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BILL ANALYSIS

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Senate Bill 54 (Substitute S-4 as reported)
Sponsor: Senator Wayne Schmidt
Committee: Finance (discharged)
Economic and Small Business Development

CONTENT

The bill would amend the Income Tax Act to restore the State Historic Preservation Tax Credit Program. Specifically, the bill would add Section 266a to Part 1 of the Act and Section 676 to Part 2 to do the following:

-- Allow a qualified taxpayer with a certificate of completed rehabilitation issued after December 31, 2020 and before January 1, 2031, to credit against the income tax or Corporate Income Tax (CIT) 25% of the qualified expenditures that met eligibility criteria for the historic rehabilitation credit under the Internal Revenue Code for the rehabilitation of a historic resource.
-- Require a person to apply to and receive certification from the State Historic Preservation Office (SHPO) that the historic significance, the rehabilitation plan, and the completed rehabilitation of the historic resource met certain criteria in order to be eligible for the proposed credit.
-- Specify that the total of all credits reserved under preapproval letters for approved rehabilitation plans could not exceed $5.0 million per calendar year, and, to the extent that the SHPO received applications for certain historic resources such as small or large nonresidential historic resources, specify the amount that the SHPO would have to approve for them.
-- Within 120 days after receiving verification that the rehabilitation was complete and met certain requirements, require the SHPO to issue a certificate of completed rehabilitation to the applicant that stated the rehabilitation plan submitted had been completed, the amount of qualified expenditures, and the total amount of the credit allowed to be claimed by a qualified taxpayer.
-- Require a historic resource to meet certain criteria.
-- Allow a person that had been issued a certificate to assign all or any portion of the credit and specify that the portion of the credit that exceeded the taxpayer's tax liability for the year could not be refunded but could be carried forward to offset tax liability in subsequent tax years for 10 years or until used up, whichever occurred first.
-- Require a percentage of the credit amount previously claimed to be added back to the tax liability of the qualified taxpayer, if the certificate of completed rehabilitation were revoked or if the historic resource were sold or disposed of less than five years after the certificate of completed rehabilitation was issued.
-- Allow the SHPO to inspect a historic resource at any time during the rehabilitation process and revoke the preapproval letter or the certificate of completed rehabilitation under certain circumstances.

Proposed MCL 206.266a & 206.676 Legislative Analyst: Tyler VanHuyse

FISCAL IMPACT

Based on Michigan's previous experience with historic preservation credits and recent changes in Federal tax law, the bill would reduce State General Fund revenue by varying magnitudes each year that could average approximately $5.0 million each fiscal year. Furthermore, any revenue impact would extend well beyond the 2030 expiration date for credit preapprovals. Most historic preservation credits claimed under the current law are claimed by business filers, and are claimed under the Michigan Business Tax (MBT). The bill would add the credit to the CIT, which currently does not allow any credits, as well as to the individual income tax. Taxpayers that currently claim the credit under the MBT would not be affected by the bill's provisions until those taxpayers exhausted all MBT-certificated credits and shifted to filing CIT returns, or in the case of pass-through entities, such as partnerships and S-corporations, to filing individual income tax returns.

Historically, the credit reduced State revenue by approximately $10.0 million to $12.0 million per year. However, absent the limits on the total amount of credits that can be preapproved in a given calendar year, changes in the treatment of the Federal version of the credit would cause the bill's impact to be greater than when the State previously offered the credit. These changes, adopted as part of the Tax Cut and Jobs Act, altered the Federal credit by shifting it from a 20.0% credit in one year to a 20.0% credit spread out over five years. As a result, under previous law, a taxpayer would claim a Federal credit for 20% of eligible expenses, and the remaining cost of the credit to the State would be 5.0% of eligible expenses. Under current Federal law, the taxpayer would receive only a Federal credit for 4.0% of the expenditures in the first year, and the bill would make the taxpayer eligible for a credit on 25.0% of expenditures regardless of any credit amounts claimed on a Federal return. Accordingly, under the previous credit, a taxpayer would receive a total credit equal to 25% of the eligible expenses between Federal and State provisions. Absent the approval limits in the bill, or in the case of projects that fell under the limits, between the bill and the changes in Federal law, the total effective credit would equal 45.0% of eligible expenses: a 4.0% Federal credit in the year the expenses were made, plus the bill's 25.0% credit in the year the expenses were made, plus an additional 4.0% Federal credit in each of the following four tax years (for a total of 16.0% of eligible expenditures). How the approval limitations would affect demand for the credit is unknown, although for projects that fell below the caps in the bill, the almost-doubled effective tax credit rate under the bill likely would generate additional demand for the credit.

While the bill would limit the total amount of credits that could be preapproved in a calendar year to $5.0 million, the limitation would not ensure that the bill would not reduce revenue by more than $5.0 million in a given fiscal year. Credits could be claimed up to five years after the project was completed, different projects would take varying lengths of time to complete and would be allowed to begin as late as eight years after the preapproval letter was issued, unused credit amounts could be carried forward for up to 10 years, and credits amounts may be transferred to other taxpayers. As a result, it is possible that a preapproval associated with a project might not result in eligible expenses being made until 2029, then being initially claimed on a return until 2034, and then carried forward until 2044—even though no preapprovals would be authorized after January 1, 2031. For projects not receiving a preapproval until 2030, credit amounts could reduce revenue as late as 2053.

Furthermore, while the credits receiving preapproval would be limited to $5.0 million per year, there would be no guarantee that the credits would be claimed (and revenue reduced) according to the same sort of schedule. As a result, in a given fiscal year, the bill could reduce revenue General Fund revenue by more than, or less than, $5.0 million. For example, if $5.0 of preapprovals were granted each year, but the projects approved in 2021 did not begin until 2023 (and was completed that year), and the projects approved in 2022 did not begin until

2023 (and was completed that year), and the projects approved in 2023 began immediately (and was completed that year), and calendar year approvals affected the fiscal year in which they were approved, the bill would have no revenue impact in fiscal year (FY) 2020-21 or 2021-22, but would reduce FY 2022-23 revenue by $15.0 million, assuming no credits amounts were carried forward. Although this example is contrived, it is meant to illustrate that per-year limits on the preapproved credits do not necessarily translate to the same per year limits in the fiscal impact of the bill on General Fund revenue and that it is both possible and likely that the actual fiscal impacts would differ from $5.0 million per year (either higher or lower) even if $5.0 million in credits were preapproved each year.

Date Completed: 12-3-20 Fiscal Analyst: David Zin