

Michigan Office of Administrative Hearings and Rules

Administrative Rules Division (ARD)

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**REGULATORY IMPACT STATEMENT
and COST-BENEFIT ANALYSIS (RIS)**

Agency Information:

Department name:

Labor and Economic Opportunity

Bureau name:

Michigan Strategic Fund

Name of person filling out RIS:

Robbert McKay

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Rule Set Information:

ARD assigned rule set number:

2021-82 LE

Title of proposed rule set:

Historic Tax Credit Certification

Comparison of Rule(s) to Federal/State/Association Standard

1. Compare the proposed rules to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.

There are no federal rules or standards that are set by a state or national licensing agency or accreditation association.

A. Are these rules required by state law or federal mandate?

The proposed rules are not required by federal law. The proposed rules are not mandated, but provide the Michigan Strategic Fund through its State Historic Preservation Office (the "agency") with the discretion to promulgate the proposed rules pursuant to the Income Tax Act, Act 281 of 1967; specifically, MCL 206.266a(13) and MCL 206.676 (13) enacted pursuant to Act 343 of 2020.

B. If these rules exceed a federal standard, please identify the federal standard or citation, describe why it is necessary that the proposed rules exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

The proposed rules do not exceed any federal standards.

2. Compare the proposed rules to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

There are no standards in similarly situated states to compare the proposed rules to.

A. If the rules exceed standards in those states, please explain why and specify the costs and benefits arising out of the deviation.

These rules do not exceed standards in other states because there are no standards in similarly situated states to compare the proposed rules to.

3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rules.

There are no other laws, rules, or other legal requirements that duplicate, overlap, or conflict with the proposed rules.

A. Explain how the rules have been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

No coordination or action is required to avoid or minimize duplication.

4. If MCL 24.232(8) applies and the proposed rules are more stringent than the applicable federally mandated standard, provide a statement of specific facts that establish the clear and convincing need to adopt the more stringent rules.

MCL 24.232(8) does not apply to the proposed rules because there is no applicable federally mandated standard.

5. If MCL 24.232(9) applies and the proposed rules are more stringent than the applicable federal standard, provide either the Michigan statute that specifically authorizes the more stringent rules OR a statement of the specific facts that establish the clear and convincing need to adopt the more stringent rules.

There is no federal standard applicable here and as such MCL 24.232(9) does not apply to the proposed rules because there is no applicable federally mandated standard.

Purpose and Objectives of the Rule(s)

6. Identify the behavior and frequency of behavior that the proposed rules are designed to alter.

The proposed rules are designed to mandate compliance with the act.

A. Estimate the change in the frequency of the targeted behavior expected from the proposed rules.

There is no expected change in frequency of the targeted behavior except that the Michigan Historic Tax Credit (the "tax credit") will be available to owners of historic properties.

B. Describe the difference between current behavior/practice and desired behavior/practice.

The proposed rules allow for the collection of application materials, establish a review fee structure, define the priority numbering system to be used, create an appeals process, and establish a property transfer protocol to support the operation of the new state historic tax credit program. Currently there is no state level historic tax credit program. The difference between the prior behavior and the current behavior is that the tax credit will now be available to owners of historic properties.

C. What is the desired outcome?

The desired outcome of promulgating the proposed rules is to administer, regulate, and provide for the enforcement of the tax credit. Additionally, the agency's goal is for the proposed rules to create a program framework which encourages private investment in the rehabilitation of Michigan's recognized historic resources.

7. Identify the harm resulting from the behavior that the proposed rules are designed to alter and the likelihood that the harm will occur in the absence of the rule.

Without the promulgation of the proposed rules, the public will not be able to make use of the tax credit.

A. What is the rationale for changing the rules instead of leaving them as currently written?

As the tax credit program is new to Michigan, there are currently no rules.

8. Describe how the proposed rules protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

These rules do not address a public health, safety, or welfare issue and are intended to accommodate the operation of the tax credit program.

9. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

As the tax credit program is new to Michigan, there are currently no rules.

Fiscal Impact on the Agency

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, higher contract costs, programming costs, changes in reimbursements rates, etc. over and above what is currently expended for that function. It does not include more intangible costs for benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

10. Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings for the agency promulgating the rule).

There is a minimal fiscal impact to the agency and it will seek to offset any tax credit program operational costs through the collection of review fees from each application submitted.

11. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rules.

The MSF has factored staff, operational, and promotional costs of the program into its future budgets. There are no new or additional appropriations needed because of the minimal fiscal impact.

12. Describe how the proposed rules are necessary and suitable to accomplish their purpose, in relationship to the burden(s) the rules place on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.

The proposed rules are necessary to administer, regulate, and provide for the enforcement of the tax credit. The costs of the program will ultimately be born directly by the participants in the tax credit program (i.e., those qualified taxpayers receiving state income tax credits to defer the cost of rehabilitating the historic resources within their direct control) through the proposed fee structure.

A. Despite the identified burden(s), identify how the requirements in the rules are still needed and reasonable compared to the burdens.

The burdens and fees imposed by the proposed rules are directly associated with the voluntary participation of the owners of historic properties in the tax credit program. The benefits of the tax credit received outweigh any burdens of the proposed rules.

Impact on Other State or Local Governmental Units

13. Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

The proposed rules do not impact state or local government revenues or costs.

14. Discuss any program, service, duty, or responsibility imposed upon any city, county, town, village, or school district by the rules.

The proposed rules do not impose any duty or responsibilities on any city, town, village, or school district.

A. Describe any actions that governmental units must take to be in compliance with the rules. This section should include items such as record keeping and reporting requirements or changing operational practices.

The proposed rules do not require any additional or new responsibilities on behalf of governmental units to be in compliance with the proposed rules.

15. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rules.

Neither legislation nor the proposed rules do not require any additional funds for state or local governmental units.

Rural Impact

16. In general, what impact will the rules have on rural areas?

The proposed rules will apply throughout Michigan. As such, the proposed rules will affect rural areas to the extent designated historic properties are located there.

A. Describe the types of public or private interests in rural areas that will be affected by the rules.

The rules will allow historic property owners who wish to participate in the new tax credit program the framework to apply for the credits. The proposed rules do not have any impact on public or private interest in rural areas.

Environmental Impact

17. Do the proposed rules have any impact on the environment? If yes, please explain.

The proposed rules focus on historic preservation and have little, if any, impact on the environment.

Small Business Impact Statement

18. Describe whether and how the agency considered exempting small businesses from the proposed rules.

The agency did not consider exempting small businesses from the proposed rules.

19. If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rules on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rules upon small businesses as described below (in accordance with MCL 24.240(1)(a-d)), or (b) the reasons such a reduction was not lawful or feasible.

Small businesses are not anticipated to be adversely affected by the proposed rules.

A. Identify and estimate the number of small businesses affected by the proposed rules and the probable effect on small businesses.

Based on the size of the tax credit program, and the limit on the total amount of credit available to small projects, the agency estimates that somewhere between 4 and 20 projects will receive credits annually. As such, the agency does not expect small businesses to be affected by the proposed rules.

B. Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rules after projecting the required reporting, record-keeping, and other administrative costs.

The agency has not established differing compliance or reporting requirements for small businesses.

C. Describe how the agency consolidated or simplified the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.

The compliance and reporting requirements are the same for all applicants.

D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.

The agency, through the proposed rules, did not establish performance standards to replace design or operation standards.

20. Identify any disproportionate impact the proposed rules may have on small businesses because of their size or geographic location.

The proposed rules have no disproportionate impacts on small businesses because of their size or geographic location.

21. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rules.

All applicants, as part of their application, are required to provide (a) the total cost of the rehabilitation, (b) the total qualified rehabilitation expenditures, (c) the start and end dates of their project, (d) labor hours generated, (e) jobs added, (f) payroll added, (g) the increase in property value, and (h) the sales and income taxes generated as they relate to their project. The cost of providing this information is de minimis in nature as it is all basic business data that is tracked as a part of fundamental business operations and rehabilitation projects.

22. Analyze the costs of compliance for all small businesses affected by the proposed rules, including costs of equipment, supplies, labor, and increased administrative costs.

Small businesses are not expected to be affected by the proposed rules.

23. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules.

There are no legal, consulting, or accounting service costs that small businesses would incur in complying with the proposed rules.

24. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

There are no additional costs or harm anticipated with the proposed rules.

25. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

The proposed rules do not exempt or set lesser standards for compliance by small businesses.

26. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

The intent of the legislation would not be met by exempting or establishing lesser standards of compliance for small businesses.

27. Describe whether and how the agency has involved small businesses in the development of the proposed rules.

No small businesses were directly involved in the development of the proposed rules.

A. If small businesses were involved in the development of the rules, please identify the business(es).

No small businesses were directly involved in the development of the proposed rules.

Cost-Benefit Analysis of Rules (independent of statutory impact)

28. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.

The tax credit is new to Michigan and, therefore, estimates of statewide compliance costs are unknown. However, the agency estimates that any costs incurred by a participating business or group would be minimal when compared to the tax credit received.

A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rules.

Only those businesses or groups that voluntarily choose to participate in the tax credit program will be subject to the costs associated with the proposed rules or receive the benefits (i.e. income tax credits) of the tax credit program.

B. What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

The proposed rules will not add any additional costs on businesses and other groups.

29. Estimate the actual statewide compliance costs of the proposed rules on individuals (regulated individuals or the public). Include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping.

The proposed rules will not result in statewide compliance costs on businesses or groups.

A. How many and what category of individuals will be affected by the rules?

Only those individuals electing to participate in the tax credit program will be affected by the proposed rules.

B. What qualitative and quantitative impact do the proposed changes in rules have on these individuals?

The proposed rules will have no qualitative or quantitative impact on individuals.

30. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.

There are no cost reductions to businesses, groups of individuals, or governmental units as a result of the proposed rules.

31. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rules. Please provide both quantitative and qualitative information, as well as your assumptions.

The agency drafted the proposed rules to ensure that the tax credit program aligns with the requirements of the act.

32. Explain how the proposed rules will impact business growth and job creation (or elimination) in Michigan.

No measurable business growth or job creation is anticipated as a result of the proposed rules.

33. Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

The agency does not anticipate any disproportional effects associated with the proposed rules.

34. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of the proposed rules and a cost-benefit analysis of the proposed rules.

The regulatory impact statement is based on the agency's experience in administering the original state historic tax credit program from 1999-2011 and the 2001 Michigan Historic Preservation Network economic impact study of the previous program.

A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., that demonstrate a need for the proposed rules.

All estimates are based on in-house project data for the previous state tax credit program and the 2001 Michigan Historic Preservation Network economic impact study of the previous program.

Alternative to Regulation

35. Identify any reasonable alternatives to the proposed rules that would achieve the same or similar goals.

There are no reasonable alternatives to the rules that have been identified.

A. Please include any statutory amendments that may be necessary to achieve such alternatives.

There are no reasonable alternatives to the rules that have been identified.

36. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

There is no private market-based mechanism in Michigan or any other state that reviews or awards state or federal historic tax credits. Under federal law, the State Historic Preservation Office is charged with promoting the identification, designation, protection and rehabilitation of historic resources throughout the State.

37. Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rules. This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

There are no viable alternatives because the legislation stipulates that the SHPO is responsible for administering the review, award, and final approval processes relating to the tax credit.

Additional Information

38. As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.

There are no specific instructions or methods for complying with the rules.