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Material Changes Transform the Ohio TMUD Tax Credit

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The new Ohio budget signed June 30, 2025 (the Budget Bill or HB 96) enacts substantial changes to Ohio Revised Code Section 122.09, the Transformational Mixed-Use Development Tax Credit (TMUD Tax Credit). The TMUD Tax Credit, enacted in 2020 (Senate Bill 39), created the tax credit for qualified large, transformative mixed-use development projects in the state of Ohio.

Following four rounds of awards, the TMUD Tax Credit itself is transformed to focus on the specific project's impact rather than the impact to the surrounding area. Although the 10% tax credit remains, there are a number of both substantive and technical changes:

- Increases from \$100MM to \$125MM+ available per fiscal year for FY26 and FY27, with up to \$85MM+ for major city (population >100,000) projects and the remainder (\$40MM+) available for projects more than 10 miles from a major city
 - Amounts in excess of \$125MM, \$85MM and \$40MM may be awarded from certain amounts recaptured from previously awarded projects that were not able to achieve key metrics
- Reduces the maximum award per project to \$20MM from \$40MM
- Costs are eligible after certification (a change from current interpretation of costs after the application date), except for architectural and engineering costs (unchanged)
- Deletes structured parking as a use that establishes a mixed use (consistent with current eligibility administrative rules) and eliminates a catchall for other qualifying uses
- Increases the payroll requirement at the project site from \$4MM to \$5MM
- Eliminates the distinction between a project and a development
- Changes the increase in tax collections to only be for the economic activity located within the project site and only for the project

- The applicant still must show an estimated increase of at least 10%, but this eliminates the need for an alternative method of computing the value of tax credit certificates
- This simplifies the impact analysis and eliminates the concepts of catalytic projects and broader impact to the surrounding area
- Codifies that the project site may include multiple parcels that are contiguous (including if only separated by a publicly dedicated road)
- Changes the award from being made by the Tax Credit Authority (and administered by the Ohio Department of Development (ODOD)) to being administered and awarded by ODOD
- Continues to require an economic impact study, but adds a requirement that the preparer have Ohio experience and requires ODOD to engage an independent third-party reviewer to ensure accuracy, uniformity, consistency and fairness
- Requires evidence that, but for the applicant's receipt of the credit, the project will not be completed.
 - The applicant will not be able to (i) close on construction financing, (ii) commence construction, excluding any brownfield remediation or demolition that may have already been performed, and (iii) complete the project unless the applicant receives the credit
- Adds transferability and use of credits against financial institutions tax and income tax rather than only insurance premium tax
- Creates a detailed scoring system out of 100 points (pts) to replace ODOD's scoring discretion:
 - **10 pts:** Comparative measurement of physical scope of the projects as measured by gross square footage of vertical improvements including new construction and renovated space
 - **5 pts:** Comparative measurement of the density of the new project as measured by a building to land ratio
 - **10 pts:** Distribution of project end uses
 - **14 pts:** Project's receipt of necessary government approvals and local support, broken down into seven 2 pt subcategories
 - **10 pts:** Committed funding sources as a percentage of total development costs
 - **5 pts:** Purchase or lease commitments from end users for the space created by the project
 - **10 pts:** Projects in areas of higher relative walkability as measured by the United States environmental protection agency's walkability index for the project's census tract
 - **5 pts:** Comparative measurement of total retail, entertainment, and dining sales to be generated by the project
 - **5 pts:** Comparative measurement of the total new payroll to be generated by the project
 - **20 pts:** Comparative measurement of the total sales, income, lodging, and property taxes to be generated by the project
 - **6 pts:** Community impacts, available in three separate areas (2 pts each)

These changes represent a fundamental shift in the TMUD Tax Credit program. We anticipate the largest impacts, in no specific order, will be: (a) putting the focus on the project's impact (eliminating the surrounding area concept entirely); (b) measuring the increase in taxes for just the project thereby

eliminating the current alternative method process; (c) increasing the available credits by \$25MM+; (d) requiring that a project cannot have commenced construction (other than brownfield or demolition) or closed on financing prior to the award; and (e) implementing a statutory and very specific scoring methodology.

We also anticipate it will take some time for ODOD to review these changes and adopt new rules and guidelines, and there are still a number of determinations ODOD will have to make, notwithstanding the prescriptive nature of the new scoring.

These changes make the TMUD Tax Credit especially attractive to non-major city projects, which now have a much larger (2x) pool of funds. The timing for projects will also be critical, given the restriction on starting construction prior to an award, particularly since the project still must start construction within 12 months of the award.

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