

1 HB345
2 183061-2
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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8 SYNOPSIS: Under current law, the state tax credit
9 program for the rehabilitation, preservation, or
10 development of certified historic structures
11 expired in calendar year 2016.

12 This bill would establish a new income tax
13 credit against the tax liability of the taxpayer
14 for the rehabilitation, preservation, or
15 development of certified historic structures.

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT

20
21 To provide an income tax credit against the tax
22 liability of the taxpayer for the rehabilitation,
23 preservation, and development of historic structures.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

3 (1) CERTIFIED HISTORIC STRUCTURE. A property located
4 in Alabama which is certified by the Alabama Historical
5 Commission as being individually listed in the National
6 Register of Historic Places, eligible for listing in the
7 National Register of Historic Places, or certified by the
8 Commission as contributing to the historic significance of a
9 Registered Historic District.

10 (2) CERTIFIED REHABILITATION. Repairs or alterations
11 to a certified historic structure that is certified by the
12 Commission as meeting the U.S. Secretary of the Interior's
13 Standards for Rehabilitation which meet the requirements
14 contained in Section 47(c)(2)(C) of the Internal Revenue Code,
15 as amended, or to a certified historic residential structure
16 as defined in subdivision (3).

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

19 (4) COMMISSION. The Alabama Historical Commission
20 and or its successor.

21 (5) COMMITTEE. The Historic Tax Credit Evaluating
22 Committee established by this act.

23 (6) DEPARTMENT. The Alabama Department of Revenue or
24 its successor.

25 (7) OWNER. Any taxpayer filing a State of Alabama
26 tax return for corporate or individual income tax or any

1 entity that is exempt from federal income taxation pursuant to
2 Section 501(c) of the Internal Revenue Code, as amended, that:

3 a. owns title to a qualified structure, or

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

6 An owner as defined herein shall not be considered a
7 private user under this Title.

8 (8) QUALIFIED REHABILITATION EXPENDITURES. Any
9 expenditure as defined under Section 47(c)(2)(A) of the
10 Internal Revenue Code, as amended, and the related regulations
11 thereunder, and other reasonable expenses and costs expended
12 in the rehabilitation of a qualified structure. For certified
13 historic residential structures, this term shall mean expenses
14 incurred by the taxpayer in the certified rehabilitation of a
15 certified historic residential structure, including but not
16 limited to preservation and rehabilitation work done to the
17 exterior of a certified historic residential structure, repair
18 and stabilization of historic structural systems, restoration
19 of historic plaster, energy efficiency measures except
20 insulation in frame walls, repairs or rehabilitation of
21 heating, air conditioning, or ventilation systems, repairs or
22 rehabilitation of electrical or plumbing systems exclusive of
23 new electrical appliances and electrical or plumbing fixtures,
24 and architectural, engineering, and land surveying fees.
25 Qualified rehabilitation expenditures do not include the cost
26 of acquisition of the qualified structure, the personal labor
27 by the owner, or any cost associated with the rehabilitation

1 of an outbuilding of the qualified structure, unless the
2 outbuilding is certified by the Commission to contribute to
3 the historical significance of the qualified structure.

4 (9) QUALIFIED STRUCTURE. Certified historic
5 structures which are certified by the Commission as meeting
6 the requirements contained in Section 47(c)(1)(A)(i) and (ii)
7 of the Internal Revenue Code, as amended, and to certified
8 historic residential structures as defined herein.

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

12 a. Designated under Alabama or local law as
13 containing criteria which substantially achieves the purpose
14 of preserving and rehabilitating buildings of historic
15 significance to the district.

16 b. Certified by the U.S. Secretary of the Interior
17 as meeting substantially all of the requirements for the
18 listing of districts in the National Register of Historic
19 Places.

20 (11) REHABILITATION PLAN. Construction plans and
21 specifications for the proposed rehabilitation of a qualified
22 structure in sufficient detail to enable the Commission to
23 evaluate compliance with the standards developed under this
24 chapter.

25 (12) SUBSTANTIAL REHABILITATION. Rehabilitation of a
26 qualified structure for which the qualified rehabilitation
27 expenditures exceed 50 percent of the owner's original

1 purchase price of the qualified structure or twenty-five
2 thousand dollars (\$25,000), whichever is greater.

3 Section 3. (a) The Commission shall develop
4 standards for the approval of the substantial rehabilitation
5 of qualified structures for which a tax credit is sought. The
6 standards shall take into account whether the substantial
7 rehabilitation of a qualified structure is consistent with the
8 historic character of the structure or of the Registered
9 Historic District in which the property is located.

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

21 (c) The Commission shall review the application and
22 rehabilitation plan to determine that the information
23 contained therein is complete. If the Commission determines
24 that the application and rehabilitation plan are complete, the
25 Commission shall recommend the project to the Committee for
26 the reservation of a tax credit. If the project is approved
27 for a tax credit by the Committee, the Commission shall

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

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

12 Owners receiving a reservation of tax credits shall
13 commence rehabilitation, if rehabilitation has not previously
14 begun, within 18 months of the date of issuance of the written
15 notice from the Committee to the owner granting the tax
16 credits. "Commencement of rehabilitation" shall mean that, as
17 of the date in which actual physical work contemplated by the
18 rehabilitation plan submitted with the application has begun,
19 the owner has incurred no less than 20 percent of the
20 estimated costs of rehabilitation provided in the application.
21 Within 36 months of the date of issuance of the written notice
22 from the Commission to the owner granting the tax credit
23 reservation, the owner must have incurred an additional 50
24 percent of the estimated costs of rehabilitation provided in
25 the application. Within 60 months of the date of issuance of
26 the written notice from the Commission to the owner granting
27 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 shall be rescinded shall be notified of the
11 rescission from the Commission and, upon receipt of the
12 notice, may submit a new application but may be charged a new
13 application 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
26 qualified rehabilitation expenditures exceed two hundred
27 thousand dollars (\$200,000), the cost and expense

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

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

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

20 (g) For processing the taxpayer's application for a
21 tax credit, the Commission may impose the following
22 application fees:

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

26 (ii) For qualified rehabilitation expenses from one
27 -million and one dollars (\$1,000,001) to ten million dollars

1 (\$10,000,000), a fee equal to fifteen thousand dollars
2 (\$15,000).

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

6 (iv) Any fees collected by the Commission under this
7 section shall be deposited in the State Treasury to the credit
8 of the Commission and all such funds are to be appropriated to
9 the Commission to defray the expenses incurred in carrying out
10 the provisions of this act.

11 (h) The Commission shall, in consultation with the
12 Department, report to the Legislature in the third year
13 following passage of this chapter, and annually thereafter, on
14 the overall economic activity, usage, and impact to the state
15 from the substantial rehabilitation of qualified structures
16 for which tax credits have been allowed.

17 Section 4. (a) The state portion of any tax credit
18 against the tax imposed by Chapters 16 and 18, for the taxable
19 year in which the certified rehabilitation is placed in
20 service, shall be equal to 25 percent of the qualified
21 rehabilitation expenditures for certified historic structures.
22 No tax credit claimed for any certified rehabilitation may
23 exceed five million dollars (\$5,000,000) for all allowable
24 property types except a certified historic residential
25 structure, and fifty thousand dollars (\$50,000) for a
26 certified historic residential structure.

1 (b) There is created within the Education Trust Fund
2 a separate account named the Historic Preservation Income Tax
3 Credit Account. The Commissioner of Revenue shall certify to
4 the Comptroller the amount of income tax credits under this
5 section and the Comptroller shall transfer into the Historic
6 Preservation Income Tax Credit Account only the amount from
7 sales tax revenues within the Education Trust Fund that is
8 sufficient for the Department of Revenue to use to cover the
9 income tax credits for the applicable tax year. The
10 Commissioner of Revenue shall distribute the funds in the
11 Historic Preservation Income Tax Credit Account pursuant to
12 this section.

13 (c) The entire tax credit must be claimed by the
14 taxpayer in the taxable year in which the certified
15 rehabilitation is placed in service. Where the taxes owed by
16 the taxpayer are less than the tax credit, the taxpayer shall
17 be entitled to claim a refund for the difference.

18 (d) For the tax years 2018 through 2027, the
19 aggregate amount of all tax credits that may be reserved in
20 any one of such years by the Commission and certification of
21 rehabilitation plans under subsection (c) of Section 3 shall
22 not exceed twenty million dollars (\$20,000,000) plus any
23 amount of previous reservations of tax credits that were
24 rescinded under subsection (c) of Section 3 of this act during
25 the tax year. However, if all of the allowable tax credit
26 amount for any tax year is not requested and reserved, any
27 unreserved tax credits may be utilized by the Commission in

1 awarding tax credits in subsequent years; provided, however,
2 that in no event shall a total of more than two-hundred
3 million dollars (\$200,000,000) be reserved by the Commission
4 during the period from the effective date of this act through
5 December 31, 2027. For purposes of this chapter, "tax year"
6 shall mean the calendar year.

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

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

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

1 shall not promulgate any rules which unduly restrict or hinder
2 the transfer of the tax credits.

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

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

17 Section 6. Owners or their duly authorized
18 representatives may appeal any state official decision,
19 including all preliminary or final reservations, approvals,
20 and denials, made by the Commission, Committee or the
21 Department with regard to an application and rehabilitation
22 plan submitted under Section 3 of this act, in accordance with
23 the Alabama Administrative Procedure Act contained in Chapter
24 22 of Title 41. Appeals shall constitute an administrative
25 review of the decision appealed from and shall not be
26 conducted as an adjudicative proceeding. Appeals shall be
27 submitted within 30 days of receipt by the owner or the

1 owner's duly authorized representative of the decision that is
2 the subject of the appeal.

3 Section 7. The tax credits authorized by this
4 chapter for the substantial rehabilitation of qualified
5 structures shall not be available to owners of qualified
6 structures that submit an application and rehabilitation plan
7 after December 31, 2027. No action or inaction on the part of
8 the Legislature shall reduce or suspend the tax credits
9 authorized by this chapter in any past or future calendar year
10 with respect to a qualified structure if the owner thereof
11 submits an application and rehabilitation plan with the
12 Commission and the Commission reserves an allocation for a tax
13 credit on or prior to December 31, 2027, even if the qualified
14 structure is placed into service after December 31, 2027, and
15 shall not affect the owner of a qualified structure if the
16 commission has reserved an allocation for a tax credit on or
17 prior to December 31, 2027.

18 Section 8. The Commission shall promulgate by
19 October 31, 2017, any and all rules and regulations necessary
20 to implement the provisions of this chapter. Applications for
21 the reservation of tax credits shall be accepted beginning
22 January 1, 2018.

23 Section 9. (a) There is hereby established the
24 Historic Tax Credit Evaluating Committee, which shall review
25 qualifying projects, approve credits for projects, and rank
26 projects in the order in which the projects should receive tax
27 credit reservations based on criteria established by the

1 Commission. The Committee shall meet by the sixtieth day of
2 each quarter for the purpose of evaluating all applications
3 for projects submitted to and approved by the Commission by
4 the thirtieth day of that quarter and allocating tax credits
5 available pursuant to this act. The Commissioner of Revenue
6 shall be a non-voting member of the Committee and provide
7 advisory and technical support. The Committee shall consist of
8 the following:

9 (1) Director of the Governor's Office of Minority
10 Affairs;

11 (2) The Executive Director of the Alabama Historic
12 Commission;

13 (3) The Finance Director;

14 (4) The Director of the Alabama Department of
15 Economic and Community Affairs;

16 (5) The Secretary of Commerce;

17 (6) Two members of the Alabama House of
18 Representatives, at least one of which shall be a member of
19 the minority party, to be appointed by the Speaker of the
20 House of Representatives; and

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

24 (b) The Alabama Historic Commission shall promulgate
25 rules that shall set forth guidelines to be utilized by the
26 Committee in determining the allocation of credits. The
27 guidelines shall set forth factors to be considered by the

1 Committee including: relative value of the proposed project to
2 the particular community, including the maintenance of the
3 historic fabric of the community; possible return on
4 investment for the community in which the proposed project is
5 located; the geographic distribution of projects; and strength
6 of local support for the proposed project. Included in the
7 information to be required for the evaluation of any project
8 shall be any additional tax credits or state, federal, or
9 local government grants that the applicant expects to utilize
10 for the construction of the project.

11 Section 10. The provisions of this act are
12 severable. If any part of this act is declared invalid or
13 unconstitutional, that declaration shall not affect the part
14 which remains.

15 Section 11. This act shall become effective
16 immediately following its passage and approval by the
17 Governor, or its otherwise becoming law.