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BILL ANALYSIS

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Senate Bill 337 (Substitute S-2 as reported)
Sponsor: Senator Jason E. Allen
Committee: Commerce and Labor

Date Completed: 5-27-05

RATIONALE

In February 2003, Governor Jennifer Granholm issued Executive Order 2003-4, creating the bipartisan Michigan Land Use Leadership Council, which was co-chaired by former Governor William Milliken and former Attorney General Frank Kelley. The order charged the Council with studying and identifying the trends, causes, and consequences of urban sprawl and making recommendations to the Governor and the Legislature regarding policies designed to mitigate the negative effects of land use patterns on Michigan's environment and economy.

Chapter 4 of the Council's final report includes recommendations for urban revitalization. The report urges the State to adopt policies that consider the use or reuse of existing facilities, rather than developing greenfield sites or locations that require the construction of new infrastructure. To that end, some people believe that the State should encourage the renovation of historic resources by offering tax credits to nonprofit organizations that undertake such redevelopment projects.

CONTENT

The bill would amend the Single Business Tax (SBT) Act to allow a "qualified taxpayer" to claim a credit against the SBT for up to 50% of the total cost of renovating a "historic resource" for tax years beginning after December 31, 2007, upon approval of the Department of History, Arts, and Libraries.

"Qualified taxpayer" would mean a taxpayer exempt from taxation under Section 501(c)(3) of the Internal Revenue Code (a charitable nonprofit organization).

"Historic resource" would mean a historic building, structure, site, object, feature, or open space that is owned by a qualified taxpayer and located within a historic district designated by the National Register of Historic Places, the State Register of Historic Sites, or a local unit of government acting under the Local Historic Districts Act; or that is individually listed on the State or National Register.

The Department of History, Arts, and Libraries (HAL) could not approve more than 10 SBT credits under the bill each calendar year. Of those, nine would have to be for $1 million or less and one could be for more than $1 million but less than $3 million. Not more than three credits could be issued for renovation of historic resources within any one municipality.

The Department would have to develop an application form and process for the credit. The application would have to require all of the following:

-- A copy of the certification issued by the Michigan Historical Center (described below).
-- Documentation that the renovation would be on a historic resource that met the bill's criteria.
-- Written commitments or agreements that showed that the qualified taxpayer had acquired, and designated to the renovation, an amount equal to at least 50% of the total cost of the renovation from sources separate from the funds

available based on an anticipated SBT credit allowed under the bill.

A qualified taxpayer would have to apply to HAL for approval of a tax credit for the renovation of a historic resource. The Department would have to establish an annual application deadline. From applications received by the deadline, HAL would have to approve up to 10 credits each calendar year.

To be eligible for the proposed SBT credit, a taxpayer would have to apply to and receive from the Michigan Historical Center certification that the historic significance, the renovation plan, and the completed renovation of the historic resource met either of the following:

-- The historic resource contributed to the significance of the historic district in which it was located; both the renovation planned and completed renovation of the historic resource met the U.S. Secretary of the Interior's standards for rehabilitation and guidelines for rehabilitating historic buildings; and all renovation work had 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 taxpayer had received from the National Park Service certification that the historic resource's significance, the renovation plan, and the completed renovation qualified for the rehabilitation credit allowed under Section 47(a)(2) of the Internal Revenue Code.

Costs for the renovation of a historic resource could be used to calculate the proposed SBT credit if the historic resource met one of the criteria listed in each item below:

-- The resource was one of the following during the tax year in which a credit was claimed: 1) individually listed on the National Register of Historic Places or the State Register of Historic Sites; 2) a contributing resource located within a historic district listed on the National or State Register; or 3) a contributing resource located within a historic district designated by a local unit of government pursuant to an ordinance adopted under the Local Historic Districts Act.
-- The resource was located in one of the following during the tax year in which a credit was claimed: 1) a designated historic district in a local unit of government with an existing ordinance under the Local Historic Districts Act; 2) an incorporated local unit of government that did not have an ordinance under the Local Historic Districts Act and had a population under 5,000; or 3) an unincorporated local unit of government.

If HAL approved the renovation of the historic resource, it would have to issue an approval letter to the qualified taxpayer. The letter would have to state that the taxpayer was a qualified taxpayer; the maximum credit allowed for the renovation of the historic resource; the maximum percentage of the total cost of the renovation determined by HAL that the qualified taxpayer was allowed to use to calculate a credit under the bill; and an identification number assigned by HAL for the renovation.

If a renovation of a historic resource were denied, a taxpayer could subsequently apply for the same or another renovation.

If a taxpayer's credit under the bill for a tax year exceeded the taxpayer's tax liability for that year, the excess would have to be refunded. If the taxpayer had no tax liability for that year, the amount of the claim would have to be approved for payment, without interest, to the taxpayer, after review and examination by the Department of Treasury.

A qualified taxpayer would have to attach all of the following to his or her annual return on which an SBT credit under the bill was claimed:

-- Certification of completed renovation.
-- Certification of historic significance related to the historic resource and the costs used to calculate the credit.
-- A financial statement indicating the total cost of the renovation and the source of all funds used to complete it.

If a taxpayer who claimed a credit under the bill no longer met the bill's criteria for a qualified taxpayer within five years after the credit was claimed, a percentage of the credit amount previously claimed for the historic resource would have to be added back to the taxpayer's tax liability, as shown in the table below. If the taxpayer no longer met the criteria five years or more after the year in which a credit was claimed, an addback to the taxpayer's tax liability could not be made.

Years after Credit was Claimed	Addback
Within 1 year	100%
At least 1 year, but less than 2	80%
At least 2 years, but less than 3	60%
At least 3 years, but less than 4	40%
At least 4 years, but less than 5	20%

Proposed MCL 208.35c

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

In its report, the Land Use Leadership Council recognized the unique character of a community's historical, cultural, artistic, and architectural assets and the need to preserve them. By providing a refundable tax credit to nonprofit organizations that renovated historic resources, the bill would further the recommendations of the Council regarding the use or reuse of existing facilities and its recognition of the value of preserving historical assets. Encouraging the rehabilitation of historic facilities, such as Traverse City's opera house, also would enhance the cultural conditions of Michigan's communities, making them more attractive places to live and conduct business. The bill would provide an additional tool to encourage economic development and growth throughout the State.

Opposing Argument

While encouraging historical preservation is a good idea and could be a valuable economic development tool, the bill's approach may not be the most appropriate way to achieve the goal of rehabilitating historic structures. The proposed plan for a refundable tax credit to nonprofit, tax-exempt organizations essentially would be an ongoing grant program. If that is a desired policy, perhaps it should be accomplished through annual appropriations rather than a statutory SBT credit for organizations that do not even pay the tax in the first place. In addition, other tax credits currently are available under both Federal and State law to encourage the rehabilitation of historic buildings.

Response: The organizations that get involved in historical preservation projects often are nonprofit entities, which, because of their tax-exempt status, are not eligible for nonrefundable tax credits like the currently available SBT credit and the Federal tax credit. By offering a refundable SBT credit to nonprofit organizations, the bill proposes a unique economic development tool.

Opposing Argument

A tax credit for up to one-half of the cost of historic resource renovation projects would be just too big. According to testimony before the Senate Commerce and Labor Committee by a Department of Treasury official, the currently available nonrefundable SBT credit is for only 5% of a project's cost and even the more generous Federal tax credit is available only for 20% of the cost.

Response: The bill would extend the SBT credit to not more than 10 projects per year and at modest amounts. Nine of the 10 credits would be capped at $1 million, and the 10th would be for not more than $3 million, so the bill's total cost could not exceed $12 million annually.

Opposing Argument

It is unclear whether a renovated structure for which a tax credit was available under the bill would have to continue to be designated as a historic resource after the rehabilitation project. If the State were to invest in the renovation of a historic resource, it should have some assurance that the resource's historical designation would endure.

Opposing Argument

In order to qualify for a tax credit, the renovation of a historic resource should be required to meet other, more traditional economic development standards, such as job creation or investment in other projects within the community.

Response: The bill would adopt a broader view of economic development. While commercial and industrial projects, to which job-creation and investment-level criteria have been tied, traditionally have been viewed as forms of economic development, the bill would recognize that the preservation of cultural facilities is a valuable part of economic revitalization, in keeping with concepts espoused by the Michigan Land Use Leadership Council.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Based on the maximum number and dollar amount of the proposed SBT credit, the maximum cost of this bill in any given fiscal year, beginning in FY 2008-09 (tax year 2008), would be $12 million. This loss in SBT revenue would affect the General Fund budget. The bill would have no direct impact on local government. The SBT already has a historic rehabilitation tax credit, which will reduce revenue an estimated $800,000 in FY 2004-05. The existing credit is nonrefundable, which means that, to qualify for the credit, a taxpayer must have a tax liability. The proposed historic renovation credit would be a refundable tax credit, and only tax-exempt nonprofit 501(c)(3) organizations would qualify for it. Tax-exempt nonprofit organizations are not eligible for the existing credit.

The bill would increase the administrative responsibilities for the tax credit staff in the Department of History, Arts, and Libraries. These costs would need to be covered with existing revenue sources as no additional revenue would be generated under the bill.

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