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STATE OF MICHIGAN  
MICHIGAN STRATEGIC FUND  
STATE HISTORIC PRESERVATION OFFICE

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## State Historic Tax Credit Program

### Draft Rules Public Comments Received August 26, 2021

The State Historic Preservation Office (SHPO) would like to thank all of those organizations and individuals who took the time to review the draft rules document dated April 29, 2021. The comments received were both insightful and informative. In many instances they prompted lively discussion of the program, the draft rules and the proposed review process. In a number of instances these comments did prompt revision in the draft rules. The following is a complete listing of all comments received followed by a response to each. Where possible, similar or duplicative comments have been grouped and a single response given.

The revised draft rules (dated August 13, 2021) have been submitted to the Michigan Office of Administrative Hearings and Rules (MOAHR) for formal review and are available on the SHPO website. Once the revised draft rules are accepted by MOAHR, the SHPO will schedule and conduct a Public Hearing regarding the revised rules. Notice of the time and location of the Public Hearing will be posted in accordance with Administrative Procedures Act, the Open Meetings Act and on the SHPO website and social media sites.

Comment:

**Should the Part 1 fee exception apply to individually listed, therefore certified, historic properties?**

Response:

This possibility was considered. In the interest of program equity and because the legislation did not differentiate between types of certified historic resources, we elected to require all State applicants to submit all three parts of the application. Creating an advantage for a small number of the total eligible properties throughout the state is inappropriate.

Comment:

**Part 1 should be waived for applicants who have previously taken advantage of tax credits and have had a home previously certified.**

Response:

Because there is no way to ensure that inappropriate work or changes have not been made to a resource that previously received credits, exempting these applicants from Part 1 is not practical. Each Part 1 application establishes the baseline condition of the property against which the completed rehabilitation is to be assessed.



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Comment:

**If the tax credit is intended to be for the exterior of the house, then it would seem that pictures of the interior of a house should not be necessary for Part 1.**

Response:

Tax credits are available for all work done to and within the historic resource as documented by the Part 1 application. Because all work (interior and exterior) is potentially creditable, SHPO staff must have a full understanding of the condition and character of the resource as a whole.

Comment:

**There seems to be a requirement that the state Part 1 application must be approved before the applicant can submit a Part 2 application. This will potentially create over an 8-month review period before an applicant can start work on a project, and in reality, will be 9 to 10 months for mail to be exchanged.**

Response:

The rules do state that the Part 1 application must be approved before Part 2 may be submitted. From a program perspective, there is in fact an advantage to requiring that the parts of the application be submitted in sequence and only after the preceding part or parts are approved. Receiving Part 1 and 2 applications at the same time for a project that does not qualify to participate in the program is inefficient from both the applicant's and the SHPO's perspective.

The 120-day review timeline is specified in program legislation. The rules cannot alter program provisions that are specifically addressed in the legislation. SHPO will make every effort to review applications more quickly.

Comments:

**Can you clarify what the Part 2 and Part 3 application percentage fee is based on? For an owner-occupied residence, the Rules state that the fee is \$100 for a project with rehabilitation expenditures less than \$20,000 and 2% of the credit reservation if the rehabilitation expenditures are greater than \$20,000. So for an example \$39,000 project, would the fee be \$780 (2% of \$39,000), or \$195 (2% of the calculated credit amount or credit reservation, which is 25% of the rehabilitation expenditures)? Clearly, the comment I received about the amount of the fees was based on the rehabilitation expenditure and not the credit reservation. We might want to add "credit reservation" to the definitions.**

**The part 2 and part 3 fees appear to be unfair for residential property owners. According to R 206.208 (4), qualified expenses under \$20,000 result in a \$100 fee. But above \$20,000, the fee is 2%. That means that if a project costs \$20,001, the fee jumps from \$100 to over \$400 for part 1 and part 2. If the project costs \$30,000, the fee will jump to \$600. In contrast, the fees for other properties for projects up to \$40,000 are \$200. As a result, for a \$30,000 residential project, the fees appear to \$50 + \$600 + \$600 or \$1250. Whereas for**

**commercial properties, the fees appear to \$100 + \$200 + \$200 or \$500. That discrepancy does not seem fair. Also, assuming a 25% tax credit for residential properties, the \$1250 fee for a \$7500 credit means the fee eats up 16.7% of the credit. This exorbitant fee is unfair and should be reduced.**

**Rule 206.208 Fees**

**The fees ranging with so many different percentages based on expenses are very difficult to follow. I read this section over repeatedly. The fees schedule needs to be more simplified.**

Response:

The fees are intended to cover the costs of operating the program. They are based on reasonable staff billing rates and are directly related to the benefit (i.e. anticipated tax credit) received by the applicant.

Part 1 fees are based on assumed fixed review times and associated staff cost.

Part 2 application must include the project's estimated Qualified Rehabilitation Expenses (QREs) upon which they will then calculate the anticipated credit. Above the break point the fee is 2% of the anticipated credit for projects. Similar logic applies to Part 3.

More specifically, Part 2 and 3 review fees are based on fixed review costs plus a percentage of the anticipated or actual credit rather than QRE directly. Fees beyond the fixed base are 2% of the anticipated credits (Part 2) or 2% of the actual credits (Part 3). Fixed review times for owner occupied residential projects are assumed to be approximately half of those for commercial projects. The point where projects begin to calculate fees (\$20,000 owner occupied residential and \$40,000 commercial respectively) are the points where the assumed fixed cost equal 2% of the associated credits.

Comment:

**Revise the proposed fee structure for owner-occupied residential properties pending public comments from large municipalities such as Detroit, Flint, Pontiac, Saginaw, etc. Recommend reducing to \$50 per application, regardless of anticipated qualified expenses.**

Response:

The fees are intended to cover the costs of operating the program. They are based on reasonable staff billing rates and are directly related to the benefit (i.e. anticipated tax credit) received by the applicant.

Comment:

**Application fees – how will applicants know what fee to pay for the Part 2 application if they do not know how much their credit reservation is? The rules may need to clarify when the Part 2 and 3 fees will be requested.**

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Response:

Part 2 application must include the project's estimated QREs upon which they will then calculate the anticipated credit. The base review fee is the fixed fee outlined above. Above the break point the fee is 2% of the anticipated credit for projects. Similar logic applies to Part 3. The Part 3 application must provide the final QREs incurred by the project. The fee will be the fixed base or, where final QREs are above the break point, 2% of the expected final credit. In no case shall the Part 3 fee exceed 2% of the actual credits awarded to the project.

Comment:

**Recommend inserting specific language that bars individual property owners from receiving simultaneous tax credits for multiple projects at different locations.**

Response:

Because the legislation stipulates that the credits are to be awarded on a first come first-served basis, we cannot add this provision to the rules. We have restricted an owner to one open Part 2 application per property.

Comment:

**Recommend specifying the photograph quality that will be accepted as part of the application(s) rather than current "deemed sufficient" language.**

Response:

The phrase "deemed sufficient" relates to both the quality and quantity of photos submitted with an application. We will work to define the physical parameters of acceptable photos (for electronic images: minimum resolution, maximum file size, file format, naming conventions, minimum print size), and will include these in the application instructions. To ensure that these standards remain up to date and flexible these details will be included in supplemental program guidance.

Comments:

**Will applications be able to be submitted directly via the SHPO website? Otherwise, recommend specifying how applications will be submitted (i.e. whether or not it will be permissible to submit electronically or only by mail).**

**Signatures – the rules do not specify whether electronic or scanned signatures will be accepted from applicants and/or municipalities filling out the declaration or other forms.**

Response:

State tax credit applications will only be accepted through an online portal. Applicants will provide a combination of direct entry project data, uploaded supporting documentation, a secured electronic signature and electronic remitted required fees.

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Comments:

**Recommend shortening the Part 1 Application (certification of historic significance) timeline for review to 60 days of receipt of complete application. The current 120 days (i.e. 4 months) might have the unintended consequence of delaying successful applications beyond the calendar year.**

**Please specify the deadline to issue the certification letter after a complete Part 2 Application is submitted to the SHPO. Recommend 60 days.**

**Notification of approval for Parts 1 and 2 must be made within 120 days for each part. That means it could take as long as 8 months to get approved. We hope the actual timeline will be much shorter than that. We intend to paint our house, but it is now taking up to a year to schedule a job from a quality painter. The 8-month timeline creates some uncertainty about scheduling a project.**

**Rule 206.204 (5) historic significance (Within 120 days of its receipt)**

**I feel 120 days is slow process to determine if the property is eligible with a certification of historic significance. The eligibility for the credits fall under three:**

- 1. A property must be listed in the National Register of Historic Places,**
- 2. Or the State Register of Historic Sites,**
- 3. or be in a local historic district, and either be individually listed or contribute to a listed district in order to be eligible for the Program.**

**That should not take four months to determine any of those three qualifiers.**

Response:

The 120-day review timeline is specified in program legislation. The rules cannot alter program provisions that are specifically addressed in the legislation. SHPO will make every effort to review applications more quickly.

Comment:

**206.201**

**(2) – PA 343 refers to the approval of the rehabilitation plan as a “preapproval letter.” Therefore, we suggest that item 2 be, “preapproval letter for a rehabilitation plan.”**

**(3) – The taxpayer is not requesting a “completed rehabilitation” but a “certificate of completed rehabilitation” as defined in PA 343.**

Response:

The items in 1, 2, and 3 in this paragraph are descriptions of what is being requested not the names of the document being submitted or the resulting document provided by the SHPO.

Comment:

**206.203**

**While a “long-term lease” is defined in Section 16 of PA 343, it might be helpful to include a definition either in this section or in Section 206.202 of these rules.**

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Response:

The rules intentionally do not restate any of the definitions already included in the legislation. We will use the definition of this term as stated in the legislation.

Comment:

**206.204**

**(1) – Can the NPS Part 1 not serve as a substitute Part 1 when an applicant seeks both a federal and state credit? Is there a reason to require an applicant to cut and paste from one into another? Maybe a short State cover sheet referring to the Federal application is appropriate. (Obviously, an online state form may make this mandatory if the form is not an attachment.)**

Response:

Because all State applications and supporting materials will need to be submitted via the online portal, accepting Federal application materials in lieu of corresponding State materials will not be possible.

Comment:

**206.204**

**(2) - Items (f) & (g) seem unnecessary. Can an applicant not simply be asked to upload the NR or SR nomination or the local study committee report? I assume that the SHPO will want to see the official document and if so, repeating the information does not seem to be needed.**

Response:

These items would be redundant if they were included in every National Register of Historic Places nomination, State Register of Historic Sites nomination and Local Historic District study committee report. Unfortunately, in the majority of cases, they are not discussed. In many instances older nominations do not even include a complete listing of all contributing and non-contributing properties in the district.

The verification of location form is required because the SHPO does not have a comprehensive list of locally designated historic districts, nor do we have copies of the final Study Committee reports. As a result, the only way to verify that a property is located in and contributes to a locally designated district is to have knowledgeable local staff attest to that fact.

Comment:

**206.205**

**(1) - To conform to the language of PA 343, this title should be “preapproval letter” instead of “certification.”**

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Response:

The word “Certification” in the heading of this section refers to the action being guided, not the name of the response document created.

Comment:

**206.205**

**(1) – Can the NPS Part 2 not serve as a substitute Part 2 when an applicant seeks both a federal and state credit? Is there a reason to require an applicant to cut and paste from one into another? Maybe a short State cover sheet referring to the Federal application is appropriate. (Obviously, an online state form may make this mandatory if the form is not an attachment.)**

Public Response:

Because all State applications and supporting materials will need to be submitted via an online portal, accepting Federal application materials in lieu of corresponding State materials will not be possible.

***Please Note:** The next two comments appear to refer to the State Equalized Value (SEV) of the property. SEQ appears to be a typo.*

**206.205**

**(1) – In the last sentence, “if appropriate” for SEQ provides no direction; maybe the rule should state something such as “except for single-family residential properties or properties exempt from SEQ valuation.”**

Response:

The legislation stipulates which properties are subject to the SEV expenditure test thus the requirement is not restated here. The application instructions will clarify under what circumstances the SEV verification form is required.

Comment:

**206.205**

**(2) (b) – The SEQ item should state something such as “except for single-family residential properties or properties exempt from SEQ valuation.”**

Response:

The legislation stipulates which properties are subject to the SEV expenditure test thus the requirement is not restated here. The application instructions will clarify under what circumstances the SEV verification form is required.

Comment:

**206.205**

**(2) – The list of items does not include “plans and construction documents for the project” itself. That information is likely required as part of the application, yet it seems that noting this will be important for an applicant.**

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Response:

The requirement for rehabilitation plans and specifications in addition to other plans and specification as may be appropriate has been clarified.

Comment:

**206.205**

**(4) – To be consistent with PA 343, in the second sentence, “credit reservation letter,” should be “preapproval letter.”**

Response:

The language in the rule has been revised to reflect the nomenclature used in the legislation.

Comment

**206.206**

**(1) Section 3 of PA 343 seems clear. Only three things can be taken into consideration when reserving tax credits – 1. Qualification of property; 2. Completeness of Application; 3. Order in which the application was received. Additional “factors” appear to run afoul of the new law.**

Response:

The language that was inconsistent with the provisions of the legislation has been removed.

Comment

**206.206**

**“Credit Reservation Letter” should be revised to “preapproval letter” throughout this section.**

Response:

The language in the rule has been revised to reflect the nomenclature used in the legislation.

Comment:

**Rule 206.206 (2) a and b - credit reservation policy**

- **Posting when the applications have reached a full limit on the SHPO website it a good plan.**
- **Assigning a priority project number for all remaining applications is a fair system.**

Response:

None required



Comment:

**206.207**

**(1) - Can the NPS Part 3 not serve as a substitute Part 3 when an applicant seeks both a federal and state credit? Is there a reason to require an applicant to cut and paste from one into another? Maybe a short State cover sheet referring to the Federal application is appropriate. (Obviously, an online state form may make this mandatory if the form is not an attachment.)**

Response:

Because all State applications and supporting materials will need to be submitted via an online portal, accepting Federal application materials in lieu of corresponding State materials will not be possible.

Comment:

**206.207**

**(1) – In the second sentence, “Part 2” should be “Part 3.”**

**On page 5 in paragraph Rule 207. (1) there is a typo on the 4th line down – this should read “and also file a state part 3 application,” It currently reads “state part 2 application,”**

Response:

The error has been corrected.

Comment:

**206.207**

**(6) – “Credit Reservation Letter” should be “preapproval letter.”**

Response:

The language in the rule has been revised to reflect the nomenclature used in the legislation.

Comment:

**206.207**

**(6) – While not issuing an amount of credit in excess of the preapproval is true, Section 4 of PA 343 allows for a process to request the additional credit IF funds are available. While funds are not likely to be available when the cap is \$5 million, they may be if the cap is raised in the future. The process to request the excess credits must be addressed in the rules.**

Response:

When filing a Part 3 application an applicant may request additional credit in excess of the amount stated in the preapproval letter. Requests for additional credit in excess of the amount stated in the preapproval letter will be treated as new credit requests and added to the end of the priority approval list. Before the end of the calendar year in which the Part 3 application was received, the SHPO may a) approve the request for additional credits if

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any are available or b) approve the application limiting the credits to the maximum established by the associated preapproval letter.

Comment:

**206.210**

**‘(4) – “Fund Manager” needs to be defined here or added to Section 206.202. We have no idea who this is.**

Response:

This provision has been removed and the rule rewritten.

Comment:

**206.211**

**‘(1) – Is there really a reason a 6-month lead time before transferring a property is necessary? We realize a number of items must be prepared for the transfer, but 6-months seems excessive.**

Response:

Because the provision involves creating a state contract, six months’ notice is necessary.

Comment:

**Timing of Designation**

**The historic designation requirements are found in Sections (3) and (6) of PA 343. Section (3) requires designation, “upon completion of the rehabilitation plan for which a preapproval letter was issued.” Section (6) states that the designation must exist, “during the tax year in which a credit under this section is claimed.” Therefore, technically, official designation is not required until the earlier of these two activities occurs which is submission of the request for a certificate of completed rehabilitation as defined in Section 3. Therefore, Part 1 & Part 2 submissions can proceed based on a determination of eligibility and not an official designation. This distinction is important as it allows an owner to pursue both the designation and the rehabilitation simultaneously instead of in a linear fashion. Working on both simultaneously is important for an owner with a strong need for cash flow as it shortens the timeline considerably. This ability can be especially important for a single building owner on a small town Main Street. This opportunity may be why (f) and (g) are required in Section 206.204 of the rules, but if so, it should be clarified. If not, the ability to proceed with a Determination of Eligibility and the requirement designation be attained by project completion should be added to the rules.**

Response:

The SHPO will accept Part 1 applications seeking approval on the basis of a preliminary determination of National Register (NR) eligibility by the SHPO National Register Coordinator. Properties that received a preliminary determination of NR eligibility must complete the NR listing process before the associated Part 3 application may be

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submitted. Completing the NR listing process does not extend the eight-year window from issuance of the preapproval letter in which the project must complete work. Nor does it increase the nine-year window in which the Part 3 application must be submitted.

Part 1 applications seeking preliminary determinations of eligibility based on potential eligibility for listing on the State Register of Historic Sites or local district designation will not be accepted.

Comment:

**Work Completed Prior to Submitting a Part 2**

**Whether work completed prior to submitting a part 2 can be included in the QRE for a project is not addressed. If allowed, the rules must address how far back can an applicant go. We know it can't be before 1/1/2021; however, it could be 1 or 2 years but not before 1/1/2021. We'd hate to see an owner not be able to get credit for work done prior to submitting an application if that owner learned about the credit after beginning work. We feel that Michigan's rural or less affluent communities may be affected to a greater extent than others if this is not allowed. While we, as MHPN, would not encourage work before Part 2 approval, we'd not like to discount its eligibility. Whether allowed or not, the rules must state if it is allowed and if so, how far back an owner can reach.**

Response:

Applications for projects with NPS Part 2 approval, work carried out or, that were complete and returned to service before the effective date of the legislation will not be accepted.

An applicant may file a Part 2 application that includes work already completed. The appropriateness of completed work will be assessed and if determined to be acceptable the additional proposed work will be reviewed. In no case may a Part 2 application include work that was complete more than one year before the Part 2 application was submitted. If a Part 2 application including previously completed work is awarded a preapproval letter, the eight year period for completion of the project will be reduced to seven years and the period to submit the Part 3 reduced to eight years or one year after the property is returned to service whichever occurs first.

Comment:

**Secretary of Interior's Standards are "All or Nothing"**

**While we as preservationists know it, we think the rules should explain that the Standards must be followed on the entire project, not just the part for which a person wishes to get a credit. It's important for people to understand it's an "all or nothing" program. Many people not familiar with the program will assume they can submit for the work that meets the Standards, leaving out what does not, and still receive a credit.**

Response:

This is true for the building-related projects reviewed by the SHPO and is how we explain the Standards to applicants and affected projects. We do not believe that it is necessary to add this to the rules.

Comment:

**Time Period for Owner To Submit Part 3 After Project Completion**

**After a Part 2 is approved, an owner has 8 years to complete the project. However, if they complete the project in 2 years, we don't feel they should be allowed to wait another 6 years to submit a part 3. They should have 6 to 9 months after the project is completed to submit the part 3 or lose the credit. One of the biggest concerns of the State Treasury is that the credits will back up and then in one budget year, hit the state budget extremely hard. Having a time period for submission is a factor that can help limit this concern.**

Response:

Part 3 for a project that receives a pre-approval letter shall be filed within nine-years of the date of the pre-approval letter or within one year of when the project is returned to service whichever occurs first.

Comment:

**Functionally Related Structures**

**While it's not an issue while the credit has a low cap, experienced owners may attempt to submit what should be one project as two so they can get under the cap and get twice the credit. For an example, an owner submits two separate applications for a building that has two sections connected by a single corridor. Since a single project can't get more than \$2 million a year, if the cap is raised, we may have that owner attempt to get \$4 million through two applications when they should only get \$2 million.**

**The Colorado Historic Preservation Tax Credit rules and regulations include:**

**Determination for treatment of properties as a single certified historic property or multiple certified historic properties shall be based on federal regulations issued by the National Park Service, Department of the Interior, 36 Code of Federal Regulations § 67.4(e) (effective May 26, 2011) and 36 Code of Federal Regulations § 67.6(b)(4-5) (effective June 27, 2011). The National Park Service Historic Preservation Tax Incentives Program has issued additional guidance to interpret these regulations: "Functionally Related Buildings – Additional Guidance for Multiple-Building Projects." The federal guidance was issued December 2016, revised March 2017.**

Response:

Provisions limiting an owner to one Part 2 application per Property and defining Property have been added.