

OFFICE OF HISTORIC PRESERVATION

NOTICE OF PROPOSED RULEMAKING*

The California Office of Historic Preservation (OHP) proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

It is anticipated that the California Tax Credit Allocation Committee (CTCAC) will also adopt proposed regulations to implement their responsibilities under SB451 after considering all comments, objections, and recommendations regarding their proposed action.

PUBLIC HEARING

The OHP has not scheduled a public hearing on this proposed action. However, OHP will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the OHP. Submit comments by email to info.calshpo@parks.ca.gov or by FAX to (916) 445-7053. The written comment period closes **on 6/20/23**. OHP will consider only comments received at the OHP office by that time. Comments may also be mailed in writing to:

California Office of Historic Preservation
Attn: Aubrie Morlet
1725 23rd Street, Suite 100
Sacramento, CA 95816

AUTHORITY AND REFERENCE

Authority Citation

Revenue and Taxation Code sections 38.10, 17053.91, and Section 23691 authorize OHP to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific Sections 38.10, 17053.91, and 23691 of the Revenue and Taxation Code, relating to taxation.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This rulemaking action clarifies and makes specific the OHP requirements for obtaining/qualifying for personal income tax credits and corporation tax credits for the rehabilitation of certified historic structures.

Senate Bill 451, Chapter 703 added and repealed Sections 38.10, 17053.91, and 23691 of the Revenue and Taxation Code, relating to taxation, regarding personal income and corporation taxes, credits, and the rehabilitation of certified historic structures.

Sections SEC.3.17053.91(g) and SEC.4.23691(g) authorizes OHP to adopt regulations to implement the requirements of these sections within the bill, establish a written application in coordination with the California Tax Credit Allocation Committee (CTCAC), establish a process to determine that an applicant meets the requirements of these sections and to ensure that the rehabilitation project meets the Secretary of the Interior's Standards for Rehabilitation, and establish a process to approve or reject all tax credit allocation applications. (Sen. Bill No. 451 (legislative session year Reg. Sess.) section #

The regulations proposed in this rulemaking action would specify the procedures required to obtain a 20% or 25% tax credit of qualified rehabilitation expenditures if the structure meets specified criteria, for rehabilitation of a certified historic structure or a qualified residence.

Sections SEC.3.17053.91(h) and SEC.4.23691(h) authorizes CTCAC to establish a process jointly with OHP to implement the provisions of these sections of the bill, allocate on a first-come-first-served basis an aggregate amount of the credit and allocate any carryover of unallocated credits from prior years, certify tax credits allocated to taxpayers, provide the Franchise Tax Board an annual list of taxpayers that were allocated a credit including each taxpayer's taxpayer identification number and the amount allocated to each taxpayer, and establish procedures for the recapture of amounts allocated for a tax credit allowed to a taxpayer for the rehabilitation of a qualified residence if the taxpayer does not used the qualified residence as their principal residence within two years after rehabilitation of the residence.

Tax and Revenue Code Section 38.10 authorizes the Legislative Analyst to collaborate with the California Tax Credit Allocation Committee and the Office of Historic Preservation to review the effectiveness of the tax credits allowed by Sections 17053.91 and 23691.

Anticipated Benefits of the Proposed Regulations:

The broad objective of the legislation is to leverage dollars in private investment enabled by allocation of the credits, create construction jobs as a result of this investment, create long-term jobs associated with the use of rehabilitated historic

buildings, and stimulate economic activity associated with the rehabilitation of historic buildings facilitated by the credits.

The specific benefits from the legislation are a 20% or a 25% personal income tax or corporate tax credit for the certified rehabilitation of a certified historic structure or a qualified residence.

These regulations do not create or expand any benefits beyond those already offered by the legislation that created this tax credit program.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

After conducting a review for any regulations that would relate to or affect this area, the OHP has concluded that these are the only regulations that concern the procedures required to obtain a 20% or 25% tax credit of qualified rehabilitation expenditures if the structure meets specified criteria, for rehabilitation of a certified historic structure or a qualified residence in California. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

Documents Relied Upon in Preparing Regulations

- Code of Federal Regulations, Title 36 Part 67: Historic Preservation Certifications under the Internal Revenue Code, last updated May 26, 2011: [36cfr67.pdf](#) ([nps.gov](#)).

DISCLOSURES REGARDING THE PROPOSED ACTION

The OHP has made the following initial determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: Staffing and program costs will be incurred by the OHP.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the state: None.
- Cost impacts on a representative private person or business:
 - As a voluntary program, businesses and individuals are not required to comply with the program regulations or requirements or incur any costs if they do not submit an application applying for the tax credit program.

- SB451 cites that the OHP (and the CTCAC) may charge a reasonable fee in an amount that does not exceed the reasonable costs incurred by fulfilling its responsibilities under SB451.
- OHP proposes that fees be established on a sliding scale based on the proposed cost of the rehabilitation of a certified historic structure and be capped at \$6,000 for income-producing projects and \$1,250 for qualified residence projects.

Results of the Economic Impact Analysis/Assessment

Beyond the fees to apply for the program, these regulations do not create any costs or benefits. Based on the legislation that created the tax credit program, however, the OHP concludes that it is: (1) unlikely that the program will eliminate any jobs within the state, (2) likely that the program will create an unknown number of jobs before, during, and after projects under this regulation, (3) likely that the program will create an unknown number of new businesses providing consultant and construction services for tax credit applicants, (4) unlikely that the program will eliminate any existing businesses, and (5) likely that the program will result in the expansion of businesses currently doing business within the state.

This tax credit program benefits the health and welfare of California residents by providing a financial incentive for reinvestment and reuse of historic properties that represent California's diverse cultural inheritance. Reuse of existing buildings also lowers greenhouse gas production associated with the procurement and transportation of materials for new construction, potentially having a positive impact on the state's environment. Historic preservation tax incentives generate jobs, enhance property values, create affordable housing, and augment revenue for federal, state, and local governments. There is no anticipated benefit to worker safety.

Significant Statewide adverse economic impact directly affecting businesses and individuals: None.

Significant effect on housing costs: None.

Applicant Reporting Requirement

Under the legislation that created this program, all applicants must submit a summary of the expected economic benefits of the project. The economic benefits shall include, but are not limited to, all of the following:

- A) Number of jobs created by the rehabilitation project, both during and after the rehabilitation of the structure.
- B) The expected increase in state and local tax revenues derived from the rehabilitation project, including those from increase wages and property taxes.

- C) Any additional incentives or contributions included in the rehabilitation project from federal, state, or local governments.
- D) Any public benefit(s) resulting from qualified rehabilitation expenditures of a qualified residence.

Section 38.10 requires that the Legislative Analyst collaborate on an annual basis with the CTCAC and OHP to review the effectiveness of the tax credits allowed by Sections 17053.91 and 23691. The review shall include, but is not limited to, an analysis of the demand for the tax credit, the types and uses of projects receiving the tax credit, the jobs created by the use of the tax credits, and the economic impact of the tax credits.

Small Business Determination:

The OHP has determined there are no cost impacts on small businesses. Federal tax credit program history has shown that small businesses benefit by the tax credit program at both the federal and state level. Many of the tax credits go to entities that utilize small businesses when they purchase goods and services or lease space to small businesses.

The proposed regulation may also positively affect small businesses in the rehabilitation of a certified historic structure under their ownership. Small business owners of certified historic structures may benefit by an eight million dollar (\$8,000,000) set aside for taxpayers with qualified rehabilitation expenditures of less than one million dollars (\$1,000,000).

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the OHP must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of OHP would be more effective in carrying out the purpose of which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The OHP invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSON(S)

Inquiries or comments concerning the proposed rulemaking action may be directed to:

Aubrie Morlet
California Office of Historic Preservation
1725 23rd Street, Suite 100
Sacramento, CA 95816

(916) 445-7000
info.calshpo@parks.ca.gov

The backup contact person for these inquiries is:

Mark Huck, Restoration Architect
California Office of Historic Preservation
1725 23rd Street, Suite 100
Sacramento, CA 95816
(916) 445-7000
info.calshpo@parks.ca.gov

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to the contact at the above address or access these documents at https://ohp.parks.ca.gov/?page_id=27495.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

OHP will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address and on the OHP website at https://ohp.parks.ca.gov/?page_id=27495. As of the date this Notice of Proposed Rulemaking is published in the Notice Register, the rulemaking file consists of this Notice of Proposed Rulemaking, the express terms of the regulation, the Initial Statement of Reasons, any information upon which the proposed rulemaking is based, and an economic impact assessment contained in the Initial Statement of Reasons.

Copies may be obtained by contacting the above contact person at the address or phone number listed above. Copies are also available through the OHP website at https://ohp.parks.ca.gov/?page_id=27495.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing, if requested by any member of the public, and considering all timely and relevant comments received, the OHP may adopt the proposed regulations substantially as described in this Notice of Proposed Rulemaking. If the OHP makes substantive modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the OHP adopts the regulations as revised. The OHP will accept written comments on the modified regulations for 15 days after the date on which they are made available.

Please send requests for copies of any modified regulations to the attention of the contact indicated above.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon completion, copies of the Final Statement of Reasons may be obtained by contacting Aubrie Morlet, at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of this Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout are available through the OHP website at https://ohp.parks.ca.gov/?page_id=27495.

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