

1 HB436
2 191846-1
3 By Representative Hall
4 RFD: Ways and Means Education
5 First Read: 20-FEB-18

2
3
4
5
6
7
8 SYNOPSIS: This bill would establish a new income tax
9 credit against the tax liability of the taxpayer
10 for the rehabilitation, preservation, or
11 development of structures near certain higher
12 education institutions.

13
14 A BILL
15 TO BE ENTITLED
16 AN ACT

17
18 To provide an income tax credit against the tax
19 liability of the taxpayer for the rehabilitation,
20 preservation, and development of structures near certain
21 higher education institutions.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. This chapter shall be known as Historic
24 University Neighborhood Rehabilitation Act.

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

1 (1) CERTIFIED REHABILITATION. Repairs or alterations
2 to a certified structure as defined in subdivision (1).

3 (2) CERTIFIED STRUCTURE. A structure which is
4 certified by the Commission as being located within one-half
5 mile of a historic higher education institution of Alabama.

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

8 (4) COMMITTEE. The Historic University Neighborhood
9 Rehabilitation Tax Credit Evaluating Committee established by
10 this act.

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

13 (6) HISTORIC HIGHER EDUCATION INSTITUTIONS. Any
14 land-grant college or university in Alabama designated to
15 receive the benefits of the Morrill Acts of 1862, 1890, or
16 1994.

17 (7) OWNER. Any taxpayer filing a State of Alabama
18 income tax return.

19 (8) QUALIFIED REHABILITATION EXPENDITURES. Any
20 expenditure for the rehabilitation of a certified structure,
21 including expenses incurred by the taxpayer, including but not
22 limited to preservation and rehabilitation work done to the
23 exterior of a certified structure, repair and stabilization of
24 structural systems, restoration of plaster, energy efficiency
25 measures except insulation in frame walls, repairs or
26 rehabilitation of heating, air conditioning, or ventilation
27 systems, repairs or rehabilitation of electrical or plumbing

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

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

15 (10) SUBSTANTIAL REHABILITATION. Rehabilitation of a
16 certified structure for which the qualified rehabilitation
17 expenditures exceed 50 percent of the owner=s original
18 purchase price of the certified structure or twenty five
19 thousand dollars (\$25,000), whichever is greater.

20 Section 3. (a) The Commission shall develop
21 standards for the approval of the substantial rehabilitation
22 of certified structures for which a tax credit is sought.

23 (b) Prior to beginning any substantial
24 rehabilitation work on a certified structure, the owner shall
25 submit an application and rehabilitation plan to the
26 Commission and an estimate of the qualified rehabilitation
27 expenditures under the rehabilitation plan; provided, however,

1 that the owner, at its own risk, may incur qualified
2 rehabilitation expenditures no earlier than six months prior
3 to the submission of the application and rehabilitation plan
4 that are limited to architectural, engineering, and land
5 surveying fees and related soft costs and any costs related to
6 the protection of the certified structure from deterioration.

7 (c) The Commission shall review the application and
8 rehabilitation plan to determine that the information
9 contained therein is complete. If the Commission determines
10 that the application and rehabilitation plan are complete, the
11 Commission shall recommend the project to the Committee for
12 the reservation of a tax credit. If the project is approved
13 for a tax credit by the Committee, the Commission shall
14 reserve, for the benefit of the owner, an allocation for a tax
15 credit as provided in Section 4 of this act, and the
16 Commission shall notify the owner in writing of the amount of
17 the reservation. The reservation of tax credits does not
18 entitle the owner to an issuance of tax credits until the
19 owner complies with all other requirements of this chapter for
20 the issuance of the tax credits. The reservation of tax
21 credits shall be made by the Commission in the order in which
22 the Committee has ranked completed applications and
23 rehabilitation plans. Reservations of tax credits shall be
24 issued by the Commission within a reasonable time from the
25 filing of a completed application and rehabilitation plan.
26 Only the property for which a property address, legal
27 description, or other specific location is provided in the

1 application shall be reviewed. Ownership of an entity that is
2 the owner of property contained in the application shall not
3 be a factor in the Commission's review of the application and
4 no subsequent change in the ownership structure of such entity
5 shall result in the loss or rescission of a reservation of tax
6 credits. The owner shall not be permitted to request the
7 review of another property for approval in the place of the
8 property contained in the application. Any application
9 disapproved by the Commission or the Committee shall be
10 removed from the review process, and the Commission shall
11 notify the owner in writing of the decision to remove the
12 application. A disapproved application may be resubmitted, but
13 shall be deemed to be a new submission and may be charged a
14 new application fee. In the event the reservations of tax
15 credits equal the total amount available for reservations
16 during the tax year, all owners with applications then
17 awaiting approval or thereafter submitted shall be notified by
18 the Commission that no additional tax credits shall be granted
19 during that tax year. The applications shall remain in active
20 status from the date of the original application and shall be
21 considered for recommendations of tax credits in the event
22 that additional credits become available due to rescission by
23 the Commission or when a new tax year's allocation of tax
24 credits becomes available.

25 Owners receiving a reservation of tax credits shall
26 commence rehabilitation, if rehabilitation has not previously
27 begun, within 18 months of the date of issuance of the written

1 notice from the Commission to the owner granting the tax
2 credits. "Commencement of rehabilitation" shall mean that, as
3 of the date in which actual physical work contemplated by the
4 rehabilitation plan submitted with the application has begun,
5 the owner has incurred no less than 20 percent of the
6 estimated costs of rehabilitation provided in the application.
7 Within 36 months of the date of issuance of the written notice
8 from the Commission to the owner granting the tax credit
9 reservation, the owner must have incurred an additional 50
10 percent of the estimated costs of rehabilitation provided in
11 the application. Within 60 months of the date of issuance of
12 the written notice from the Commission to the owner granting
13 the tax credit reservation, the project must be completed.
14 Owners receiving a reservation of tax credits shall submit
15 evidence of compliance with the provisions of this subsection.
16 If the Commission determines that an owner has failed to
17 comply with the requirements provided under this section, the
18 reservation of tax credits for the owner may be rescinded and,
19 if so, the amount of tax credits shall then be included in the
20 total amount of available tax credits provided for in
21 subsection (c) of Section 4 of this act, from which
22 reservations may be granted. Any owner whose reservation of
23 tax credits are rescinded shall be notified of the rescission
24 from the Commission and, upon receipt of the notice, may
25 submit a new application but may be charged a new application
26 fee.

1 (d) Following the completion of a substantial
2 rehabilitation of a certified structure, the owner shall
3 notify the Commission that the substantial rehabilitation has
4 been completed and shall certify the qualified rehabilitation
5 expenditures incurred with respect to the rehabilitation plan.
6 In addition, the owner shall provide the Commission with: (i)
7 a cost and expense certification, prepared by a licensed
8 certified public accountant that is not an affiliate of the
9 owner, certifying the total qualified rehabilitation
10 expenditures and the total amount of tax credits against any
11 state tax due that is specified in this chapter for which the
12 owner is eligible under Section 4 of this act and, if the
13 qualified rehabilitation expenditures exceed two hundred
14 thousand dollars (\$200,000), the cost and expense
15 certification must be audited by the licensed certified public
16 accountant; and (ii) an appraisal of the certified structure
17 prepared by an independent MAI designated and licensed real
18 estate appraiser. The Commission shall review the
19 documentation of the rehabilitation and verify its compliance
20 with the rehabilitation plan. The Commission shall also review
21 the content of the cost and expense certification as well as
22 the appraisal to ensure compliance with standards adopted by
23 rule of the Commission. Within 90 days after receipt and
24 approval of the foregoing documentation from the owner, the
25 Commission shall issue a tax credit certificate in an amount
26 equivalent to the lesser of: (i) the amount of the tax credit
27 reservation issued for the project under the provisions of

1 subsection (c), or (ii) 25 percent of the actual qualified
2 rehabilitation expenditures for certified structures. In the
3 event the amount of qualified rehabilitation expenditures
4 incurred by the owner would result in the issuance of an
5 amount of tax credits in excess of the amount of tax credits
6 reserved for the owner under subsection (c), the owner may
7 apply to the Commission for issuance of tax credits in an
8 amount equal to the excess. Applications for issuance of tax
9 credits in excess of the amount of tax credits reserved for
10 the owner shall be made on a form prescribed by the Commission
11 and shall represent a separate certificate that shall be
12 issued, subject to all provisions regarding priority provided
13 in Section 9 of this act.

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

18 (f) The Department shall grant a tax credit against
19 any state tax due that is specified in this chapter to a
20 taxpayer holding the tax credit certificate issued under
21 subsection (d) or, in the case of a transferee, issued by the
22 Department pursuant to Section 4 of this act against any tax
23 due under Chapter 18 in the amount stated on the tax credit
24 certificate. The Department shall have the right to audit and
25 to reassess any credit improperly obtained by the owner, in
26 accordance with the Taxpayers' Bill of Rights and the Uniform
27 Revenue Procedures contained in Chapter 2A; provided, however

1 that only the owner initially awarded the tax credit
2 certificate, and not any subsequent transferee of the tax
3 credit certificate or person to whom tax credits have been
4 passed through pursuant to Section 4 of this act, shall be
5 liable for any credit improperly obtained by the owner.

6 (g) For processing the taxpayer=s application for a
7 tax credit, the Commission may impose the following
8 application fees:

9 (i) For qualified rehabilitation expenses of one
10 Bmillion dollars (\$1,000,000) or less, a fee equal to one
11 percent (1%) of the qualified rehabilitation expenditures.

12 (ii) For qualified rehabilitation expenses from one
13 Bmillion and one dollars (\$1,000,001) to ten million dollars
14 (\$10,000,000), a fee equal to fifteen thousand dollars
15 (\$15,000).

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

19 (iv) Any fees collected by the Commission under this
20 section shall be deposited in the State Treasury to the credit
21 of the Commission and all such funds are to be appropriated to
22 the Commission to defray the expenses incurred in carrying out
23 the provisions of this act.

24 (h) The Commission shall report to the Legislature
25 in the third year following passage of this chapter, and
26 annually thereafter, on the overall economic activity, usage,
27 and impact to the state from the substantial rehabilitation of

1 certified structures for which tax credits have been allowed.
2 The information in the reports shall be consistent with the
3 information required by the Legislature pursuant to, and shall
4 be provided by the Commission to the Legislature in accordance
5 with, Section 40 1 50, Code of Alabama 1975, and rules adopted
6 thereunder. Information provided pursuant to this section is
7 exempt from the confidentiality provisions of Section 40 2A
8 10, Code of Alabama 1975.

9 Section 4. (a) The tax credit against the tax
10 imposed by Chapter 18, Title 40, Code of Alabama 1975, for the
11 taxable year in which the certified rehabilitation is placed
12 in service, shall be equal to 25 percent of the qualified
13 rehabilitation expenditures for certified structures. No tax
14 credit claimed for any certified rehabilitation may exceed
15 five million dollars (\$5,000,000) for all allowable property
16 types.

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

1 Historic University Neighborhood Rehabilitation Income Tax
2 Credit Account pursuant to this section.

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

8 (d) For the tax years 2019 through 2023, the
9 aggregate amount of all tax credits that may be reserved in
10 any one of such years by the Commission and certification of
11 rehabilitation plans under subsection (c) of Section 3 shall
12 not exceed ten million dollars (\$10,000,000) plus any amount
13 of previous reservations of tax credits that were rescinded
14 under subsection (c) of Section 3 of this act during the tax
15 year. However, if all of the allowable tax credit amount for
16 any tax year is not requested and reserved, any unreserved tax
17 credits may be utilized by the Commission in awarding tax
18 credits in subsequent years; provided, however, that in no
19 event shall a total of more than fifty million dollars
20 (\$50,000,000) be reserved by the Commission during the period
21 from the effective date of this act through December 31, 2023.
22 For purposes of this chapter, "tax year" shall mean the
23 calendar year.

24 (e) Tax credits granted to a partnership, a limited
25 liability company, S Corporations, trusts, or estates, shall
26 be claimed at the entity level and shall not pass through to
27 the partners, members, or owners.

1 (f) All or any portion of the income tax credits
2 under this section and Sections 3 of this act shall be
3 transferable and assignable, subject to any notice and
4 verification requirements to be determined by the Department,
5 without the requirement of transferring any ownership interest
6 in the certified structure or any interest in the entity which
7 owns the certified structure. Any tax credits transferred
8 shall be at a value of at least eighty five percent (85%) of
9 the present value of the credits. However, once a credit is
10 transferred, only the transferee may utilize such credit and
11 the credit cannot be transferred again. A transferee of the
12 tax credits may use the amount of tax credits transferred to
13 offset any income tax under Chapter 18 of Title 40. The
14 Department shall promulgate a form transfer statement to be
15 filed by the transferor with the Department prior to the
16 purported transfer of any credit issued under this chapter.
17 The transfer statement form shall include the name and federal
18 taxpayer identification number of the transferor and each
19 transferee listed therein along with the amount of the tax
20 credit to be transferred to each transferee listed on the
21 form. The transfer statement form shall also contain such
22 other information as the Department may from time to time
23 reasonably require. For each transfer, the transferor shall
24 file (1) a completed transfer statement form; (2) a copy of
25 the tax credit certificate issued by the Commission
26 documenting the amount of tax credits which the transferor
27 intends to transfer; (3) a copy of the proposed written

1 transfer agreement; and (4) a transfer fee payable to the
2 Department in the amount of one thousand dollars (\$1,000) per
3 transferee listed on the transfer statement form. The
4 transferor shall file with the Department a fully executed
5 copy of the written transfer agreement with each transferee
6 within 30 days after the completed transfer. Filing of the
7 written transfer agreement with the Department shall perfect
8 such transfer with respect to such transferee. Within 30 days
9 after the Department's receipt of the fully executed written
10 transfer agreement, the Department shall issue a tax credit
11 certificate to each transferee listed in such agreement in the
12 amount of the tax credit so transferred. Such certificate
13 shall be used by the transferee in claiming the tax credit
14 pursuant to Section 3(e) and (f) of this act. The Department
15 may promulgate such additional rules as are necessary to
16 permit verification of the ownership of the tax credits but
17 shall not promulgate any rules which unduly restrict or hinder
18 the transfer of the tax credits.

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

23 (b) In the taxable year the certified rehabilitation
24 is placed in service for any structure for which a tax credit
25 has been issued, the Commission shall provide notice of the
26 certified rehabilitation and a copy of the appraisal provided
27 by the owner to the taxing authority responsible for the

1 assessment of ad valorem taxes. Upon notification, the taxing
2 authority responsible for the assessment of ad valorem taxes
3 shall complete a new assessment for the structure to be used
4 in the assessment of ad valorem taxes for the tax year in
5 which the certified rehabilitation was placed in service.

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

19 Section 7. The tax credits authorized by this
20 chapter for the substantial rehabilitation of certified
21 structures shall not be available to owners of certified
22 structures that submit an application and rehabilitation plan
23 after December 31, 2023. No action or inaction on the part of
24 the Legislature shall reduce or suspend the tax credits
25 authorized by this chapter in any past or future calendar year
26 with respect to a certified structure, if the owner thereof
27 submits an application and rehabilitation plan with the

1 Commission and the Commission reserves an allocation for a tax
2 credit on or prior to December 31, 2023, even if the certified
3 structure is placed into service after December 31, 2023, and
4 shall not affect the owner of a certified structure if the
5 commission has reserved an allocation for a tax credit on or
6 prior to December 31, 2023.

7 Section 8. By October 1, 2018 the Commission shall
8 promulgate administrative rules necessary to implement the
9 provisions of this chapter. Applications for the reservation
10 of tax credits shall be accepted beginning November 1, 2018.

11 Section 9. (a) There is hereby established the
12 Historic University Neighborhood Rehabilitation Tax Credit
13 Evaluating Committee which shall review qualifying projects,
14 approve credits for projects, and rank projects in the order
15 in which the projects should receive tax credit reservations
16 based on criteria established by the Commission. The
17 Commission shall establish a review cycle for the Committee
18 beginning on January 1, 2019, provided that the Committee
19 shall meet at least quarterly unless no credits remain to be
20 allocated. The Commissioner of Revenue shall be a non voting
21 member of the Committee and provide advisory and technical
22 support. The Committee shall consist of the following:

23 (1) Director of the Governor's Office of Minority
24 Affairs;

25 (2) The Executive Director of the Alabama Historical
26 Commission;

27 (3) The Finance Director;

1 (4) The Director of the Alabama Department of
2 Economic and Community Affairs;

3 (5) The Secretary of Commerce;

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

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

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

25 Section 10. The provisions of this act are
26 severable. If any part of this act is declared invalid or

1 unconstitutional, that declaration shall not affect the part
2 which remains.

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