



# Ohio Legislative Service Commission

## Bill Analysis

Mackenzie Damon

### S.B. 40

131st General Assembly  
(As Introduced)

**Sens.** Beagle, Schiavoni, Eklund, Patton

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## BILL SUMMARY

- Authorizes, for five years, a nonrefundable tax credit against various taxes for individuals and businesses that contribute to economic development projects undertaken by local governments and nonprofit corporations.
- Provides that the credit equals the contributor's contribution, subtracted by certain adjustments and multiplied by 60% in the case of projects primarily benefiting rural areas and 50% in the case of projects primarily benefiting urban areas.
- Requires the Development Services Agency to administer the tax credit program.

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## CONTENT AND OPERATION

### Tax credit for contributions to economic development projects

The bill authorizes a tax credit for individuals and businesses that contribute money to an economic development project undertaken by a local government or nonprofit community development corporation. The nonrefundable credit is allowed against the income tax, financial institutions tax, insurance premiums taxes, or public utility taxes. In general, the credit equals 60% of a contributor's contribution to a project primarily benefiting a rural area, and 50% of a contribution to a project primarily benefiting an urban area.<sup>1</sup>

#### Eligibility

To qualify for the credit, an individual or business must contribute at least \$5,000 to a "catalytic project" undertaken by a local government, community improvement

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<sup>1</sup> R.C. 122.155 to 122.159, 5725.191, 5726.58, 5727.242, 5727.43, 5727.812, 5729.081, and 5747.052.

corporation, or nonprofit community development corporation. A "catalytic project" is an economic development project that is expected to induce sustainable private investment in one or more local governments. Such a project may include building construction, infrastructure improvements, business district redevelopment, land reutilization, or microenterprise development.

Any local government or community improvement corporation may propose a catalytic project unless the Auditor of State has determined that the local government is in a fiscal emergency. A nonprofit corporation may propose a catalytic project if the corporation was organized primarily to administer such a project. The corporation must be exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code and, after January 1, 2017, be certified by the Development Services Agency (DSA).<sup>2</sup>

### **Application process**

Under the bill, a local government or nonprofit community development corporation that wishes to initiate a catalytic project must submit a proposal to the DSA. The proposal must include the name and contact information of each contributor to the catalytic project and a project plan. The plan must describe the catalytic project, estimate its total costs, predict the economic impact of the project on local governments, and designate the project as a rural or urban catalytic project. A project is designated as "rural" if more than half of the total project expenditures will benefit counties with populations of less than 125,000. A project is an "urban" project if less than half of the total project expenditures will benefit such counties.

The DSA must approve or deny a proposal within 30 days after receiving the proposal. When evaluating a proposal, the DSA must consider the need for economic development in the local governments that will benefit from the project and the potential for the project to promote further investment in those local governments. The DSA may approve the full amount of a contributor's proposed contribution or only a portion of that amount. Either way, the approved contribution amount must be at least \$5,000.

The DSA must send a written notice to each applicant of the agency's decision to approve or deny a proposal. If the DSA decides to approve a contribution amount that is less than the contributor's proposed contribution, the notice must provide the reasons for that decision. Alternatively, if the DSA denies an application, the notice must provide reasons for the denial and may include suggestions for re-submitting the

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<sup>2</sup> R.C. 122.155 and 122.156(A).

proposal. The DSA's decision to approve or deny an application cannot be appealed, but applicants may re-apply or submit multiple applications.

The DSA notice must also provide an estimate of the tax credit for which each contributor is eligible. For approved rural catalytic projects, the estimated credit will equal 60% of the approved contribution amount. For urban catalytic projects, the estimated credit equals 50% of the approved contribution amount.<sup>3</sup>

### **Application fee**

For each project proposal, the bill requires the payment of an application fee. The DSA may determine the amount of the fee, but no fee may exceed 10% of the estimated tax credits determined for the contributors to the project. Any person or entity may pay the application fee. However, no portion of a contributor's approved contribution may be applied towards the fee.

If the DSA does not receive the application fee within 30 days after the date the proposal is approved, the approval is automatically revoked. If the fee is paid after those 30 days, the DSA must refund the fee and notify the contributor and local government or development corporation that the approval was revoked.<sup>4</sup>

### **Project completion report**

Once a catalytic project is completed, the local government or development corporation that proposed the project must submit a project completion report. The DSA must receive the completion report within two years after the date the project was approved. The report must certify that the project is fully completed, the total amount of money spent on the project, the total amount of approved contributions made to the project, a list of any differences between the initial project plan and the completed project, and an estimate of the economic impact of any such differences.<sup>5</sup>

### **Tax credit amount**

Upon receipt of a project completion report within two years after the project was approved, the DSA must issue a tax credit certificate to each individual and business that contributed to the project. The tax credit allowed to a contributor will equal the contributor's adjusted contribution amount, multiplied by 60% in the case of a rural catalytic project and 50% in the case of an urban catalytic project.

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<sup>3</sup> R.C. 122.156(A), (B), and (C).

<sup>4</sup> R.C. 122.156(D).

<sup>5</sup> R.C. 122.157(A).

A contributor's adjusted contribution equals the contribution amount approved by the DSA, subtracted by (1) any amount reimbursed to the contributor by the local government or development corporation, and (2) the value of any nonmonetary compensation provided to the contributor by the local government or development corporation. And, if the total amount of approved contributions from all contributors are not expended on the project, a subtraction is made for each contributor to the project in proportion to the contributor's contribution in comparison to all contributors to the project. In addition, if the completed project differs from the initial project plan and that difference reduces the predicted economic impact of the project, the DSA may reduce a contributor's tax credit by an amount commensurate with that difference.<sup>6</sup>

#### **Carry-forward period**

If the tax credit exceeds a contributor's tax liability for any year, the contributor may carry forward the excess credit amount for up to five years.<sup>7</sup>

#### **Transferability**

A contributor may not transfer a tax credit certificate to any other person.<sup>8</sup>

#### **Deadline for approving credits**

The DSA may not approve any project or proposed contribution after December 31 of the fifth calendar year after the bill's effective date.<sup>9</sup>

#### **Credit cap**

Under the bill, a contributor may receive a tax credit for an approved contribution of up to \$500,000. The total amount of estimated tax credits approved for all individuals and businesses contributing to a single catalytic project cannot exceed \$500,000.

The bill also imposes an overall cap of \$5 million on the amount of estimated credits that may be approved each year. If the DSA approves less than \$5 million of estimated credits in any year, the excess amount may be carried forward and awarded in the next year. Before July 1 of each year, the DSA may award estimated credits for urban projects of no more than \$3.5 million of the \$5 million annual estimated credit

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<sup>6</sup> R.C. 122.157(A) and (B).

<sup>7</sup> R.C. 5725.191, 5726.58, 5727.242, 5727.43, 5727.812, 5729.081, and 5747.052.

<sup>8</sup> R.C. 122.157(C).

<sup>9</sup> R.C. 122.156(E).



allotment plus 70% of any estimated credit allotment carried forward from the previous year.<sup>10</sup>

### **Certification of nonprofit community development corporations**

After January 1, 2017, all nonprofit community development corporations that wish to participate in the tax credit program must be certified by the DSA. To be certified, the corporation must submit an application that includes a description of the catalytic project the corporation wishes to propose or administer, the estimated economic impact on local governments that would benefit from the project, the estimated date of completion of the project, and any other information the DSA requires.

The DSA must approve or deny a nonprofit corporation's application within 30 days after receipt. If the DSA denies an application, the notice provided to the corporation must include the reasons for denial. If the DSA approves an application, the certification is valid for two years from the date of the approval. A corporation may renew a certification for an additional two-year period by submitting a new application at least 30 days before the first certification expires.

The bill requires the DSA to maintain a list of certified nonprofit community development corporations and to provide copies of the list to the public upon request.<sup>11</sup>

### **Cost-benefit analysis**

On or before January 7 of each year, the DSA must conduct a cost-benefit analysis of each approved catalytic project and of the tax credit program as a whole. The DSA must provide the analysis to the Governor and the legislature, and make the analysis available to program participants and the general public upon request.<sup>12</sup>

### **Credit recapture**

If the DSA believes that a local government, development corporation, or contributor presented, or contributed to the presentation of, false information in connection with obtaining a tax credit certificate, the DSA must provide notice to those entities and allow them to contest the allegations. If the DSA determines that the allegations are true, it may revoke any remaining tax credit available to the contributor and refuse to accept any future project applications from the local government or

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<sup>10</sup> R.C. 122.156(E) and 122.157(E).

<sup>11</sup> R.C. 122.159.

<sup>12</sup> R.C. 122.157(F).



development corporation. The Tax Commissioner may also issue an assessment to recoup any amount of the credit the contributor has already claimed.<sup>13</sup>

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## HISTORY

ACTION	DATE
Introduced	02-10-15

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<sup>13</sup> R.C. 122.158.

