

HISTORIC PRESERVATION TAX CREDITS

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Senate Bill 54 (S-4) as passed by the Senate

Sponsor: Sen. Wayne Schmidt

House Committee: Government Operations

Senate Committee: Economic and Small Business Development

Complete to 12-14-20

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

Senate Bill 54 would amend Part 1 (individual income tax) and Part 2 (corporate income tax) of the Income Tax Act to provide for a historic preservation tax credit of up to 25% of qualified expenditures on the rehabilitation of historic buildings, structures, and sites. The bill would essentially reinstate a tax credit that was eliminated beginning in 2012. The State Historic Preservation Office (SHPO)¹ would have to certify the property and rehabilitation. The total of all preapproved credits could not exceed \$5.0 million in a calendar year, and no taxpayer could claim a credit of more than \$2.0 million for a single property.

Specifically, the bill would allow a **qualified taxpayer** with a certificate of completed rehabilitation issued after December 31, 2020, and before January 1, 2031, to claim a tax credit for **qualified expenditures** for the rehabilitation of a **historic resource** under the **rehabilitation plan** in the year the certificate is issued.

Qualified taxpayer would mean a person that either owns the historic resource to be rehabilitated or has a **long-term lease** agreement with the owner of that resource and that has qualified expenditures that meet either of the following:

- For the rehabilitation of a **residential historic resource**, qualified expenditures of at least \$1,000.²
- For the rehabilitation of a historic resource other than a residential historic resource, qualified expenditures equal to or greater than 10% of the state equalized valuation (SEV) of the property or relevant portion of the property.³

Historic resource would mean a publicly or privately owned historic building, structure, site, object, feature, or open space that meets either of the following:

- It is located in a **historic district** designated by the National Register of Historic Places, the state register of historic sites, or a local unit acting under the Local Historic Districts Act.
- It is individually listed on the state register of historic sites or the National Register of Historic Places.

Long-term lease would mean a lease term of at least 27.5 years for a residential resource and 31.5 years for a nonresidential resource.

¹ <https://www.miplace.org/historic-preservation/>

² This amount would be adjusted annually for inflation using the most comprehensive index of consumer prices available for the Detroit area from the U.S. Department of Labor Bureau of Labor Statistics.

³ If the SEV has not been determined for a historic resource or portion of property, **qualified expenditures** would have to be at least 5% of its appraised value as determined by a certified appraiser.

Qualified expenditures would mean capital expenditures that qualify for a rehabilitation credit under section 47(a)(2) of the Internal Revenue Code⁴ (the federal credit) or that would qualify under that section except that they were for a historic resource that is not eligible for that credit. Qualified expenditures would include only those paid or incurred during the time periods prescribed for the federal credit and any related Treasury regulations. Expenditures for nonhistoric additions to a historic resource would not qualify unless required by state or federal historic preservation, safety, or accessibility regulations.

Historic district would mean an area, or group of areas not necessarily having contiguous boundaries, that contains a resource or group of resources related by history, architecture, archaeology, engineering, or culture.

Residential historic resource would mean a non-income-producing historic resource that is an owner-occupied dwelling.

A qualified taxpayer could claim a credit equal to 25% of the taxpayer's qualified expenditures. The taxpayer would have to initially claim a credit within five years after issuance of the certificate of completed rehabilitation, after which time the certificate would no longer be valid and the taxpayer could no longer claim a credit for that rehabilitation plan.

Application and rehabilitation plan

To be eligible for the credit, a person would have to submit an application and a rehabilitation plan to SHPO. Completed applications would be considered in the order received and would have to be approved or denied within 120 days. If SHPO determines that an application is complete and the plan meets the criteria for a credit, it would issue a preapproval letter stating that the plan qualifies and the maximum total amount of the credit reserved for which a credit could be claimed when the project is complete under the plan.

If SHPO denies an application, the applicant could file an appeal in a form and manner as prescribed by SHPO or reapply for the same or another plan, or both.

Reserved credits

The total of all credits reserved under preapproval letters could not exceed \$5.0 million in a calendar year. A qualified taxpayer could not be authorized to claim a credit of more than \$2.0 million in a single tax year for the same historic resource. If SHPO received applications for more than \$2.0 million for credits for **small nonresidential historic resources**, at least \$2.0 million of the \$5.0 million each calendar year would have to be approved for small nonresidential historic resources. Similarly, if SHPO received applications for more than \$2.0 million for credits for **large nonresidential historic resources**, at least \$2.0 million would have to be approved for those historic resources. And if SHPO received applications for more than \$1.0 million for credits for residential historic resources, at least \$1.0 million would have to be approved for those historic resources.

Small nonresidential historic resource would mean a non-owner-occupied, income-producing historic resource that has a rehabilitation plan with qualified expenditures of

⁴ <https://www.govinfo.gov/content/pkg/USCODE-2011-title26/pdf/USCODE-2011-title26-subtitleA-chap1-subchapA-partIV-subpartE-sec47.pdf>

less than \$2.0 million, and **large nonresidential historic resource** would mean a non-owner-occupied, income-producing historic resource that has a rehabilitation plan with qualified expenditures of \$2.0 million or more.

If SHPO reserved the maximum amount of tax credits for a calendar year, it would have to notify applicants whose applications were pending or submitted afterward. SHPO would also have to notify them of the priority number given their application and plan. The applications and plans would be in priority status for two years after their original submission, to be considered in priority order at the start of the next calendar year (or if additional credits become available due to approval rescissions).

Commencement and completion of plans

An applicant receiving a preapproval letter would have to start rehabilitation (if it had not already started) within one year, and complete the plan within eight years, after issuance of the letter, or SHPO would rescind the letter and reallocate the credit reserved for that plan.

Upon completing a rehabilitation plan for which a preapproval letter was issued, the applicant would have to submit to SHPO documentation that the rehabilitation is complete⁵ and the completed rehabilitation of the historic resource meets either of the following:

- All of the following:
 - The historic resource contributes to the significance of the historic district in which it is located or is individually listed on the National Register of Historic Places or state register of historic sites.
 - Both the rehabilitation plan and completed rehabilitation of the historic resource meet the Secretary of the Interior's standards for rehabilitation and guidelines for rehabilitating historic buildings, 36 CFR part 67.⁶
 - All rehabilitation work has been done to or within the walls, boundaries, or structures of the historic resource or to historic resources located within the property boundaries of the property.
- The applicant has received certification from the National Park Service that the historic resource's significance, the rehabilitation plan, and the completed rehabilitation qualify for the federal credit under section 47(a)(2) of the Internal Revenue Code.

Qualified expenditures for the rehabilitation of a historic resource could be used to calculate the credit under the bill if the historic resource was one of the following during the tax year in which the credit for those expenditures was claimed:

- Individually listed on the National Register of Historic Places or state register of historic sites.
- A **contributing resource** located in a historic district listed on the National Register of Historic Places or the state register of historic sites.
- A contributing resource located within a historic district designated by a local unit pursuant to an ordinance adopted under the Local Historic Districts Act.

Contributing resource would mean a historic resource that contributes to the significance of the historic district in which it is located.

⁵ If the applicant is eligible for the federal credit, additional documentation that the rehabilitation is complete would not be required for the credit under the bill.

⁶ <https://www.nps.gov/tps/tax-incentives/taxdocs/36cfr67.pdf>

SHPO would have to verify that the rehabilitation is complete and meets the required criteria. Within 120 days after verification, SHPO would have to issue to the applicant a certificate of completed rehabilitation that states that the submitted rehabilitation plan has been completed, the amount of qualified expenditures, and the total amount of the credit allowed to be claimed by the qualified taxpayer. If the amount of qualified expenditures incurred exceeds the amount of the tax credits reserved by the preapproval letter, the applicant could request SHPO to issue and approve a certificate of completed rehabilitation in excess of the amount authorized in the preapproval letter. SHPO could issue such a certificate if less than \$5.0 million has been reserved for the calendar year, after priority has been given to those notified as described above.

Inspection and revocation

SHPO could inspect a historic resource at any time during the rehabilitation process and could revoke the preapproval letter or certificate of completed rehabilitation if the rehabilitation was not undertaken as represented in the rehabilitation plan or if unapproved alterations to the completed rehabilitation were made within five years after the tax year in which the certificate of completed rehabilitation was issued. SHPO would have to promptly notify the Department of Treasury of a revocation.

If a certificate of completed rehabilitation was revoked or a historic resource was sold or disposed of less than five years after the certificate of completed rehabilitation is issued, a percentage of the credit amount previously claimed relative to that historic resource would have to be added back to the tax liability of the qualified taxpayer that received the certificate of completed rehabilitation and not the assignee in the year of the revocation. The amount could also be deducted from any credits carried forward. The percentage would be one of the following, based on how long after issuance of the certificate of completed rehabilitation the revocation occurred:

- If less than one year, 100%.
- If at least one but less than two years, 80%.
- If at least two but less than three years, 60%.
- If at least three but less than four years, 40%.
- If at least four but less than five years, 20%.
- If five years or more, an addback to the tax liability would not be required.

Alternatively, the qualified taxpayer could enter into a written agreement with SHPO that allows for the transfer or sale of the historic resource and provides the following:

- Reasonable assurance that after the transfer the property will remain a historic resource during the five-year period after the certificate of completed rehabilitation is issued.
- A method for the Department of Treasury to recover an amount from the qualified taxpayer equal to the appropriate percentage of credit added back as described above.
- An encumbrance on the title to the historic resource being sold or transferred, stating that the property must remain a historic resource throughout the five-year period after the certificate of completed rehabilitation is issued.
- A provision for the payment by the qualified taxpayer of all legal and professional fees associated with drafting, reviewing, and recording this written agreement.

Assignment of credits

A person issued a certificate of completed rehabilitation could assign all or any portion of the credit allowed under it. A credit assignment would be irrevocable and would have to be made

in the tax year the certificate is issued. If the qualified taxpayer both claims and assigns portions of the credit, the portion it claims would have to be claimed in the tax year the certificate is issued. An assignee could subsequently assign all or any portion of the credit to one or more assignees. An assignment or subsequent reassignment of a credit would have to be made in the year the certificate is issued. A credit assignment or subsequent reassignment would have to be made on a form prescribed by SHPO, which would have to review and issue a completed assignment or reassignment certificate to the assignee or reassignee.

An assigned credit amount could be claimed against the assignee's tax liability under either Part 1 or Part 2 of the act. For a credit assigned to a partnership, limited liability company, or subchapter S corporation, the assignees would be its partners, members, or shareholders based on the partner's, member's, or shareholder's proportionate share of ownership or based on an alternative method approved by SHPO. The assignee or reassignee would have to first claim the credit in the tax year in which the assignment or reassignment is made and attach a copy of the completed assignment certificate to the annual return filed under the act for that tax year.

Claiming and carryforward of credits

The qualified taxpayer would have to attach all of the following to the qualified taxpayer's annual return under this part:

- Certificate of completed rehabilitation.
- Certification of historic significance related to the historic resource and the qualified expenditures used to claim a credit.
- A completed assignment form for any assigned portion of a credit.

The total of the credits claimed under both Parts 1 and 2 of the act for a rehabilitation project could not exceed 25% of the total qualified expenditures eligible for the credit for that project under either part alone.

If the credit for the tax year and any unused carryforward of the credit exceed the qualified taxpayer's tax liability for the tax year, that excess would not be refunded but could be carried forward to offset tax liability in subsequent tax years for 10 years or until used up, whichever occurs first.

Fees, rules, and report

SHPO could impose a fee to cover the administrative cost of implementing the bill and could promulgate rules under the Administrative Procedures Act to implement the bill.

SHPO would have to submit to the legislature an annual economic impact report that includes all of the following for the immediately preceding state fiscal year:

- Its fee schedule and the total amount of fees collected.
- A description of each rehabilitation project for which a preapproval letter or certificate of completed rehabilitation was issued, including the total rehabilitation costs, labor hours generated, jobs added, payroll added, total capital investments, gain in property value after rehabilitation, and amount of income and sales tax generated by the project.
- The location of each new and ongoing rehabilitation project.

Proposed MCL 206.266a and 206.676

FISCAL IMPACT:

As written, the bill would reduce general fund revenue by \$5.0 million per year, on average. Because the \$5.0 million credit per year threshold is on a calendar year basis, it's possible that the total that could be claimed in any given fiscal year could be more or less than \$5.0 million.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.