 million per fiscal year, but time lags involved in completing projects and administering the program imply that there likely would be no revenue losses in FY 2021, and potential losses resulting from the bill may start in FY 2022. Under the terms of the bill, each approved project could result in revenue losses of $40 million, 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. Because the credit is nonrefundable, the loss is limited by each taxpayer's tax liability. The revenue loss from a credit may be spread over up to six fiscal years, the initial year it is claimed and up to five subsequent years.

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 $1.7 million for each fund for $100 million worth of tax credits per year. 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 assist the Authority in certifying transformational mixed-use development projects and administering 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.[6] The bill may increase the Department of Insurance's administrative costs related to inspections and examinations associated with such tax credits. Any increase in such costs may be paid from the Department of Insurance Operating Fund (Fund 5540).[7] 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.

Commercial real estate broker liens

The bill modifies the law governing commercial real estate broker liens. This provision has no direct fiscal effect on the state and local governments.

Synopsis of Fiscal Effect Changes

The current substitute bill (l_133_2340-3) extends the termination date for all preliminarily approved projects from FY 2022 to FY 2023. The substitute bill adds a payroll requirement as an alternative condition related to a project located within ten miles of a major city. The substitute bill also modifies the criteria related to the physical size of a project that is not located within ten miles of a major city. The substitute bill adds an alternative method to compute the amount of tax credit after a project is certified and before it is completed; the property owner of such project may request for such method of computation if the increase in tax collections is determined to exceed 10% of the estimated development costs within one year after the project is completed. 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 previous substitute bill provides a standard method to compute the credit amount, which 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 current substitute bill provides that the amount of the tax credit awarded for a project is the lesser of the amount in the previous substitute bill or the amount of credit that was preliminarily approved. The current substitute bill therefore places limits on the revenue losses that were not in the As Introduced version of the bill or in the previous substitute bill.

SB0039H3/lb

---

[6] 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.

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