

1 HB345
2 186323-3
3 By Representatives Gaston, Faulkner, Buskey, Garrett,
4 Drummond, Clarke, McMillan, Shiver, Ingram, Greer, Ainsworth,
5 Clouse, Faust, Collins, Scott, Givan, Moore (M), Millican,
6 Johnson (R), Tuggle, Hurst, Ledbetter, Fridy, Sanderford,
7 Farley, Todd, Hall, Butler, Blackshear, Harbison, Boyd,
8 Alexander, Jackson, Carns, Beech, Knight, Fincher, Drake,
9 Black, Lindsey, Ford, Davis, Williams (JW), Sessions,
10 Nordgren, Johnson (K), Pringle, Coleman, Rogers, Shedd,
11 Pettus, Patterson, Wood, Ball, Rich, Harper, Weaver, Rowe,
12 Standridge, South, England, Martin, Lee, Crawford, Lovvorn,
13 Baker, Warren, McClammy, Ellis, Chesteen, Bandy, Beckman,
14 Howard, Whorton (I), Treadaway, Boothe, McCutcheon, Mooney,
15 Hanes, Williams (JD), Polizos, Wingo, Whorton (R), Wadsworth,
16 Brown, Moore (B), Daniels and Bracy
17 RFD: Ways and Means Education
18 First Read: 02-MAR-17

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ENROLLED, An Act,

To provide an income tax credit against the tax liability of the taxpayer for the rehabilitation, preservation, and development of historic structures.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This chapter shall apply to qualified structures throughout the State of Alabama.

Section 2. As used in this chapter, the following terms shall have the following meanings:

(1) CERTIFIED HISTORIC STRUCTURE. A property located in Alabama which is at least sixty years old, unless the structure is an historic structure located within the boundaries of a National Monument or Park as declared by the United States Congress or the President of the United States, in which case the federal age provisions shall apply, and is certified by the Alabama Historical Commission as being individually listed in the National Register of Historic Places, eligible for listing in the National Register of Historic Places, or certified by the Commission as contributing to the historic significance of a Registered Historic District.

(2) CERTIFIED REHABILITATION. Repairs or alterations to a certified historic structure that is certified by the Commission as meeting the U.S. Secretary of the Interior's

1 Standards for Rehabilitation which meet the requirements
2 contained in Section 47(c)(2)(C) of the Internal Revenue Code,
3 as amended, or to a certified historic residential structure
4 as defined in subdivision (3).

5 (3) CERTIFIED HISTORIC RESIDENTIAL STRUCTURE. A
6 certified historic structure as defined in subdivision (1).

7 (4) COMMISSION. The Alabama Historical Commission
8 and or its successor.

9 (5) COMMITTEE. The Historic Tax Credit Evaluating
10 Committee established by this act.

11 (6) DEPARTMENT. The Alabama Department of Revenue or
12 its successor.

13 (7) OWNER. Any taxpayer filing a State of Alabama
14 income tax return or any entity that is exempt from federal
15 income taxation pursuant to Section 501(c) of the Internal
16 Revenue Code, as amended, that:

17 a. owns title to a qualified structure, or

18 b. owns a leasehold interest in a qualified
19 structure for a term of not less than 39 years.

20 An owner as defined herein shall not be considered a
21 private user as defined in Section 40-9A-1, Code of Alabama
22 1975.

23 (8) QUALIFIED REHABILITATION EXPENDITURES. Any
24 expenditure as defined under Section 47(c)(2)(A) of the
25 Internal Revenue Code, as amended, and the related regulations

1 thereunder, and other reasonable expenses and costs expended
2 in the rehabilitation of a qualified structure. For certified
3 historic residential structures, this term shall mean expenses
4 incurred by the taxpayer in the certified rehabilitation of a
5 certified historic residential structure, including but not
6 limited to preservation and rehabilitation work done to the
7 exterior of a certified historic residential structure, repair
8 and stabilization of historic structural systems, restoration
9 of historic plaster, energy efficiency measures except
10 insulation in frame walls, repairs or rehabilitation of
11 heating, air conditioning, or ventilation systems, repairs or
12 rehabilitation of electrical or plumbing systems exclusive of
13 new electrical appliances and electrical or plumbing fixtures,
14 and architectural, engineering, and land surveying fees.
15 Qualified rehabilitation expenditures do not include the cost
16 of acquisition of the qualified structure, the personal labor
17 by the owner, or any cost associated with the rehabilitation
18 of an outbuilding of the qualified structure, unless the
19 outbuilding is certified by the Commission to contribute to
20 the historical significance of the qualified structure.

21 (9) QUALIFIED STRUCTURE. Certified historic
22 structures which are certified by the Commission as meeting
23 the requirements contained in Section 47(c)(1)(A)(i) and (ii)
24 of the Internal Revenue Code, as amended, and to certified
25 historic residential structures as defined herein.

1 (10) REGISTERED HISTORIC DISTRICT. Any district
2 listed in the National Register of Historic Places and any
3 district which is either of the following:

4 a. Designated under Alabama or local law as
5 containing criteria which substantially achieves the purpose
6 of preserving and rehabilitating buildings of historic
7 significance to the district.

8 b. Certified by the U.S. Secretary of the Interior
9 as meeting substantially all of the requirements for the
10 listing of districts in the National Register of Historic
11 Places.

12 (11) REHABILITATION PLAN. Construction plans and
13 specifications for the proposed rehabilitation of a qualified
14 structure in sufficient detail to enable the Commission to
15 evaluate compliance with the standards developed under this
16 chapter.

17 (12) SUBSTANTIAL REHABILITATION. Rehabilitation of a
18 qualified structure for which the qualified rehabilitation
19 expenditures exceed 50 percent of the owner's original
20 purchase price of the qualified structure or twenty-five
21 thousand dollars (\$25,000), whichever is greater.

22 Section 3. (a) The Commission shall develop
23 standards for the approval of the substantial rehabilitation
24 of qualified structures for which a tax credit is sought. The
25 standards shall take into account whether the substantial

1 rehabilitation of a qualified structure is consistent with the
2 historic character of the structure or of the Registered
3 Historic District in which the property is located.

4 (b) Prior to beginning any substantial
5 rehabilitation work on a qualified structure, the owner shall
6 submit an application and rehabilitation plan to the
7 Commission and an estimate of the qualified rehabilitation
8 expenditures under the rehabilitation plan; provided, however,
9 that the owner, at its own risk, may incur qualified
10 rehabilitation expenditures no earlier than six months prior
11 to the submission of the application and rehabilitation plan
12 that are limited to architectural, engineering, and land
13 surveying fees and related soft costs and any costs related to
14 the protection of the qualified structure from deterioration.

15 (c) The Commission shall review the application and
16 rehabilitation plan to determine that the information
17 contained therein is complete. If the Commission determines
18 that the application and rehabilitation plan are complete, the
19 Commission shall recommend the project to the Committee for
20 the reservation of a tax credit. If the project is approved
21 for a tax credit by the Committee, the Commission shall
22 reserve, for the benefit of the owner, an allocation for a tax
23 credit as provided in Section 4 of this act, and the
24 Commission shall notify the owner in writing of the amount of
25 the reservation. The reservation of tax credits does not

1 entitle the owner to an issuance of tax credits until the
2 owner complies with all other requirements of this chapter for
3 the issuance of the tax credits. The reservation of tax
4 credits shall be made by the Commission in the order in which
5 the Committee has ranked completed applications and
6 rehabilitation plans. Reservations of tax credits shall be
7 issued by the Commission within a reasonable time from the
8 filing of a completed application and rehabilitation plan.
9 Only the property for which a property address, legal
10 description, or other specific location is provided in the
11 application shall be reviewed. Ownership of an entity that is
12 the owner of property contained in the application shall not
13 be a factor in the Commission's review of the application and
14 no subsequent change in the ownership structure of such entity
15 shall result in the loss or rescission of a reservation of tax
16 credits. The owner shall not be permitted to request the
17 review of another property for approval in the place of the
18 property contained in the application. Any application
19 disapproved by the Commission or the Committee shall be
20 removed from the review process, and the Commission shall
21 notify the owner in writing of the decision to remove the
22 application. A disapproved application may be resubmitted, but
23 shall be deemed to be a new submission and may be charged a
24 new application fee. In the event the reservations of tax
25 credits equal the total amount available for reservations

1 during the tax year, all owners with applications then
2 awaiting approval or thereafter submitted shall be notified by
3 the Commission that no additional tax credits shall be granted
4 during that tax year. The applications shall remain in active
5 status from the date of the original application and shall be
6 considered for recommendations of tax credits in the event
7 that additional credits become available due to rescission by
8 the Commission or when a new tax year's allocation of tax
9 credits becomes available.

10 Owners receiving a reservation of tax credits shall
11 commence rehabilitation, if rehabilitation has not previously
12 begun, within 18 months of the date of issuance of the written
13 notice from the Commission to the owner granting the tax
14 credits. "Commencement of rehabilitation" shall mean that, as
15 of the date in which actual physical work contemplated by the
16 rehabilitation plan submitted with the application has begun,
17 the owner has incurred no less than 20 percent of the
18 estimated costs of rehabilitation provided in the application.
19 Within 36 months of the date of issuance of the written notice
20 from the Commission to the owner granting the tax credit
21 reservation, the owner must have incurred an additional 50
22 percent of the estimated costs of rehabilitation provided in
23 the application. Within 60 months of the date of issuance of
24 the written notice from the Commission to the owner granting
25 the tax credit reservation, the project must be completed.

1 Owners receiving a reservation of tax credits shall submit
2 evidence of compliance with the provisions of this subsection.
3 If the Commission determines that an owner has failed to
4 comply with the requirements provided under this section, the
5 reservation of tax credits for the owner may be rescinded and,
6 if so, the amount of tax credits shall then be included in the
7 total amount of available tax credits provided for in
8 subsection (c) of Section 4 of this act, from which
9 reservations may be granted. Any owner whose reservation of
10 tax credits are rescinded shall be notified of the rescission
11 from the Commission and, upon receipt of the notice, may
12 submit a new application but may be charged a new application
13 fee.

14 (d) Following the completion of a substantial
15 rehabilitation of a qualified structure, the owner shall
16 notify the Commission that the substantial rehabilitation has
17 been completed and shall certify the qualified rehabilitation
18 expenditures incurred with respect to the rehabilitation plan.
19 In addition, the owner shall provide the Commission with: (i)
20 a cost and expense certification, prepared by a licensed
21 certified public accountant that is not an affiliate of the
22 owner, certifying the total qualified rehabilitation
23 expenditures and the total amount of tax credits against any
24 state tax due that is specified in this chapter for which the
25 owner is eligible under Section 4 of this act and, if the

1 qualified rehabilitation expenditures exceed two hundred
2 thousand dollars (\$200,000), the cost and expense
3 certification must be audited by the licensed certified public
4 accountant; and (ii) an appraisal of the qualified structure
5 prepared by an independent MAI designated and licensed real
6 estate appraiser. The Commission shall review the
7 documentation of the rehabilitation and verify its compliance
8 with the rehabilitation plan. The Commission shall also review
9 the content of the cost and expense certification as well as
10 the appraisal to ensure compliance with standards adopted by
11 rule of the Commission. Within 90 days after receipt and
12 approval of the foregoing documentation from the owner, the
13 Commission shall issue a tax credit certificate in an amount
14 equivalent to the lesser of: (i) the amount of the tax credit
15 reservation issued for the project under the provisions of
16 subsection (c), or (ii) 25 percent of the actual qualified
17 rehabilitation expenditures for certified historic structures.
18 In the event the amount of qualified rehabilitation
19 expenditures incurred by the owner would result in the
20 issuance of an amount of tax credits in excess of the amount
21 of tax credits reserved for the owner under subsection (c),
22 the owner may apply to the Commission for issuance of tax
23 credits in an amount equal to the excess. Applications for
24 issuance of tax credits in excess of the amount of tax credits
25 reserved for the owner shall be made on a form prescribed by

1 the Commission and shall represent a separate certificate that
2 shall be issued, subject to all provisions regarding priority
3 provided in Section 9 of this act.

4 (e) In order to obtain a credit against any state
5 tax due that is specified in this chapter, a taxpayer shall
6 file the tax credit certificate with the taxpayer's Alabama
7 state tax return.

8 (f) The Department shall grant a tax credit against
9 any state tax due that is specified in this chapter to a
10 taxpayer holding the tax credit certificate issued under
11 subsection (d) or, in the case of a transferee, issued by the
12 Department pursuant to Section 4 of this act against any tax
13 due under Chapter 18 in the amount stated on the tax credit
14 certificate. The Department shall have the right to audit and
15 to reassess any credit improperly obtained by the owner, in
16 accordance with the Taxpayers' Bill of Rights and the Uniform
17 Revenue Procedures contained in Chapter 2A; provided, however
18 that only the owner initially awarded the tax credit
19 certificate, and not any subsequent transferee of the tax
20 credit certificate or person to whom tax credits have been
21 passed through pursuant to Section 4 of this act, shall be
22 liable for any credit improperly obtained by the owner.

23 (g) For processing the taxpayer's application for a
24 tax credit, the Commission may impose the following
25 application fees:

1 (i) For qualified rehabilitation expenses of one
2 -million dollars (\$1,000,000) or less, a fee equal to one
3 percent (1%) of the qualified rehabilitation expenditures.

4 (ii) For qualified rehabilitation expenses from one
5 -million and one dollars (\$1,000,001) to ten million dollars
6 (\$10,000,000), a fee equal to fifteen thousand dollars
7 (\$15,000).

8 (iii) For qualified rehabilitation expenses over
9 ten million dollars (\$10,000,000), a fee equal to twenty
10 thousand dollars (\$20,000).

11 (iv) Any fees collected by the Commission under this
12 section shall be deposited in the State Treasury to the credit
13 of the Commission and all such funds are to be appropriated to
14 the Commission to defray the expenses incurred in carrying out
15 the provisions of this act.

16 (h) The Commission shall report to the Legislature
17 in the third year following passage of this chapter, and
18 annually thereafter, on the overall economic activity, usage,
19 and impact to the state from the substantial rehabilitation of
20 qualified structures for which tax credits have been allowed.
21 The information in the reports shall be consistent with the
22 information required by the Legislature pursuant to, and shall
23 be provided by the Commission to the Legislature in accordance
24 with, Section 40-1-50, Code of Alabama 1975, and rules adopted
25 thereunder. Information provided pursuant to this section is

1 exempt from the confidentiality provisions of Section
2 40-2A-10, Code of Alabama 1975.

3 Section 4. (a) The state portion of any tax credit
4 against the tax imposed by Chapter 18, Title 40, Code of
5 Alabama 1975, for the taxable year in which the certified
6 rehabilitation is placed in service, shall be equal to 25
7 percent of the qualified rehabilitation expenditures for
8 certified historic structures. No tax credit claimed for any
9 certified rehabilitation may exceed five million dollars
10 (\$5,000,000) for all allowable property types except a
11 certified historic residential structure, and fifty thousand
12 dollars (\$50,000) for a certified historic residential
13 structure.

14 (b) There is created within the Education Trust Fund
15 a separate account named the Historic Preservation Income Tax
16 Credit Account. The Commissioner of Revenue shall certify to
17 the Comptroller the amount of income tax credits under this
18 section and the Comptroller shall transfer into the Historic
19 Preservation Income Tax Credit Account only the amount from
20 sales tax revenues within the Education Trust Fund that is
21 sufficient for the Department of Revenue to use to cover the
22 income tax credits for the applicable tax year. The
23 Commissioner of Revenue shall distribute the funds in the
24 Historic Preservation Income Tax Credit Account pursuant to
25 this section.

1 (c) The entire tax credit must be claimed by the
2 taxpayer for the taxable year in which the certified
3 rehabilitation is placed in service. Where the taxes owed by
4 the taxpayer are less than the tax credit, the taxpayer shall
5 be entitled to claim a refund for the difference.

6 (d) For the tax years 2018 through 2022, the
7 aggregate amount of all tax credits that may be reserved in
8 any one of such years by the Commission and certification of
9 rehabilitation plans under subsection (c) of Section 3 shall
10 not exceed twenty million dollars (\$20,000,000) plus any
11 amount of previous reservations of tax credits that were
12 rescinded under subsection (c) of Section 3 of this act during
13 the tax year. However, if all of the allowable tax credit
14 amount for any tax year is not requested and reserved, any
15 unreserved tax credits may be utilized by the Commission in
16 awarding tax credits in subsequent years; provided, however,
17 that in no event shall a total of more than one hundred
18 million dollars (\$100,000,000) be reserved by the Commission
19 during the period from the effective date of this act through
20 December 31, 2022. For purposes of this chapter, "tax year"
21 shall mean the calendar year.

22 (e) Of the annual amount of the tax credits provided
23 for in subsection (d), 40% shall be reserved to taxpayers with
24 a certified rehabilitation project located in a county in
25 which the population does not exceed 175,000 according to the

1 2010 decennial census. In the event applications are not
2 received and credits are not allocated for projects in these
3 areas by the close of the second quarter of the program year,
4 the funds may revert for allocations of other project
5 applications.

6 (f) Tax credits granted to a partnership, a limited
7 liability company, S Coporations, trusts, or estates, shall be
8 claimed at the entity level and shall not pass through to the
9 partners, members, or owners.

10 (g) All or any portion of the income tax credits
11 under this section and Sections 3 of this act shall be
12 transferable and assignable, subject to any notice and
13 verification requirements to be determined by the Department,
14 without the requirement of transferring any ownership interest
15 in the qualified structure or any interest in the entity which
16 owns the qualified structure. Any tax credits transferred
17 shall be at a value of at least eighty-five percent (85%) of
18 the present value of the credits. However, once a credit is
19 transferred, only the transferee may utilize such credit and
20 the credit cannot be transferred again. A transferee of the
21 tax credits may use the amount of tax credits transferred to
22 offset any income tax under Chapter 18 of Title 40. The
23 Department shall promulgate a form transfer statement to be
24 filed by the transferor with the Department prior to the
25 purported transfer of any credit issued under this chapter.

1 The transfer statement form shall include the name and federal
2 taxpayer identification number of the transferor and each
3 transferee listed therein along with the amount of the tax
4 credit to be transferred to each transferee listed on the
5 form. The transfer statement form shall also contain such
6 other information as the Department may from time to time
7 reasonably require. For each transfer, the transferor shall
8 file (1) a completed transfer statement form; (2) a copy of
9 the tax credit certificate issued by the Commission
10 documenting the amount of tax credits which the transferor
11 intends to transfer; (3) a copy of the proposed written
12 transfer agreement; and (4) a transfer fee payable to the
13 Department in the amount of one thousand dollars (\$1,000) per
14 transferee listed on the transfer statement form. The
15 transferor shall file with the Department a fully executed
16 copy of the written transfer agreement with each transferee
17 within 30 days after the completed transfer. Filing of the
18 written transfer agreement with the Department shall perfect
19 such transfer with respect to such transferee. Within 30 days
20 after the Department's receipt of the fully executed written
21 transfer agreement, the Department shall issue a tax credit
22 certificate to each transferee listed in such agreement in the
23 amount of the tax credit so transferred. Such certificate
24 shall be used by the transferee in claiming the tax credit
25 pursuant to Section 3(e) and (f) of this act. The Department

1 may promulgate such additional rules as are necessary to
2 permit verification of the ownership of the tax credits but
3 shall not promulgate any rules which unduly restrict or hinder
4 the transfer of the tax credits.

5 Section 5. (a) Recapture of any of the credit shall
6 apply against the taxpayer who utilizes the credit, and any
7 required adjustments to basis due to recapture, shall be
8 governed by Section 50 of the Internal Revenue Code.

9 (b) In the taxable year the certified rehabilitation
10 is placed in service for any structure for which a tax credit
11 has been issued, the Commission shall provide notice of the
12 certified rehabilitation and a copy of the appraisal provided
13 by the owner to the taxing authority responsible for the
14 assessment of ad valorem taxes. Upon notification, the taxing
15 authority responsible for the assessment of ad valorem taxes
16 shall complete a new assessment for the structure to be used
17 in the assessment of ad valorem taxes for the tax year in
18 which the certified rehabilitation was placed in service.

19 Section 6. Owners or their duly authorized
20 representatives may appeal any state official decision,
21 including all preliminary or final reservations, approvals,
22 and denials, made by the Commission, Committee or the
23 Department with regard to an application and rehabilitation
24 plan submitted under Section 3 of this act, in accordance with
25 the Alabama Administrative Procedure Act contained in Chapter

1 22 of Title 41. Appeals shall constitute an administrative
2 review of the decision appealed from and shall not be
3 conducted as an adjudicative proceeding. Appeals shall be
4 submitted within 30 days of receipt by the owner or the
5 owner's duly authorized representative of the decision that is
6 the subject of the appeal.

7 Section 7. The tax credits authorized by this
8 chapter for the substantial rehabilitation of qualified
9 structures shall not be available to owners of qualified
10 structures that submit an application and rehabilitation plan
11 after December 31, 2022. No action or inaction on the part of
12 the Legislature shall reduce or suspend the tax credits
13 authorized by this chapter in any past or future calendar year
14 with respect to a qualified structure if the owner thereof
15 submits an application and rehabilitation plan with the
16 Commission and the Commission reserves an allocation for a tax
17 credit on or prior to December 31, 2022, even if the qualified
18 structure is placed into service after December 31, 2022, and
19 shall not affect the owner of a qualified structure if the
20 commission has reserved an allocation for a tax credit on or
21 prior to December 31, 2022.

22 Section 8. The Commission shall promulgate by
23 October 1, 2017, any and all rules and regulations necessary
24 to implement the provisions of this chapter. Applications for

1 the reservation of tax credits shall be accepted beginning
2 November 1, 2017.

3 Section 9. (a) There is hereby established the
4 Historic Tax Credit Evaluating Committee, which shall review
5 qualifying projects, approve credits for projects, and rank
6 projects in the order in which the projects should receive tax
7 credit reservations based on criteria established by the
8 Commission. The Commission shall establish a review cycle for
9 the Committee beginning on January 1, 2018, provided that the
10 Committee shall meet at least quarterly unless no credits
11 remain to be allocated. The Commissioner of Revenue shall be a
12 non-voting member of the Committee and provide advisory and
13 technical support. The Committee shall consist of the
14 following:

15 (1) Director of the Governor's Office of Minority
16 Affairs;

17 (2) The Executive Director of the Alabama Historical
18 Commission;

19 (3) The Finance Director;

20 (4) The Director of the Alabama Department of
21 Economic and Community Affairs;

22 (5) The Secretary of Commerce;

23 (6) Two members of the Alabama House of
24 Representatives, at least one of which shall be a member of

1 the minority party, to be appointed by the Speaker of the
2 House of Representatives; and

3 (7) Two members of the Alabama Senate, at least one
4 of which shall be a member of the minority party, to be
5 appointed by the President Pro Tem of the Senate.

6 (b) The Alabama Historical Commission shall
7 promulgate rules that shall set forth guidelines to be
8 utilized by the Committee in determining the allocation of
9 credits. The guidelines shall set forth factors to be
10 considered by the Committee including: relative value of the
11 proposed project to the particular community, including the
12 maintenance of the historic fabric of the community; possible
13 return on investment for the community in which the proposed
14 project is located; the geographic distribution of projects;
15 and strength of local support for the proposed project.
16 Included in the information to be required for the evaluation
17 of any project shall be any additional tax credits or state,
18 federal, or local government grants that the applicant expects
19 to utilize for the construction of the project.

20 Section 10. The provisions of this act are
21 severable. If any part of this act is declared invalid or
22 unconstitutional, that declaration shall not affect the part
23 which remains.

1 Section 11. This act shall become effective
2 immediately following its passage and approval by the
3 Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 18-APR-17, as amended.

Jeff Woodard
Clerk

Senate	<hr/> 09-MAY-17 <hr/>	Amended and Passed
House	<hr/> 19-MAY-17 <hr/>	Concurred in Sen- ate Amendment