

HB253 ENGROSSED



1 AY8I77-2
2 By Representatives Clarke, Drummond, Chestnut, Gray, Pringle,
3 Simpson, Bracy, Jackson, Blackshear, Clouse, Baker, Wilcox,
4 Hall
5 RFD: Ways and Means Education
6 First Read: 04-Apr-23
7
8 2023 Regular Session



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A BILL
TO BE ENTITLED
AN ACT

Relating to taxation; to amend Sections 40-9F-31, 40-9F-33, and 40-9F-38, Code of Alabama 1975; to allow rehabilitation credits to be tied to the year in which the reservation is allocated; to provide for additional rehabilitation credit allocations; to further provide for the membership of the Historic Tax Credit Evaluating Committee and the factors considered by the committee; and to make nonsubstantive, technical revisions to update the existing code language to current style.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 40-9F-31, 40-9F-33, and 40-9F-38, Code of Alabama 1975, are amended to read as follows:

"§40-9F-31

As used in this article, the following terms ~~shall~~ have the following meanings:

(1) CERTIFIED HISTORIC STRUCTURE. A property located in ~~Alabama~~ this state which is at least 60 years of age, unless the structure is a historic structure located within the boundaries of a National Monument or Park as declared by the



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29 United States Congress or the President of the United States,
30 in which case the federal age provisions shall apply, and is
31 certified by the Alabama Historical Commission as being
32 individually listed in the National Register of Historic
33 Places, eligible for listing in the National Register of
34 Historic Places, or certified by the commission as
35 contributing to the historic significance of a Registered
36 Historic District.

37 (2) CERTIFIED REHABILITATION. Repairs or alterations to
38 a certified historic structure that is certified by the
39 commission as meeting the U.S. Secretary of the Interior's
40 Standards for Rehabilitation which meet the requirements
41 ~~contained in Section 47(c)(2)(C) of the Internal Revenue~~
42 ~~Code of 26 U.S.C. § 47, as amended, or to a certified historic~~
43 ~~residential structure as defined in subdivision (3).~~

44 ~~(3) CERTIFIED HISTORIC RESIDENTIAL STRUCTURE. A~~
45 ~~certified historic structure as defined in subdivision (1).~~

46 ~~(4) (3) COMMISSION. The Alabama Historical Commission~~
47 ~~and~~ or its successor.

48 ~~(5) (4) COMMITTEE. The Historic Tax Credit Evaluating~~
49 Committee established by this article.

50 ~~(6) (5) DEPARTMENT. The Alabama Department of Revenue or~~
51 its successor.

52 ~~(7) (6) DISQUALIFYING USE. Any use of a certified~~
53 historic ~~residential~~ structure that is occupied by an owner
54 and used exclusively as a primary or secondary residence.

55 ~~(8) (7) OWNER. Any taxpayer filing a State of Alabama~~
56 income tax return or any entity that is exempt from federal



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57 income taxation pursuant to ~~Section 501(c) of the Internal~~
58 ~~Revenue Code~~26 U.S.C. § 501, as amended, that:

59 ~~a. Owns~~ owns title to a qualified structure, or

60 ~~b. Owns~~ owns a leasehold interest in a qualified
61 structure for a term of not less than 39 years.

62 An owner as defined herein shall not be considered a
63 private user as defined in Section 40-9A-1.

64 ~~(9)~~ (8) QUALIFIED REHABILITATION EXPENDITURES. Any
65 expenditure as defined under ~~Section 47(c)(2)(A) of the~~
66 ~~Internal Revenue Code~~26 U.S.C. § 47, as amended, and the
67 related regulations thereunder, and other reasonable expenses
68 and costs expended in the rehabilitation of a qualified
69 structure. ~~For certified historic residential structures, this~~
70 ~~term shall mean expenses incurred by the taxpayer in the~~
71 ~~certified rehabilitation of a certified historic residential~~
72 ~~structure, including but not limited to preservation and~~
73 ~~rehabilitation work done to the exterior of a certified~~
74 ~~historic residential structure, repair and stabilization of~~
75 ~~historic structural systems, restoration of historic plaster,~~
76 ~~energy efficiency measures except insulation in frame walls,~~
77 ~~repairs or rehabilitation of heating, air conditioning, or~~
78 ~~ventilation systems, repairs or rehabilitation of electrical~~
79 ~~or plumbing systems exclusive of new electrical appliances and~~
80 ~~electrical or plumbing fixtures, and architectural,~~
81 ~~engineering, and land surveying fees.~~ Qualified rehabilitation
82 expenditures do not include the cost of acquisition of the
83 qualified structure, the personal labor by the owner, or any
84 cost associated with the rehabilitation of an outbuilding of



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85 the qualified structure, unless the outbuilding is certified
86 by the commission to contribute to the historical significance
87 of the qualified structure.

88 ~~(10)~~ (9) QUALIFIED STRUCTURE. Certified historic
89 structures which are certified by the commission as meeting
90 the requirements contained in ~~Section 47(c)(1)(A)(i) and (ii)~~
91 ~~of the Internal Revenue Code~~ 26 U.S.C. § 47, ~~as amended, and to~~
92 ~~certified historic residential structures as defined herein.~~

93 ~~(11)~~ (10) REGISTERED HISTORIC DISTRICT. Any district
94 listed in the National Register of Historic Places and any
95 district which is either of the following:

96 a. Designated under Alabama or local law as containing
97 criteria which substantially achieves the purpose of
98 preserving and rehabilitating buildings of historic
99 significance to the district.

100 b. Certified by the U.S. Secretary of the Interior as
101 meeting substantially all of the requirements for the listing
102 of districts in the National Register of Historic Places.

103 ~~(12)~~ (11) REHABILITATION PLAN. Construction plans and
104 specifications for the proposed rehabilitation of a qualified
105 structure in sufficient detail to enable the commission to
106 evaluate compliance with the standards developed under this
107 article.

108 ~~(13)~~ (12) SUBSTANTIAL REHABILITATION. Rehabilitation of
109 a qualified structure for which the qualified rehabilitation
110 expenditures exceed 50 percent of the owner's original
111 purchase price of the qualified structure or twenty-five
112 thousand dollars (\$25,000), whichever is greater."



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113 "§40-9F-33

114 (a) The state portion of any tax credit against the tax
115 imposed by Chapter 18 for the taxable year in which the
116 reservation is allocated to a project or the certified
117 rehabilitation is placed in service shall be equal to 25
118 percent of the qualified rehabilitation expenditures for
119 certified historic structures. No tax credit claimed for any
120 certified rehabilitation may exceed five million dollars
121 (\$5,000,000) for all allowable property types ~~except a~~
122 ~~certified historic residential structure, and fifty thousand~~
123 ~~dollars (\$50,000) for a certified historic residential~~
124 ~~structure.~~

125 (b) There is created within the Education Trust Fund a
126 separate account named the Historic Preservation Income Tax
127 Credit Account. The Commissioner of Revenue shall certify to
128 the Comptroller the amount of income tax credits under this
129 section and the Comptroller shall transfer into the Historic
130 Preservation Income Tax Credit Account only the amount from
131 sales tax revenues within the Education Trust Fund that is
132 sufficient for the Department of Revenue to use to cover the
133 income tax credits for the applicable tax year. The
134 Commissioner of Revenue shall distribute the funds in the
135 Historic Preservation Income Tax Credit Account pursuant to
136 this section.

137 (c) The entire tax credit must be claimed by the
138 taxpayer for the taxable year in which the reservation is
139 allocated to a project or the certified rehabilitation is
140 placed in service. Tax credits shall not be claimed prior to



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141 the taxable year in which the certified rehabilitation is
142 placed in service. Where the taxes owed by the taxpayer are
143 less than the tax credit, the taxpayer shall be entitled to
144 claim a refund for the difference. In the event that any
145 additional credit is allocated to the taxpayer for a given
146 project, the additional credit must be claimed in the taxable
147 year the additional credit is allocated to the taxpayer.

148 (d) (1) For the tax years 2018 through ~~2027~~2022, the
149 aggregate amount of all tax credits that may be reserved in
150 any one of such years by the commission and certification of
151 rehabilitation plans under ~~subsection (c) of~~ Section
152 40-9F-32 (c) shall not exceed twenty million dollars
153 (\$20,000,000), plus any amount of previous reservations of tax
154 credits that were rescinded under ~~subsection (c) of~~ Section
155 40-9F-32 (c) during the tax year. However, if all of the
156 allowable tax credit amount for any tax year is not requested
157 and reserved, any unreserved tax credits may be utilized by
158 the commission in awarding tax credits in subsequent years;
159 provided, however, that in no event shall a total of more than
160 two hundred million dollars (\$200,000,000) be reserved by the
161 commission during the period from May 25, 2017, through
162 December 31, ~~2027~~2022, pursuant to this article. Applications
163 shall not be received by the commission after the Historic Tax
164 Credit Evaluating Committee has ranked projects with a total
165 amount exceeding two hundred million dollars (\$200,000,000).
166 ~~For purposes of this article, tax year shall mean the calendar~~
167 ~~year.~~

168 (2) For the tax years 2023 through 2027, the aggregate



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169 amount of all tax credits that may be reserved in any one of
170 such years by the commission and certification of
171 rehabilitation plans under Section 40-9F-32(c) shall not
172 exceed ~~forty million dollars (\$40,000,000)~~ twenty million
173 dollars (\$20,000,000), plus any amount of previous
174 reservations of tax credits that were rescinded under Section
175 40-9F-32(c) during the tax year. However, if all of the
176 allowable tax credit amount for any tax year is not requested
177 and reserved, any unreserved tax credits may be utilized by
178 the commission in awarding tax credits in subsequent years;
179 provided, however, that in no event shall a total of more than
180 two hundred million dollars (\$200,000,000) be reserved by the
181 commission during the period from May 25, 2017, through
182 December 31, 2027, pursuant to this article.

183 (3) For tax years 2023 through 2027, no tax credits
184 shall be reserved for qualified structures the end use of
185 which is proposed to be a disqualifying use.

186 (4) For purposes of this article, "tax year" shall mean
187 calendar year.

188 (e) Of the annual amount of the tax credits provided
189 for in subsection (d), 40 percent shall be reserved to
190 taxpayers with a certified rehabilitation project located in a
191 county in which the population does not exceed 175,000
192 according to the most recent federal decennial census. In the
193 event applications are not received and credits are not
194 allocated for projects in these areas by the close of the
195 third quarter of the program year, the funds may revert for
196 allocations of other project applications.



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197 (f) Tax credits granted to a partnership, a limited
198 liability company, S corporations, trusts, or estates, shall
199 be claimed at the entity level and shall not pass through to
200 the partners, members, or owners.

201 (g) All or any portion of the income tax credits under
202 this section and Section 40-9F-32 shall be transferable and
203 assignable, subject to any notice and verification
204 requirements to be determined by the department, without the
205 requirement of transferring any ownership interest in the
206 qualified structure or any interest in the entity which owns
207 the qualified structure. Any tax credits transferred shall be
208 at a value of at least 85 percent of the present value of the
209 credits. However, once a credit is transferred, only the
210 transferee may utilize ~~such~~ the credit and the credit ~~cannot~~
211 may not be transferred again. A transferee of the tax credits
212 may use the amount of tax credits transferred to offset any
213 income tax under Chapter 18. The entire tax credit must be
214 claimed by the transferee for the taxable year in which the
215 reservation is allocated to a project or the certified
216 rehabilitation is placed in service. When the taxes owed by
217 the transferee are less than the tax credit, the transferee
218 shall be entitled to claim a refund for the difference. The
219 department shall adopt a form transfer statement to be filed
220 by the transferor with the department prior to the purported
221 transfer of any credit issued under this article. The transfer
222 statement form shall include the name and federal taxpayer
223 identification number of the transferor and each transferee
224 listed therein along with the amount of the tax credit to be



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225 transferred to each transferee listed on the form. The
226 transfer statement form shall also contain any other
227 information as the department may from time to time reasonably
228 require. For each transfer, the transferor shall file: (1) a
229 completed transfer statement form; (2) a copy of the tax
230 credit certificate issued by the commission documenting the
231 amount of tax credits which the transferor intends to
232 transfer; (3) a copy of the proposed written transfer
233 agreement; and (4) a transfer fee payable to the department in
234 the amount of one thousand dollars (\$1,000) per transferee
235 listed on the transfer statement form. The transferor shall
236 file with the department a fully executed copy of the written
237 transfer agreement with each transferee within 30 days after
238 the completed transfer. Filing of the written transfer
239 agreement with the department shall perfect the transfer with
240 respect to the transferee. Within 30 days after the
241 department's receipt of the fully executed written transfer
242 agreement, the department shall issue a tax credit certificate
243 to each transferee listed in the agreement in the amount of
244 the tax credit so transferred. The certificate shall be used
245 by the transferee in claiming the tax credit pursuant to
246 subsections (e) and (f) of Section 40-9F-32. The department
247 may adopt additional rules as are necessary to permit
248 verification of the ownership of the tax credits, but shall
249 not adopt any rules which unduly restrict or hinder the
250 transfer of the tax credits."

251 "§40-9F-38

252 (a) There is established the Historic Tax Credit



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253 Evaluating Committee, which shall review qualifying projects,
254 approve credits for projects, and rank projects in the order
255 in which the projects should receive tax credit reservations
256 based on criteria established by the commission. The
257 commission shall establish a review cycle for the committee
258 beginning on January 1, 2018, provided that the committee
259 shall meet at least quarterly unless no credits remain to be
260 allocated. The Commissioner of Revenue shall be a nonvoting
261 member of the committee and provide advisory and technical
262 support. The committee shall consist of the following:

263 (1) The Director of the Alabama Office of Minority
264 Affairs.

265 (2) The Executive Director of the Alabama Historical
266 Commission.

267 (3) The Finance Director.

268 (4) The Director of the Alabama Department of Economic
269 and Community Affairs.

270 (5) The Secretary of Commerce.

271 (6) Two members of the Alabama House of
272 Representatives, at least one of which shall be a member of
273 the minority party, to be appointed by the Speaker of the
274 House of Representatives.

275 (7) Two members of the Alabama Senate, at least one of
276 which shall be a member of the minority party, to be appointed
277 by the President Pro Tempore of the Senate.

278 (8) The Chair of the Senate Finance Taxation Education
279 Committee or his or her designee.

280 (9) The Chair of the House Ways and Means Education



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281 Committee or his or her designee.

282 (b) (1) The Alabama Historical Commission shall adopt
283 rules that shall set forth guidelines to be used by the
284 committee in determining the allocation of credits. The
285 guidelines shall set forth factors to be considered by the
286 committee including all of the following:

287 a. ~~Relative~~The relative value of the proposed project
288 to the particular community, including the maintenance of the
289 historic fabric of the community~~†~~.

290 b. The possible return on investment for the community
291 in which the proposed project is located~~†~~.

292 c. ~~the~~The geographic distribution of projects~~†~~.

293 d. ~~the~~The likelihood of the project proceeding without
294 the historic tax credit authorized in this article~~†~~.

295 e. ~~and~~The strength of local support for the proposed
296 project.

297 f. The leveraged investment ratio of the project, as
298 determined by the total project investment divided by the
299 amount of tax credits requested.

300 g. The number of net new jobs the project will create
301 in the state.

302 h. The amount of overall project financing for which
303 the applicant has firm, secured commitments prior to
304 submitting its application.

305 (2) Included in the information to be required for the
306 evaluation submitted in the application of any project shall
307 be any additional tax credits or state, federal, or local
308 government grants that the applicant expects to utilize for



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309 the construction of the project.

310 (3) The committee shall establish a minimum threshold
311 that a project must exceed before the project may be funded by
312 the committee.

313 (c) The committee may meet in person, remotely, or by
314 using a hybrid model where some members attend in person and
315 others attend remotely, pursuant to Section 36-25A-5.1."

316 Section 2. This act shall become effective immediately
317 following its passage and approval by the Governor, or its
318 otherwise becoming law.



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House of Representatives

Read for the first time and referred04-Apr-23
to the House of Representatives
committee on Ways and Means
Education
Read for the second time and placed03-May-23
on the calendar:
1 amendment
Read for the third time and passed09-May-23
as amended
Yeas 102
Nays 0
Abstains 1

John Treadwell
Clerk