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3 SENATE FINANCE AND TAXATION EDUCATION COMMITTEE SUBSTITUTE FOR  
4 SB262

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

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

17  
18 A BILL  
19 TO BE ENTITLED  
20 AN ACT

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

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

26 Section 1. This chapter shall apply to qualified  
27 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 at least seventy-five years old, unless  
5 the structure is an historic structure located within the  
6 boundaries of a National Monument or Park as declared by the  
7 United States Congress or the President of the United States,  
8 in which case the federal age provisions shall apply, and is  
9 certified by the Alabama Historical Commission as being  
10 individually listed in the National Register of Historic  
11 Places, eligible for listing in the National Register of  
12 Historic Places, or certified by the Commission as  
13 contributing to the historic significance of a Registered  
14 Historic District.

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

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

24           (4) COMMISSION. The Alabama Historical Commission  
25 and or its successor.

26           (5) COMMITTEE. The Historic Tax Credit Evaluating  
27 Committee established by this act.

1           (6) DEPARTMENT. The Alabama Department of Revenue or  
2 its successor.

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

7           a. owns title to a qualified structure, or

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

10           An owner as defined herein shall not be considered a  
11 private user as defined in Section 40-9B-3, Code of Alabama  
12 1975.

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

1 new electrical appliances and electrical or plumbing fixtures,  
2 and architectural, engineering, and land surveying fees.  
3 Qualified rehabilitation expenditures do not include the cost  
4 of acquisition of the qualified structure, the personal labor  
5 by the owner, or any cost associated with the rehabilitation  
6 of an outbuilding of the qualified structure, unless the  
7 outbuilding is certified by the Commission to contribute to  
8 the historical significance of the qualified structure.

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

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

17 a. Designated under Alabama or local law as  
18 containing criteria which substantially achieves the purpose  
19 of preserving and rehabilitating buildings of historic  
20 significance to the district.

21 b. Certified by the U.S. Secretary of the Interior  
22 as meeting substantially all of the requirements for the  
23 listing of districts in the National Register of Historic  
24 Places.

25 (11) REHABILITATION PLAN. Construction plans and  
26 specifications for the proposed rehabilitation of a qualified  
27 structure in sufficient detail to enable the Commission to

1 evaluate compliance with the standards developed under this  
2 chapter.

3 (12) SUBSTANTIAL REHABILITATION. Rehabilitation of a  
4 qualified structure for which the qualified rehabilitation  
5 expenditures exceed 50 percent of the owner's original  
6 purchase price of the qualified structure or twenty-five  
7 thousand dollars (\$25,000), whichever is greater.

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

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

26 (c) The Commission shall review the application and  
27 rehabilitation plan to determine that the information

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

1 disapproved by the Commission or the Committee shall be  
2 removed from the review process, and the Commission shall  
3 notify the owner in writing of the decision to remove the  
4 application. A disapproved application may be resubmitted, but  
5 shall be deemed to be a new submission and may be charged a  
6 new application fee. In the event the reservations of tax  
7 credits equal the total amount available for reservations  
8 during the tax year, all owners with applications then  
9 awaiting approval or thereafter submitted shall be notified by  
10 the Commission that no additional tax credits shall be granted  
11 during that tax year. The applications shall remain in active  
12 status from the date of the original application and shall be  
13 considered for recommendations of tax credits in the event  
14 that additional credits become available due to rescission by  
15 the Committee or when a new tax year's allocation of tax  
16 credits becomes available.

17 Owners receiving a reservation of tax credits shall  
18 commence rehabilitation, if rehabilitation has not previously  
19 begun, within 18 months of the date of issuance of the written  
20 notice from the Committee to the owner granting the tax  
21 credits. "Commencement of rehabilitation" shall mean that, as  
22 of the date in which actual physical work contemplated by the  
23 rehabilitation plan submitted with the application has begun,  
24 the owner has incurred no less than 20 percent of the  
25 estimated costs of rehabilitation provided in the application.  
26 Within 36 months of the date of issuance of the written notice  
27 from the Commission to the owner granting the tax credit

1 reservation, the owner must have incurred an additional 50  
2 percent of the estimated costs of rehabilitation provided in  
3 the application. Within 60 months of the date of issuance of  
4 the written notice from the Commission to the owner granting  
5 the tax credit reservation, the project must be completed.  
6 Owners receiving a reservation of tax credits shall submit  
7 evidence of compliance with the provisions of this subsection.  
8 If the Commission determines that an owner has failed to  
9 comply with the requirements provided under this section, the  
10 reservation of tax credits for the owner may be rescinded and,  
11 if so, the amount of tax credits shall then be included in the  
12 total amount of available tax credits provided for in  
13 subsection (c) of Section 4 of this act, from which  
14 reservations may be granted. Any owner whose reservation of  
15 tax credits shall be rescinded shall be notified of the  
16 rescission from the Commission and, upon receipt of the  
17 notice, may submit a new application but may be charged a new  
18 application fee.

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



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

1 reserved for the owner shall be made on a form prescribed by  
2 the Commission and shall represent a separate certificate that  
3 shall be issued, subject to all provisions regarding priority  
4 provided in this section.

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

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

24 (g) For processing the taxpayer's application for a  
25 tax credit, the Commission may impose the following  
26 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, in consultation with the  
17 Department, report to the Legislature in the third year  
18 following passage of this chapter, and annually thereafter, on  
19 the overall economic activity, usage, and impact to the state  
20 from the substantial rehabilitation of qualified structures  
21 for which tax credits have been allowed.

22 Section 4. (a) The state portion of any tax credit  
23 against the tax imposed by Chapter 18, for the taxable year in  
24 which the certified rehabilitation is placed in service, shall  
25 be equal to 25 percent of the qualified rehabilitation  
26 expenditures for certified historic structures. No tax credit  
27 claimed for any certified rehabilitation may exceed five

1 million dollars (\$5,000,000) for all allowable property types  
2 except a certified historic residential structure, and fifty  
3 thousand dollars (\$50,000) for a certified historic  
4 residential structure.

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

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

22 (d) For tax years 2018 through 2022, the aggregate  
23 amount of all tax credits that may be reserved in any one of  
24 such years by the Commission and certification of  
25 rehabilitation plans under subsection (c) of Section 3 shall  
26 not exceed twenty million dollars (\$20,000,000) plus any  
27 amount of previous reservations of tax credits that were

1 rescinded under subsection (c) of Section 3 of this act during  
2 the tax year. However, if all of the allowable tax credit  
3 amount for any tax year is not requested and reserved, any  
4 unreserved tax credits may be utilized by the Commission in  
5 awarding tax credits in subsequent years; provided, however,  
6 that in no event shall a total of more than one-hundred  
7 million dollars (\$100,000,000) be reserved by the Commission  
8 during the period from the effective date of this act through  
9 December 31, 2022. For purposes of this chapter, "tax year"  
10 shall mean the calendar year.

11 (e) The annual amount of tax credit provided for in  
12 subsection (d) shall be divided equally among the  
13 Congressional Districts in the state and available for  
14 reservation for projects within those districts for the first  
15 three months of each tax year. Any tax credits remaining  
16 available after six months in each Congressional District  
17 shall then be made available for use by any Congressional  
18 District in the state.

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

23 (g) All or any portion of the income tax credits  
24 under this section and Sections 3 of this act shall be  
25 transferable and assignable, subject to any notice and  
26 verification requirements to be determined by the Department,  
27 without the requirement of transferring any ownership interest

1 in the qualified structure or any interest in the entity which  
2 owns the qualified structure. Any tax credits transferred  
3 shall be at a value of at least eighty-five percent (85%) of  
4 the present value of the credits. However, once a credit is  
5 transferred, only the transferee may utilize such credit and  
6 the credit cannot be transferred again. A transferee of the  
7 tax credits may use the amount of tax credits transferred to  
8 offset any income tax under Chapter 18 of Title 40. The  
9 Department shall promulgate a form transfer statement to be  
10 filed by the transferor with the Department prior to the  
11 purported transfer of any credit issued under this chapter.  
12 The transfer statement form shall include the name and federal  
13 taxpayer identification number of the transferor and each  
14 transferee listed therein along with the amount of the tax  
15 credit to be transferred to each transferee listed on the  
16 form. The transfer statement form shall also contain such  
17 other information as the Department may from time to time  
18 reasonably require. For each transfer, the transferor shall  
19 file (1) a completed transfer statement form; (2) a copy of  
20 the tax credit certificate issued by the Commission  
21 documenting the amount of tax credits which the transferor  
22 intends to transfer; (3) a copy of the proposed written  
23 transfer agreement; and (4) a transfer fee payable to the  
24 Department in the amount of one thousand dollars (\$1,000) per  
25 transferee listed on the transfer statement form. The  
26 transferor shall file with the Department a fully executed  
27 copy of the written transfer agreement with each transferee

1 within 30 days after the completed transfer. Filing of the  
2 written transfer agreement with the Department shall perfect  
3 such transfer with respect to such transferee. Within 30 days  
4 after the Department's receipt of the fully executed written  
5 transfer agreement, the Department shall issue a tax credit  
6 certificate to each transferee listed in such agreement in the  
7 amount of the tax credit so transferred. Such certificate  
8 shall be used by the transferee in claiming the tax credit  
9 pursuant to Section 3(e) and (f) of this act. The Department  
10 may promulgate such additional rules as are necessary to  
11 permit verification of the ownership of the tax credits but  
12 shall not promulgate any rules which unduly restrict or hinder  
13 the transfer of the tax credits.

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

18 (b) In the taxable year the certified rehabilitation  
19 is placed in service for any structure for which a tax credit  
20 has been issued, the Commission shall provide notice of the  
21 certified rehabilitation and a copy of the appraisal provided  
22 by the owner to the taxing authority responsible for the  
23 assessment of ad valorem taxes. Upon notification, the taxing  
24 authority responsible for the assessment of ad valorem taxes  
25 shall complete a new assessment for the structure to be used  
26 in the assessment of ad valorem taxes for the tax year in  
27 which the certified rehabilitation was placed in service.

1           Section 6. Owners or their duly authorized  
2 representatives may appeal any state official decision,  
3 including all preliminary or final reservations, approvals,  
4 and denials, made by the Commission, Committee or the  
5 Department with regard to an application and rehabilitation  
6 plan submitted under Section 3 of this act, in accordance with  
7 the Alabama Administrative Procedure Act contained in Chapter  
8 22 of Title 41. Appeals shall constitute an administrative  
9 review of the decision appealed from and shall not be  
10 conducted as an adjudicative proceeding. Appeals shall be  
11 submitted within 30 days of receipt by the owner or the  
12 owner's duly authorized representative of the decision that is  
13 the subject of the appeal.

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



1 commission has reserved an allocation for a tax credit on or  
2 prior to December 31, 2022.

3 Section 8. The Commission shall promulgate by  
4 October 31, 2017, any and all rules and regulations necessary  
5 to implement the provisions of this chapter. Applications for  
6 the reservation of tax credits shall be accepted beginning  
7 January 1, 2018.

8 Section 9. (a) There is hereby established the  
9 Historic Tax Credit Evaluating Committee, which shall review  
10 qualifying projects, approve credits for projects, and rank  
11 projects in the order in which the projects should receive tax  
12 credit reservations based on criteria established by the  
13 Commission. The Committee shall meet by the sixtieth day of  
14 each quarter for the purpose of evaluating all applications  
15 for projects submitted to and approved by the Commission by  
16 the thirtieth day of that quarter and allocating tax credits  
17 available pursuant to this act. The Commissioner of Revenue  
18 shall be a non-voting member of the Committee and provide  
19 advisory and technical support. The Committee shall consist of  
20 the following:

21 (1) Director of the Governor's Office of Minority  
22 Affairs;

23 (2) The Executive Director of the Alabama Historic  
24 Commission;

25 (3) The Finance Director;

26 (4) The Director of the Alabama Department of  
27 Economic and Community Affairs;

1 (5) The Secretary of Commerce;

2 (6) Two members of the Alabama House of  
3 Representatives, at least one of which shall be a member of  
4 the minority party, to be appointed by the Speaker of the  
5 House of Representatives; and

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

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

23 Section 10. The provisions of this act are  
24 severable. If any part of this act is declared invalid or  
25 unconstitutional, that declaration shall not affect the part  
26 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.