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S.B. 39
133rd General Assembly

Bill Analysis

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Version: As Reported by Senate Finance

Primary Sponsor: Sen Schuring

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SUMMARY

- Authorizes a nonrefundable insurance premiums tax credit for capital contributions to the construction of “transformational mixed use developments” (TMUDs).
- Sets the credit at 10% of documented development costs or 10% of an insurance company’s capital contribution, and permits unclaimed credit amounts to be carried forward for up to five years.
- 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 Director of Development Services may certify a development plan, monitor construction progress, and award tax credit certificates upon completion of the TMUD.

DETAILED ANALYSIS

Transformational mixed used development (TMUD) credit

The bill authorizes a new tax credit to assist property owners in raising capital for the completion of “transformational mixed use developments” (TMUDs), which the bill defines as multiple-purpose developments that meet certain minimum building height or square footage criteria and that are expected to have a “transformational economic impact” on the surrounding area and a total estimated cost of more than \$50 million. 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 Director of Development Services through an application process initiated by either the property owner or an insurance company that contributes capital

to the TMUD. After receiving the application – in the form of a development plan – the Director may certify the TMUD as eligible for the credit if the substance of the plan meets the bill’s eligibility criteria. The amount of the credit equals 10% of the development costs associated with the TMUD if the applicant is the property owner, or 10% of the capital contribution if the applicant is an insurance company. The credit is nonrefundable and may be claimed against Ohio’s taxes on foreign and domestic insurance companies.

A property owner who applies for and is “preliminarily approved” for a tax credit may sell or transfer the rights to the credit to one or more insurance companies in order to raise capital for the project. Once a credit is preliminarily approved for, awarded to, or acquired by an insurance company, no sale or transfer is permitted. Once the TMUD is complete, the Director must issue tax credit certificates to the property owner or 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 Director 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 bill and, therefore, may submit a development plan for approval. The bill explicitly bars the state, state agencies, and political subdivisions from pursuing or receiving the credit.²

The development plan must include 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, evidence that the project will not be completed unless the credit is awarded, and if the applicant is an insurance company, the amount of the insurance company’s capital contribution and the date on which it was 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 describe and estimate a schedule for progression and completion of the previous and future phases of the project.³

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

¹ R.C. 122.09(B).

² R.C. 122.09(A)(2).

³ R.C. 122.09(B).

The bill specifically identifies architectural and engineering fees as development costs that may be included in computing the credit.⁴

The bill stipulates that the estimated increase in state and local tax collections must be computed by predicting the amount of state and local taxes that will be derived from economic activity within the TMUD and the surrounding area over the five years following completion of the project 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 bill does not define what might constitute the “surrounding area” of a TMUD.⁵

An insurance company that applies to the Director 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. The bill defines “insurance company” as any person that is subject to Ohio’s taxes on foreign or domestic insurance companies.⁶

Eligibility criteria for development

In evaluating a development plan, the Director must determine if the proposed TMUD meets all the following eligibility criteria:

1. The 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;⁷
2. The development plan must include at least one new or previously vacant building that is either 15 or more stories high or 350,000 or more square feet in floor area, or include two or more new buildings that are connected to one another and that collectively have 350,000 or more square feet in floor area;
3. There must be more than one intended “use” associated with the project site;
4. The development must be expected to have a “transformational economic impact” on the project area;
5. The estimated increased tax collections within the TMUD and the surrounding area must exceed 10% of the estimated development costs for the project;
6. The project would not be completed if not for receiving the credit.

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).

⁷ The bill does not require the final costs to exceed \$50 million, only that the plan’s estimated costs exceed that amount.

The bill 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 Director is required to consider the potential impact in terms of “architecture, accessibility to pedestrians, retail entertainment architecture, retail entertainment and dining sales, job creation, property values, connectivity, and revenue from sales, income, lodging, and property taxes” in determining whether to certify the project.⁸

If the Director approves the application, the development plan is certified as eligible and the tax credit is preliminarily approved equal to 10% of the estimated development costs associated with the TMUD (if the applicant is the property owner) or 10% of the capital contribution (if the applicant is an insurance company). After certification, the tax credit remains contingent upon completion of the TMUD as described in the development plan. If the development plan does not satisfy all the eligibility criteria, the Director must deny the application. The denial must be issued in writing and must include the reason or reasons for the denial. The Director’s denial of a development plan is not subject to appeal but an applicant may revise and resubmit the plan at any time.⁹

Transferability

A tax credit for a TMUD that has been certified is considered to be “preliminarily approved.” If the applicant is the property owner, they may then sell the credit to one or more persons 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.¹⁰

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

Progress reports

The bill requires the applicant to report to the Director on the progress of the TMUD on at least three occasions following certification of the development plan. The first report is due within one year of the certification date and must include an updated schedule for the progression and completion of the project and “sufficient evidence of reviewable progress” concerning construction. The second report is due within 18 months of the certification date and must include evidence that financing has been secured and closed. The third report is due upon the completion of the TMUD and must include a certification of actual development costs prepared by a third-party certified public accountant (CPA).

⁸ R.C. 122.09(A)(3).

⁹ R.C. 122.09(B) and (C).

¹⁰ R.C. 122.09(E).

If the applicant does not comply with either of the first two reporting requirements, the Director may rescind certification of the development plan and associated tax credits. Alternatively, the Director may extend the applicable reporting deadline. In either case, the Director must notify the applicant of the Director's determination. Completion of the third reporting requirement prompts the Director to issue the tax credit certificates. The actual development costs reported upon completion of the TMUD are subject to inspection and examination by the Superintendent of Insurance.¹¹

Tax credit certificates

After receiving notice that the TMUD is complete, the Director must issue tax credit certificates in an aggregate amount not exceeding 10% of the actual development costs attributed to the TMUD, as reported by the third-party CPA. If the applicant is an insurance company, the value of the tax credit certificate equals 10% of the applicant's capital contribution. If the applicant is the property owner, the value of the tax credit certificate equals 10% of the actual development costs (less capital contributions for which an insurance company received a tax credit).

Tax credit certificates are issued to the person owning the rights to the credit – i.e., the applicant or the insurance companies to which the applicant sold the credit. If the actual development costs are less than the estimated development costs stipulated in the development plan, the aggregate value of the tax credit certificates awarded in connection with the TMUD are reduced accordingly. If portions of the tax credit were sold, each certificate is reduced pro rata to account for the deficiency unless the property owner prescribes an alternative method to allocate the reduced credit. If the actual development costs exceed the estimated development costs, the value of the credit is increased accordingly.

The bill requires the Director to send notice to the Superintendent of Insurance when the tax credit certificates are awarded. The notice must state the name of the applicant, whether the applicant is the property owner or an insurance company, the name of each person to whom a certificate was issued, the actual development costs attributed to the TMUD, and the credit amount shown on each certificate.¹²

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.¹³ Only insurance companies may claim a TMUD credit.

¹¹ R.C. 122.09(D) and (F).

¹² R.C. 122.09(F).

¹³ R.C. 122.09(F)(4), 5725.35, 5725.98, 5729.18, and 5729.98.

Publication of project information

The bill requires the Director 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 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. Thereafter, 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 Director may omit any proprietary or sensitive information.¹⁴

Rulemaking; budget reporting

The bill requires the Director to adopt rules concerning the implementation and administration of the TMUD credit. The rules must include application forms and procedures, criteria for reviewing development plans for certification, eligibility requirements for obtaining a tax credit certificate, the form of the tax credit certificate, reporting requirements for certified projects, and monitoring procedures.¹⁵

The bill 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.¹⁶

HISTORY

Action	Date
Introduced	02-12-19
Reported, S. Finance	06-06-19

S0039-RS-133/ec

¹⁴ R.C. 122.09(G).

¹⁵ R.C. 122.09(H).

¹⁶ R.C. 107.036.