

Legislative Analysis



VISUAL ARTS BUILDING TAX BENEFITS

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House Bill 5810 (Substitute H-2)
House Bill 6068 (Substitute H-1)
Sponsor: Rep. Jerry O. Kooiman

House Bill 5811 (Substitute H-2)
Sponsor: Rep. Bill Huizenga

House Bill 5812 (Substitute H-1)
Sponsor: Rep. Glenn Steil Jr.

Committee: Tax Policy
First Analysis (8-4-04)

BRIEF SUMMARY: The bills would provide various tax benefits for donations made for the construction of a visual arts building.

FISCAL IMPACT: The combined initial fiscal impact of the bills is expected to be less than \$5 million. (This is based on an anticipated \$75 million project in Grand Rapids, although the bill would apply statewide.)

THE APPARENT PROBLEM:

The history of the Grand Rapids Museum of Art dates back to 1910 when the Municipal Beauty Committee of the City Federation of Women's Clubs recommended the establishment of an art collection in Grand Rapids, laying the groundwork for an art museum and the formation of the Art Association of Grand Rapids. The association's first exhibition, a collection of 11 paintings, opened to the public on January 11, 1911. For the next 13 years, the association held exhibitions at a variety of locations throughout the city. The museum established its first permanent home on Fulton Street in 1924, and remained there for nearly six decades. Throughout the years, the museum underwent several expansions and renovations, enabling it to present exhibits on the works of Picasso and Van Gogh.

During the 1960's and 1970's, the museum's operations grew considerably, and it became apparent that a new location was necessary. In 1978, the City of Grand Rapids offered to lease the old federal building to the museum (which dates back to 1910) for \$1. After a \$2.3 million capital campaign for renovations to the historic building, the museum's new (and current) facility opened to the public with a gala celebration led by former President Gerald R. Ford on September 17, 1981.

After 20 years in the old federal building, the museum's board of trustee's voted unanimously in February 2001 to expand the museum. The following November, with a

\$20 million gift from the Wege Foundation and \$2.5 million in land donated by the Grand Rapids Downtown Development Authority, the capital campaign for the new museum began. The expansion, estimated at \$75 million for the new facility and a bolstered endowment, is expected to triple the amount of gallery space and expand the lobby, and include space for the new Family Learning Center, as well as a gift shop, café, and auditorium. The new facility, to be located in Monroe Center in downtown Grand Rapids, is expected to open in the fall of 2006.

With nearly \$54 million raised thus far, fundraising for the new 100,000 square foot facility has proceeded swimmingly. However, the museum has raised the bulk of the funds from foundations. The museum can always use more individual contributions and other financial assistance. Legislation providing tax incentives related to the construction of the new facility has been introduced.

THE CONTENT OF THE BILLS:

House Bill 5810 (Sales Tax) and House Bill 6068 (Use Tax)

House Bill 5810 would amend the General Sales Tax Act (MCL 205.54bb) to exclude from taxation under the act, the sale of tangible personal property to a person engaged in the business of constructing real estate, if such property is for an arts building that is located in the state and owned and operated by a tax-exempt organization

House Bill 6068 would amend the Use Tax Act (MCL205.94y) to exclude from taxation under the act the storage, use, or consumption of tangible personal property acquired by a person engaged in the business of constructing real estate, if such property is for an arts building that is located in the state and owned by a tax-exempt organization.

[A similar exemption from sales and use taxes currently applies to persons engaged in construction projects for nonprofit hospitals, nonprofit housing, and worship-related portions of churches, synagogues, mosques, etc.]

House Bill 5811 (Income Tax)

The bill would amend the Income Tax Act (MCL 206.269) to provide taxpayers with a nonrefundable credit equal to one-half of the amount the taxpayer donated to a nonprofit, tax exempt organization for the construction of an arts building in the state. The credit would be capped at \$100 for a single return and \$200 for a joint return. However, a taxpayer could not claim both the public contribution credit under Section 260 and the construction credit available under the bill using the same donation.

[Under Section 260 of the Income Tax Act, a taxpayer can claim a non-refundable “public contribution credit” for up to 50 percent of the total donations made to Michigan public broadcasting stations, Michigan colleges and universities, public libraries, the state archives, the state history museum, municipally-affiliated art institutions, and the State Art in Public Places Fund. The maximum public contribution credit for all contributions

is \$100 for a single return and \$200 for a joint return. Under the provisions of the bill, for instance, if a taxpayer donated \$200 to an arts museum, with \$100 designated for construction of a new building, the taxpayer could claim a \$50 public contribution credit, and a \$50 construction credit. The taxpayer could not, however, claim the public contribution credit on the entire \$200 donation, and also claim construction credit for the \$100 construction donation.]

House Bill 5812 (Single Business Tax)

The bill would amend the Single Business Tax Act (MCL 208.39a) to provide taxpayers with a credit equal to one-half of the amount the taxpayer donated to a nonprofit, tax exempt organization for the construction of an arts building. The credit would be capped at five percent of the taxpayer's tax liability or \$5,000, whichever is less. The credit would be nonrefundable, though it could be carried forward for up to 10 years or until the excess credit is exhausted, whichever occurs first. However, a taxpayer could not claim both the community foundation endowment contribution credit under Section 38c and the construction credit available under the bill using the same donation.

For all four bills, "arts building" would generally mean a building or structure with the primary purpose of housing or displaying visual arts.

ARGUMENTS:

For:

House Bill 5811 is needed to encourage individuals to support the construction of the new Grand Rapids art facility. While the Income Tax Act does provide a public contribution credit for charitable contributions made to certain art institutes, it does not apply to contributions made to the Grand Rapids Museum of Art. The public contribution credit applies to contributions of money or artwork provided to an art institute affiliated with a municipality, such as the Detroit Institute of Art. The Grand Rapids Museum of Art is entirely separate from the City of Grand Rapids and so contributions to it, whether specifically for the new facility or the museum's operating budget, are not included in determining the public contribution credit.

Similarly, the SBT construction credit encourages businesses to donate property and money for the construction of the new facility.

In addition, the sales tax and use tax exemptions will ensure that the materials used in the construction of the new facility are exempt from taxation. If the museum (as a nonprofit entity) purchases the materials itself, those purchases are already exempt from sales and use taxes. But if the materials are, instead, purchased by the contractor, they are subject to taxation. This invariably increases the cost of the new facility. The exemption provided by this legislation provides museums and contractors with greater flexibility in making purchases for building materials, as it eliminates the need for the museum to directly make the purchase.

Response:

It is not entirely clear if the bills apply only to traditional visual arts museums (such as those that display paintings, sculptures, etc.) or if they also apply to other museums as well. The bills define “art” to mean an original, visual creation executed in any size or shape, in any media, and using any combination of materials. (Incidentally, House Bill 6068 adds the criteria that the work be “of quality”, a phrase that has been dropped from the other bills in the package.) From this definition, it appears that the bills could apply to other museums as well, not just art museums.

If, however, the proposed legislation is interpreted so as to sufficiently limit its application to art museums, the question becomes: why should other museums be excluded? Moreover, the legislation would not apply to the construction of performing arts centers. What if the Grand Rapids Symphony, Opera Grand Rapids, and the Grand Rapids Ballet Company (or similar groups in other cities) wanted to construct a new building? Could the legislature and the governor reasonably not provide similar tax incentives to businesses and individuals supporting the construction of the new facilities? In this regard, the bill unfairly targets one particular group, and excludes numerous equally worthy causes.

Finally, the bills do not appear to apply solely to building construction, which potentially increases their fiscal impact. House Bills 5810 and 6068 exempt property that is “to be affixed to or made a structural part of” an arts building, whereas House Bills 5811 and 5812 apply to donations made for the construction of an arts building. It appears then, that House Bills 5810 and 6068 (the sales and use tax exemption bills) apply to the restoration or renovation of an arts building, in addition to any new construction. House Bills 5811 and 5812 (the income tax and single business tax credit bills) appear to only apply to any new construction. If the bills are intended to only apply to new construction (as is the case in the Grand Rapids Art Museum), the sales and use tax exemptions provided under House Bills 5810 and 6068 should be limited.

Against:

The fiscal impact of the bill, estimated by the Department of Treasury to be \$10 and \$12 million, is too costly, given the state’s weak financial condition. Moreover, at a time when direct state support for the arts has been repeatedly cut in recent years, it seems imprudent to direct several million dollars to the Grand Rapids Art Museum, while other arts organizations in the city and throughout the state are facing financial problems that are only made worse by cuts in state funding. If the state has an additional \$5 million to \$12 million to spend on the arts, it should be made available to all arts organization through the more equitable and fair peer-review, competitive granting process employed by the Michigan Council for Arts and Cultural Affairs.

In addition, rather than creating an income tax credit that is separate from the public contribution credit, House Bill 5811 should expand the public contribution income tax credit to include donations made for the construction of an art museum; this would lump all of the taxpayers donations to determine the credit.

Response:

The package of bills recognizes the economic impact the new museum will have on the city and the state and, as such, any revenue foregone because of the tax incentives will likely be made up through increased economic activity. In a July 2003 press release, the museum touted a Deloitte & Touche economic impact study of the new museum, which concluded that the museum will generate \$17 million to \$28 million in sales revenue and anticipated economic activity outside of the museum each year. As an example of the role arts and cultural organization play in economic development, one should look to Pittsburgh and Detroit. Pittsburgh has transformed a blighted red-light district on the banks of the Allegheny River into a 14 square block cultural district that is abuzz with activity and home to at least a dozen arts organizations as a several commercial and residential buildings. Closer to home, Detroit's renaissance appears to have begun in earnest several years ago with the renovation of its arts centers - the Fox Theater, Orchestra Hall (and, now, the Max M. Fisher Music Center), and the Detroit Opera House, among others - which predates the recent influx of sports stadiums and casinos. This package of bills, then, helps the city, and region, as well as the museum.

POSITIONS:

ArtServe of Michigan does not have a position on the bill. (7-15-04)

The Department of Treasury opposes the bill. (7-14-04)

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