F I S C A L   I M P A C T   R E P O R T

ORIGINAL DATE 2/08/16
SPONSOR Sanchez, C **LAST UPDATED** ______ **HB** ______

SHORT TITLE Cultural Property Tax Credit Provisions **SB** 199

ANALYST Graeser/Alejandro

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY16	**FY17**	**FY18**	**FY19**	**FY20**		
	($1,350.0)	($1,350.0)	($1,350.0)	($1,350.0)	Recurring	General Fund

(Parenthesis ( ) indicate revenue decreases

The maximum Cultural Property Tax Credits for the combination of personal income tax and corporate income tax is proposed in the bill to be capped at $1.5 million annually. The credits are refundable. An unknown amount of rollover has been allowed, but taxpayers have been unable to apply the credit to current-year liabilities. These rollover amounts, if they exist, would have high priority for the first few years of these capped credit amounts.

SOURCES OF INFORMATION

LFC Files

Responses Received From
Department of Cultural Affairs (DCA)
Economic Development Department (EDD)

SUMMARY

Synopsis of Bill

Senate Bill 199 significantly expands the scope and impact of the Cultural Property Income Tax Credit Act originally enacted in 1984 and amended in 2007. The bill retains the current law provision of a PIT or CIT credit of 50 percent of expenses with a maximum of $25 thousand per project. The bill, however, increases this per-project limit to as much as $285 thousand for properties located within an arts and cultural district, a frontier community or for properties subject to the Main Street Act. The bill allows these earned credits up to a maximum annual cap of $1.5 million (applied to the sum of credits approved for PIT and for CIT) and allows the credits to become refundable rather than the current law provision for which the credits are non-refundable and any amounts in excess of current-year liabilities allowed a four-year rollover feature.

The effective date of the act is not stated – it is assumed 90 days after adjournment, or May 18, 2016. The new cap and enhanced amounts would be effective for projects completed on or after January 1, 2016 with credit claims based on certification by the Cultural Property Preservation

Committee and limited by the annual cap on tax year claims. There is no delayed repeal date. The LFC recommends adding a delayed repeal date.

FISCAL IMPLICATIONS

TRD has recently released the 2015 Tax Expenditure Report. On page 137, the following data are detailed for the Cultural Property Preservation Credit. The report notes that the current version of the credit is non-refundable. Taxpayers must have sufficient state tax liability to cover the credit.

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Expenditure	$235.8	$163.3	$155.1	$158.0	$182.0
Claims	81	68	71	58	58

The recent baseline cost is assumed to be $150 thousand. Thus, the net general fund cost is the maximum $1.5 million minus the current cost.

EDD contends that the revenue impact of the bill will be offset by additional revenues generated by properties that are not currently generating revenue.

This bill may be counter to the LFC tax policy principles of adequacy, efficiency, accountability and equity. Due to the increasing cost of tax expenditures revenues may be insufficient to cover growing recurring appropriations.

Estimating the cost of tax expenditures is difficult. Confidentiality requirements surrounding certain taxpayer information create uncertainty, and analysts must frequently interpret third-party data sources. The statutory criteria for a tax expenditure may be ambiguous, further complicating the initial cost estimate of the expenditure's fiscal impact. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures.

SIGNIFICANT ISSUES

The bill amends the current cultural properties income tax credit statute administered by the Historic Preservation Division of the Department of Cultural Affairs by raising the cap on certain state historic tax credits and allowing a refund of an eligible portion of the credits awarded for a completed rehabilitation, restoration, or preservation of an eligible property listed in the New Mexico Register of Cultural Properties.

Currently, the cap is $25 thousand per approved project outside Arts and Cultural Districts and $50 thousand for projects in Arts & Cultural Districts. The only increase to the cap in the last 30 years was an increase from $25 thousand to $50 thousand in 2007 for projects in Arts and Cultural Districts.

EDD points out that this program is intended to leverage financing for preservation and renovation projects:

> New Mexico MainStreet in the Economic Development Department has been looking for financial tools to utilize for property owners, especially owners of small commercial properties in rural and underserved urban neighborhoods to utilize to support commer-

cial property owners in the restoration and rehabilitation of vacant and/or under-utilized commercial property. In particular, small property owners throughout New Mexico are often cash poor but property rich. The property often does not qualify as security for a loan to address the full rehabilitation of the building.

A refundable state historic tax credit potentially provides private commercial property owners the security lenders require for building rehabilitation work which could provide eligible property owners a way to package a rehabilitation project that otherwise was financially untenable.

The intent of the bill is to stimulate greater private investment in existing historic properties and communities, return under-used historic buildings to productive use, create more commercial spaces for new business enterprises, and generate employment opportunities in communities both large and small throughout the state.

The Historic Preservation Division in the Department of Cultural Affairs has been looking for ways to increase the amount of rehabilitation of listed cultural resources and to provide financial incentives for greater participation in rural and underserved communities throughout the state. In many of those areas property owners lack sufficient state income tax liability to benefit from the existing program, but own many run-down historic properties.

As other states report, having a robust state tax credit program has positive economic effects. In addition to stimulating the local construction industry and local business areas, refundable and transferable state tax credit programs increase the use of the federal historic preservation tax credit that is known to attract investment capital to states and return federal tax dollars to taxpayers in those states.

Known as rural and impoverished, Kentucky has a $5 million annual program cap on refundable/transferable tax credits. The Kentucky Heritage Council/State Historic Preservation Office reported in 2011: “In just six years, Kentucky’s program leveraged $197.1 million in private investment to preserve historic structures and created 4,534 jobs since its enactment in 2005.” Kentucky also reported that $13.6 million in tax credits were awarded in that period and each $1 of credit issued averaged $14.54 in direct economic impact, and “In FY 2010 alone, Kentucky had 27 projects successfully completed that earned a 20 percent federal tax credit with investments totaling $18,223,755.” They pointed out their state credit can be the tipping point that makes projects feasible when federal credits are not enough and it puts under-utilized real estate back on local and state tax rolls.

Minnesota’s program began in 2010, has no annual or per-project caps and is refundable (called a “grant”) and transferable. Their annual report for 2013 states “In the three years of the Minnesota Historic Rehabilitation Tax Credit, the tax credit has generated an estimated $1.1 billion in output in the state’s economy, 7,582 jobs, and $370 million in labor income.” It stated that projects approved for federal tax credits completed in that period also applied for state credits totaling $134.5 million. Using those amounts, the report concluded that, for every state dollar of tax credit or grant (refund) allowed in the past three years, $8.38 in economic activity was generated in Minnesota.

In the National Trust for Historic Preservation’s 2010 report on State Tax Credits for Historic Preservation, 31 state programs were included (there are currently 34 states with tax credit programs) and 48 percent (15 states) had no annual caps. The average cap for the other 16 states was $27.4 million. The caps ranged from $0.7 million to $140 million with only three state caps less than $3 million. The annual cap proposed for New Mexico of $1.5 million is therefore well below average.

PERFORMANCE IMPLICATIONS

Performance objectives for both DCA and EDD might benefit from this proposal.

EDD notes the following performance objectives are implicated:

> There are a number of qualifying areas that must be satisfied for a property to be eligible for state historic tax credits and for the award thereof.
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> - The property has to be on the state registry of historic places
> - The property owner must be interested in restoring the property
> - The property owner will need to file paperwork and project budget and plan with the Cultural Property Review Committee of the Historic Preservation Division
> - The application will need to be reviewed and approved by the Cultural Property Review Committee of the Historic Preservation Division
> - A letter of approval will set the conditions of the state historic tax credit including which elements of the project and their costs are eligible for the credit
> - The Historic Preservation Division will review the project for compliance with award stipulations
> - The property owner will need to complete the work which the Historic Preservation Division will do a final review and approval to ensure compliance
> - Upon that certification the refundable amount that the project qualifies for will be reimbursed to the property owner.
> - Property owners with limited liability may apply for the portion of the tax credit in proportion to their liability.
> - Actual performance impacts may take up to two years from enactment of the bill.
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> Projects requiring larger financing that are eligible for state historic tax credits often partner the tax credit with national historic tax credits and other federal sources of revenue to package a full restoration and rehabilitation project. The Clovis Hotel in Clovis New Mexico is a good example that engaged a variety of tax credits loans and financial, which attracted a private developer who renovated and re-opened the once vacant historic hotel for housing, retail and services.
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> The National Trust for Historic Preservation estimates that for the short term every $1 million in on project rehabilitation, creates 25 construction jobs at an annual salary equivalent of $40,000. Similar job numbers and often higher construction salaries have been reported by the National Park Service, the states of Missouri and New Jersey.
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> Larger revitalization projects in revitalization districts often pair CDBG and EDA funding with State Capital Outlay to ensure needed public infrastructure upgrades run concurrent with commercial property reinvestment.

The LFC tax policy of accountability is met since TRD is required in the bill to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the deduction and other information to determine whether the deduction is meeting its purpose. While neither the historic preservation division nor the Main Street program at EDD are required to assist in the preparation of this report by TRD, it will be in the interest of both agencies to cooperate fully.

ADMINISTRATIVE IMPLICATIONS

Once the refundable state historic tax credit program is adopted the Historic Preservation Division will need to promulgate rules, develop a new application process, and prioritize staff time to oversee the expanded program.

TECHNICAL ISSUES

This bill does not contain a delayed repeal date. The LFC recommends adding a delayed repeal date.

OTHER SUBSTANTIVE ISSUES

34 states have state historic tax credit programs, 6 have refundable tax credit programs with transferability as an option, 23 have transferability where the awardee of a tax credit who does not have a tax burden may sell the tax credit to another entity with a tax burden. The awardee in the transaction of transferability applies the cash directly to the building restoration.

In neighboring states the following have historic tax credit programs to compare with this bill:

Arizona - working on their program for 2015.
Colorado - created in 2014, $10 million cap, fully transferable.
Nebraska - created in 2014, $15 million cap, transferable.
Oklahoma - created in 2005, no cap, transferable.
Texas – created in 2013, no cap, fully transferable.

The following states have refundable state historic tax credits with the potential of transferability;

Iowa – 25 percent tax credit for commercial property, 30 percent for projects in the arts and cultural districts, no project cap, fully transferable
Kentucky – 20 percent credit for all non-residential properties, cap $400 thousand per project, $5 million annual program cap fully refundable or transferable.
Maine – 25 percent tax credit, project cap $5 million no annual cap on program
Minnesota – Created in 2010, 100 percent equal to federal tax credit for commercial property fully refundable or transferable
Ohio – 25 percent tax credit, project cap $5 million, $3 million maximum refundable. $60 million cap annually. Fully transferable or refundable.

States using state historic tax credits usually identify negative economic conditions that need to be mitigated by attracting private sector reinvestment including: census areas of low to moderate income levels, metropolitan redevelopment areas, federal or state designated economic redevelopment and revitalization areas (MainStreet, Frontier, and Arts & Cultural Districts), or scenes of national catastrophe (hurricanes, tornadoes, earthquakes, forest fires).

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to DCA, if this bill is not enacted, the current state historic tax credit will remain an underutilized public tool for economic revitalization.

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