

1 HB140
2 146539-2
3 By Representatives Gaston, Buskey, DeMarco, Harper, Scott,
4 McClurkin, Wood, Tuggle, McCutcheon, Long, Sessions, Bridges,
5 Carns, Merrill, Farley, Treadaway, Drake, Williams (J),
6 Fincher, Clouse, Love, McAdory, Payne, Roberts, Baughn, Rich,
7 Hill, Sanderford, Henry, Collins, Johnson (K), Nordgren,
8 Warren, Jackson, Beech, Moore (M), Boyd, Newton (D), Hubbard
9 (M), McMillan, Ison, Davis, Ball, Hammon, Poole, Wallace,
10 Wren, Coleman-Evans, McClammy, Chesteen and Lee
11 RFD: Ways and Means Education
12 First Read: 05-FEB-13

1 meeting the requirements contained in Section 47(c)(1)(a) and
2 (b) of the Internal Revenue Code, as amended, or to a
3 certified historic residential structure as defined in
4 subdivision (4).

5 (3) COMMISSION. The Alabama Historical Commission
6 and or its successor.

7 (4) CERTIFIED HISTORIC RESIDENTIAL STRUCTURE. A
8 certified historic structure as defined in subdivision (1), or
9 a non-historic structure built prior to 1936 which is or will
10 be owned and used as a single family, owner occupied
11 residential property and which is contained within a single
12 family residential structure, either free standing or
13 supported by party walls, but not to include individual units
14 within a multi-residential structure such as a condominium or
15 cooperative.

16 (5) DEPARTMENT. The Alabama Department of Revenue or
17 its successor.

18 (6) OWNER. Any taxpayer filing a State of Alabama
19 tax return or any entity that is exempt from federal income
20 taxation pursuant to Section 501(c) of the Internal Revenue
21 Code, as amended, that: a. owns title to a qualified
22 structure, or b. owns prospective title to a qualified
23 structure in the form of a purchase agreement or option to
24 purchase, or c. owns a leasehold interest in a qualified
25 structure for a term of not less than 39 years.

26 (7) QUALIFIED REHABILITATION EXPENDITURES. Any
27 expenditure as defined under Section 47(c)(2)(A) of the

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

22 (8) QUALIFIED STRUCTURE. Certified historic
23 structures and non-historic structures built before 1936 which
24 are certified by the commission as meeting the requirements
25 contained in Section 47(c)(1)(a) and (b) of the Internal
26 Revenue Code, as amended, and to certified historic
27 residential structures as defined herein.

1 (9) 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 certified
5 by the U.S. Secretary of the Interior as containing criteria
6 which substantially achieves the purpose of preserving and
7 rehabilitating buildings of historic significance to the
8 district.

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

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

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

23 Section 3. (a) The commission shall develop
24 standards for the approval of the substantial rehabilitation
25 of qualified structures for which a tax credit is sought. The
26 standards shall take into account whether the substantial
27 rehabilitation of a qualified structure is consistent with the

1 historic character of the structure or of the Registered
2 Historic District in which the property is located.

3 (b) Prior to beginning any substantial
4 rehabilitation work on a qualified structure, the owner shall
5 submit an application and rehabilitation plan to the
6 commission and an estimate of the qualified rehabilitation
7 expenditures under the rehabilitation plan; provided, however,
8 that the owner, at its own risk, may incur qualified
9 rehabilitation expenditures no earlier than six months prior
10 to the submission of the application and rehabilitation plan
11 that are limited to architectural, engineering, and land
12 surveying fees and related soft costs and any costs related to
13 the protection of the qualified structure from deterioration.
14 Owners may submit an application and rehabilitation plan, and
15 may commence rehabilitation, before the property is listed in
16 the National Register of Historic Places; provided, however,
17 that owners, at their own risk, may incur qualified
18 rehabilitation expenditures which are limited to architectural
19 engineering and land surveying fees and related soft costs and
20 emergency costs and expenses necessary for the protection of
21 the qualified structure from deterioration and which are
22 incurred no earlier than six months prior to the submission of
23 the application and rehabilitation plan to the commission.

24 (c) The commission shall review the application and
25 rehabilitation plan to determine that the information
26 contained therein is complete. If the commission determines
27 that the application and rehabilitation plan are complete, the

1 commission shall reserve for the benefit of the owner an
2 allocation for a tax credit as provided in Section 4 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 act for the
7 issuance of the tax credits. The reservation of tax credits
8 shall be made by the commission in the order in which
9 completed applications and rehabilitation plans are received
10 by the commission, and the reservation of tax credits shall be
11 issued by the commission within a reasonable time, not to
12 exceed 90 days from the filing of a completed application and
13 rehabilitation plan. Applications received by the commission
14 on the same day shall go through a lottery process to
15 determine the order in which the applications will be reviewed
16 by the commission. Only the property for which a property
17 address, legal description or other specific location is
18 provided in the application shall be reviewed. The owner shall
19 not be permitted to request the review of another property for
20 approval in the place of the property contained in the
21 application. The owner may add or remove partners, members, or
22 shareholders as part of its ownership structure, so long as at
23 least 50 percent of the ownership remains the same. If the
24 ownership of the qualified structure is changed due to a
25 foreclosure, deed in lieu of a foreclosure, or a transfer in
26 bankruptcy or receivership, the foregoing provisions
27 restricting a change in ownership structure are not

1 applicable, provided that the successor owner of the qualified
2 structure furnishes sufficient documentation to the commission
3 as evidence of the foreclosure, deed in lieu of foreclosure or
4 bankruptcy or receivership. Any application disapproved by the
5 commission shall be removed from the review process, and the
6 commission shall notify the owner in writing of the decision
7 to remove the application. Disapproved applications shall lose
8 their priority in the review process. A disapproved
9 application may be resubmitted, but shall be deemed to be a
10 new submission for purposes of the priority procedures
11 described in this section and may be charged a new application
12 fee. In the event that the commission grants reservations for
13 tax credits equal to the total amount available for
14 reservations during the fiscal year, all owners with
15 applications then awaiting approval or thereafter submitted
16 for approval shall be notified by the commission that no
17 additional approvals shall be granted during that fiscal year
18 and shall be notified of the priority given to the owner's
19 application then awaiting approval. The applications shall
20 remain in priority status for two (2) years from the date of
21 the original application and shall be considered for
22 reservations of tax credits in the priority order established
23 in this section in the event that additional credits become
24 available due to the rescission of approvals or when a new
25 fiscal year's allocation of tax credits becomes available.

26 Owners receiving a reservation of tax credits shall
27 commence rehabilitation, if rehabilitation has not previously

1 begun, within 18 months of the date of issuance of the written
2 notice from the commission to the owner granting the
3 reservation of tax credits. "Commencement of rehabilitation"
4 shall mean that, as of the date in which actual physical work
5 contemplated by the rehabilitation plan submitted with the
6 application has begun, the owner has incurred no less than 20
7 percent of the estimated costs of rehabilitation provided in
8 the application. Owners receiving a reservation of tax credits
9 shall submit evidence of compliance with the provisions of
10 this subsection. If the commission determines that an owner
11 has failed to comply with the requirements provided under this
12 section, the reservation of tax credits for the owner may be
13 rescinded and, if so, the amount of tax credits shall then be
14 included in the total amount of available tax credits provided
15 for in subsection (c) of Section 4, from which reservations
16 may be granted. Any owner whose reservation of tax credits
17 shall be rescinded shall be notified of the rescission from
18 the commission and, upon receipt of the notice, may submit a
19 new application but may be charged a new application fee.

20 (d) Following the completion of a substantial
21 rehabilitation of a qualified structure, the owner shall
22 notify the commission that the substantial rehabilitation has
23 been completed and shall certify the qualified rehabilitation
24 expenditures incurred with respect to the rehabilitation plan.
25 In addition, the owner shall provide the commission with: (i)
26 a cost and expense certification, prepared by a licensed
27 certified public accountant that is not an affiliate of the

1 owner, certifying the total qualified rehabilitation
2 expenditures and the total amount of tax credits for which the
3 owner is eligible under Section 4 and, if the qualified
4 rehabilitation expenditures exceed five hundred thousand
5 dollars (\$500,000), the cost and expense certification must be
6 audited by the licensed certified public accountant; and (ii)
7 an appraisal of the qualified structure prepared by an
8 independent MAI designated and licensed real estate appraiser.
9 The commission shall review the documentation of the
10 rehabilitation and verify its compliance with the
11 rehabilitation plan. Within 90 days after receipt of the
12 foregoing documentation from the owner, the commission shall
13 issue a tax credit certificate in an amount equivalent to the
14 lesser of: (i) the amount of the tax credit reservation issued
15 for the project under the provisions of subsection (c), or
16 (ii) 25 percent of the actual qualified rehabilitation
17 expenditures for certified historic structures and 10 percent
18 of the actual qualified rehabilitation expenditures for
19 qualified pre-1936 non-historic structures. In the event the
20 amount of qualified rehabilitation expenditures incurred by
21 the owner would result in the issuance of an amount of tax
22 credits in excess of the amount of tax credits reserved for
23 the owner under subsection (c) of section 3, the owner may
24 apply to the commission for issuance of tax credits in an
25 amount equal to the excess. Applications for issuance of tax
26 credits in excess of the amount of tax credits reserved for
27 the owner shall be made on a form prescribed by the commission

1 and shall represent a separate certificate that shall be
2 issued, subject to all provisions regarding priority provided
3 in this section.

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

8 (f) The Department shall grant a tax credit to a
9 taxpayer holding the tax credit certificate issued under
10 subsection (d) against any tax due under Chapters 14A, 14B,
11 16, 18, and 21 of Title 40, and ~~Chapters 3 and 4~~ Chapter 4A of
12 Title 27, Code of Alabama 1975, in the amount stated on the
13 tax credit certificate. The Department shall have the right to
14 audit and to reassess any credit improperly obtained by the
15 owner, in accordance with the Taxpayers' Bill of Rights and
16 the Uniform Revenue Procedures contained in Chapter 2A of
17 Title 40, Code of Alabama 1975; provided, however that only
18 the owner initially awarded the tax credit certificate, and
19 not any subsequent transferee of the tax credit certificate,
20 shall be liable for any credit improperly obtained by the
21 owner.

22 (g) For processing the taxpayer's application for a
23 tax credit, the commission may impose reasonable application
24 fees of up to one percent of the qualified rehabilitation
25 expenses but not to exceed ten thousand dollars (\$10,000).

26 (h) The commission shall, in consultation with the
27 department, report to the Legislature in the third year

1 following passage of this act, and annually thereafter, on the
2 overall economic activity, usage, and impact to the state from
3 the substantial rehabilitation of qualified structures for
4 which tax credits have been allowed.

5 Section 4. (a) The tax credit against the tax
6 imposed by Chapters 14A, 14B, 16, 18 and 21 of Title 40, and
7 ~~Chapters 3 and 4~~ Chapter 4A of Title 27, Code of Alabama 1975,
8 for the taxable year in which the certified rehabilitation is
9 placed in service, shall be equal to 25 percent of the
10 qualified rehabilitation expenditures for certified historic
11 structures, and shall be 10 percent of the qualified
12 rehabilitation expenditures for qualified pre-1936
13 non-historic structures. No tax credit claimed for any
14 certified rehabilitation may exceed five million dollars
15 (\$5,000,000) for all allowable property types except a
16 certified historic residential structure, and fifty thousand
17 dollars (\$50,000) for a certified historic residential
18 structure.

19 (b) The entire tax credit may be claimed by the
20 taxpayer in the taxable year in which the certified
21 rehabilitation is placed in service. Where the taxes owed by
22 the taxpayer are less than the tax credit, the taxpayer shall
23 not be entitled to claim a refund for the difference, but any
24 unused portion of the credit may be carried forward for up to
25 10 additional tax years.

26 (c) The aggregate amount of all tax credits in any
27 tax year that may be reserved by the commission upon

1 certification of rehabilitation plans under subsection (c) of
2 Section 3 shall not exceed thirty million dollars
3 (\$30,000,000) plus any amount of previous reservations of tax
4 credits that were rescinded under subsection (c) of Section 3
5 during the tax year. However, if all of the allowable tax
6 credit amount for any tax year is not requested and reserved,
7 any unreserved tax credits may be utilized by the commission
8 in awarding tax credits in subsequent years.

9 (d) Tax credits granted to a partnership, a limited
10 liability company taxed as a partnership or multiple owners of
11 a property shall be passed through to the partners, members or
12 owners (including any not-for-profit entity that is a partner,
13 member or owner) respectively pro rata or pursuant to an
14 executed agreement among the partners, members or owners
15 documenting an alternate distribution method.

16 (e) All or any portion of the tax credits under this
17 act shall be freely transferable and assignable, subject to
18 any notice and verification requirements to be determined by
19 the commission or the Department, or both. Any transferee of
20 the tax credits may use the amount of tax credits transferred
21 to offset against any tax due under Chapters 14A, 14B, 16, 18
22 and 21 of Title 40, and ~~Chapters 3 and 4~~ Chapter 4A of Title
23 27, Code of Alabama 1975, or the transferee may freely
24 transfer and assign all or any portion of the tax credits to
25 any other person or entity, including an entity that is exempt
26 from federal income taxation pursuant to Section 501(c) of the
27 Internal Revenue Code, as amended, and the other person or

1 entity may freely transfer and assign all or any portion of
2 the tax credits to any other person or entity. The tax credits
3 may be transferred or assigned until the time that the credit
4 is claimed on a State of Alabama tax return by any taxpayer.

5 Section 5. (a) Recapture of any of the credit, and
6 any required adjustments to basis due to recapture, shall be
7 governed by Section 50 of the Internal Revenue Code; provided,
8 however, that only the owner initially awarded the tax credit
9 certificate, and not any subsequent transferee of the tax
10 credit certificate, shall be liable for any amount of the
11 credit recaptured.

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

22 Section 6. Owners or their duly authorized
23 representatives may appeal any official decision, including
24 all preliminary or final reservations, approvals and denials,
25 made by the commission or the Department with regard to an
26 application and rehabilitation plan submitted under Section 3,
27 in accordance with the Alabama Administrative Procedures Act

1 contained in Chapter 22 of Title 41, Code of Alabama 1975.
2 Appeals shall constitute an administrative review of the
3 decision appealed from and shall not be conducted as an
4 adjudicative proceeding. Appeals shall be submitted within
5 thirty days of receipt by the owner or the owner's duly
6 authorized representative of the decision that is the subject
7 of the appeal.

8 Section 7. The commission shall promulgate by
9 September 1, 2013 any and all rules and regulations necessary
10 to implement the provisions of this act. Applications for the
11 reservation of tax credits shall be accepted beginning October
12 1, 2013, but no tax credit may be credited prior to the
13 taxpayer's return for the taxable year 2014.

14 Section 8. The provisions of this act are severable.
15 If any part of this act is declared invalid or
16 unconstitutional, that declaration shall not affect the part
17 which remains.

18 Section 9. This act shall become effective
19 immediately following its passage and approval by the
20 Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Ways and Means
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Yeas 101, Nays 0, Abstains 0

Jeff Woodard
Clerk