

SB240 INTRODUCED



1 83D8FF-1
2 By Senators Singleton, Chambliss, Smitherman
3 RFD: Finance and Taxation Education
4 First Read: 25-Apr-23
5
6 2023 Regular Session



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SYNOPSIS:

Under current law, the aggregate amount of all tax credits that may be reserved in any year by the Alabama Historical Commission shall not exceed twenty million dollars.

This bill would allow the Alabama Historical Commission to aggregate up to forty million dollars in tax credits each year.

Under current law, rehabilitation tax credits are tied to the year in which the certified rehabilitation is placed in service.

This bill would allow rehabilitation tax credits to be tied to the year in which the reservation is allocated.

This bill would provide for additional rehabilitation credit allocations.

This bill would further provide for the membership of the Historic Tax Credit Evaluating Committee and the factors considered by the committee.

This bill would also make nonsubstantive, technical revisions to update the existing code language to current style.

A BILL



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29 TO BE ENTITLED

30 AN ACT

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

42 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

45 "§40-9F-31

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

48 (1) CERTIFIED HISTORIC STRUCTURE. A property located in
49 ~~Alabama~~ this state which is at least 60 years of age, unless
50 the structure is a historic structure located within the
51 boundaries of a National Monument or Park as declared by the
52 United States Congress or the President of the United States,
53 in which case the federal age provisions shall apply, and is
54 certified by the Alabama Historical Commission as being
55 individually listed in the National Register of Historic
56 Places, eligible for listing in the National Register of



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57 Historic Places, or certified by the commission as
58 contributing to the historic significance of a Registered
59 Historic District.

60 (2) CERTIFIED REHABILITATION. Repairs or alterations to
61 a certified historic structure that is certified by the
62 commission as meeting the U.S. Secretary of the Interior's
63 Standards for Rehabilitation which meet the requirements
64 ~~contained in Section 47(c)(2)(C) of the Internal Revenue~~
65 ~~Code of 26 U.S.C. § 47, as amended, or to a certified historic~~
66 ~~residential structure as defined in subdivision (3).~~

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

69 ~~(4)~~ (3) COMMISSION. The Alabama Historical Commission
70 ~~and~~ or its successor.

71 ~~(5)~~ (4) COMMITTEE. The Historic Tax Credit Evaluating
72 Committee established by this article.

73 ~~(6)~~ (5) DEPARTMENT. The Alabama Department of Revenue or
74 its successor.

75 ~~(7)~~ (6) DISQUALIFYING USE. Any use of a certified
76 historic ~~residential~~ structure that is occupied by an owner
77 and used exclusively as a primary or secondary residence.

78 ~~(8)~~ (7) OWNER. Any taxpayer filing a State of Alabama
79 income tax return or any entity that is exempt from federal
80 income taxation pursuant to ~~Section 501(c) of the Internal~~
81 ~~Revenue Code~~ 26 U.S.C. § 501, ~~as amended,~~ that:

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

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



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

87 ~~(9)~~ (8) QUALIFIED REHABILITATION EXPENDITURES. Any
88 expenditure as defined under ~~Section 47(c)(2)(A) of the~~
89 ~~Internal Revenue Code~~ 26 U.S.C. § 47, as amended, and the
90 related regulations thereunder, and other reasonable expenses
91 and costs expended in the rehabilitation of a qualified
92 structure. ~~For certified historic residential structures, this~~
93 ~~term shall mean expenses incurred by the taxpayer in the~~
94 ~~certified rehabilitation of a certified historic residential~~
95 ~~structure, including but not limited to preservation and~~
96 ~~rehabilitation work done to the exterior of a certified~~
97 ~~historic residential structure, repair and stabilization of~~
98 ~~historic structural systems, restoration of historic plaster,~~
99 ~~energy efficiency measures except insulation in frame walls,~~
100 ~~repairs or rehabilitation of heating, air conditioning, or~~
101 ~~ventilation systems, repairs or rehabilitation of electrical~~
102 ~~or plumbing systems exclusive of new electrical appliances and~~
103 ~~electrical or plumbing fixtures, and architectural,~~
104 ~~engineering, and land surveying fees.~~ Qualified rehabilitation
105 expenditures do not include the cost of acquisition of the
106 qualified structure, the personal labor by the owner, or any
107 cost associated with the rehabilitation of an outbuilding of
108 the qualified structure, unless the outbuilding is certified
109 by the commission to contribute to the historical significance
110 of the qualified structure.

111 ~~(10)~~ (9) QUALIFIED STRUCTURE. Certified historic
112 structures which are certified by the commission as meeting



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113 the requirements contained in ~~Section 47(c)(1)(A)(i) and (ii)~~
114 ~~of the Internal Revenue Code~~26 U.S.C. § 47, ~~as amended, and to~~
115 ~~certified historic residential structures as defined herein.~~

116 ~~(11)~~(10) REGISTERED HISTORIC DISTRICT. Any district
117 listed in the National Register of Historic Places and any
118 district which is either of the following:

119 a. Designated under Alabama or local law as containing
120 criteria which substantially achieves the purpose of
121 preserving and rehabilitating buildings of historic
122 significance to the district.

123 b. Certified by the U.S. Secretary of the Interior as
124 meeting substantially all of the requirements for the listing
125 of districts in the National Register of Historic Places.

126 ~~(12)~~(11) REHABILITATION PLAN. Construction plans and
127 specifications for the proposed rehabilitation of a qualified
128 structure in sufficient detail to enable the commission to
129 evaluate compliance with the standards developed under this
130 article.

131 ~~(13)~~(12) SUBSTANTIAL REHABILITATION. Rehabilitation of
132 a qualified structure for which the qualified rehabilitation
133 expenditures exceed 50 percent of the owner's original
134 purchase price of the qualified structure or twenty-five
135 thousand dollars (\$25,000), whichever is greater."

136 "§40-9F-33

137 (a) The state portion of any tax credit against the tax
138 imposed by Chapter 18 for the taxable year in which the
139 reservation is allocated to a project or the certified
140 rehabilitation is placed in service shall be equal to 25



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141 percent of the qualified rehabilitation expenditures for
142 certified historic structures. No tax credit claimed for any
143 certified rehabilitation may exceed five million dollars
144 (\$5,000,000) for all allowable property types ~~except a~~
145 ~~certified historic residential structure, and fifty thousand~~
146 ~~dollars (\$50,000) for a certified historic residential~~
147 ~~structure.~~

148 (b) There is created within the Education Trust Fund a
149 separate account named the Historic Preservation Income Tax
150 Credit Account. The Commissioner of Revenue shall certify to
151 the Comptroller the amount of income tax credits under this
152 section and the Comptroller shall transfer into the Historic
153 Preservation Income Tax Credit Account only the amount from
154 sales tax revenues within the Education Trust Fund that is
155 sufficient for the Department of Revenue to use to cover the
156 income tax credits for the applicable tax year. The
157 Commissioner of Revenue shall distribute the funds in the
158 Historic Preservation Income Tax Credit Account pursuant to
159 this section.

160 (c) The entire tax credit must be claimed by the
161 taxpayer for the taxable year in which the reservation is
162 allocated to a project or the certified rehabilitation is
163 placed in service. Tax credits shall not be claimed prior to
164 the taxable year in which the certified rehabilitation is
165 placed in service. Where the taxes owed by the taxpayer are
166 less than the tax credit, the taxpayer shall be entitled to
167 claim a refund for the difference. In the event that any
168 additional credit is allocated to the taxpayer for a given



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169 project, the additional credit must be claimed in the taxable
170 year the additional credit is allocated to the taxpayer.

171 (d) (1) For the tax years 2018 through ~~2027~~2022, the
172 aggregate amount of all tax credits that may be reserved in
173 any one of such years by the commission and certification of
174 rehabilitation plans under ~~subsection (c) of~~ Section
175 40-9F-32 (c) shall not exceed twenty million dollars
176 (\$20,000,000), plus any amount of previous reservations of tax
177 credits that were rescinded under ~~subsection (c) of~~ Section
178 40-9F-32 (c) during the tax year. However, if all of the
179 allowable tax credit amount for any tax year is not requested
180 and reserved, any unreserved tax credits may be utilized by
181 the commission in awarding tax credits in subsequent years;
182 provided, however, that in no event shall a total of more than
183 two hundred million dollars (\$200,000,000) be reserved by the
184 commission during the period from May 25, 2017, through
185 December 31, ~~2027~~2022, pursuant to this article. Applications
186 shall not be received by the commission after the Historic Tax
187 Credit Evaluating Committee has ranked projects with a total
188 amount exceeding two hundred million dollars (\$200,000,000).
189 ~~For purposes of this article, tax year shall mean the calendar~~
190 ~~year.~~

191 (2) For the tax years 2023 through 2027, the aggregate
192 amount of all tax credits that may be reserved in any one of
193 such years by the commission and certification of
194 rehabilitation plans under Section 40-9F-32(c) shall not
195 exceed forty million dollars (\$40,000,000), plus any amount of
196 previous reservations of tax credits that were rescinded under



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197 Section 40-9F-32(c) during the tax year. However, if all of
198 the allowable tax credit amount for any tax year is not
199 requested and reserved, any unreserved tax credits may be
200 utilized by the commission in awarding tax credits in
201 subsequent years; provided, however, that in no event shall a
202 total of more than two hundred million dollars (\$200,000,000)
203 be reserved by the commission during the period from May 25,
204 2017, through December 31, 2027, pursuant to this article.

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

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

210 (e) Of the annual amount of the tax credits provided
211 for in subsection (d), 40 percent shall be reserved to
212 taxpayers with a certified rehabilitation project located in a
213 county in which the population does not exceed 175,000
214 according to the most recent federal decennial census. In the
215 event applications are not received and credits are not
216 allocated for projects in these areas by the close of the
217 third quarter of the program year, the funds may revert for
218 allocations of other project applications.

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

223 (g) All or any portion of the income tax credits under
224 this section and Section 40-9F-32 shall be transferable and



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225 assignable, subject to any notice and verification
226 requirements to be determined by the department, without the
227 requirement of transferring any ownership interest in the
228 qualified structure or any interest in the entity which owns
229 the qualified structure. Any tax credits transferred shall be
230 at a value of at least 85 percent of the present value of the
231 credits. However, once a credit is transferred, only the
232 transferee may utilize ~~such~~ the credit and the credit ~~cannot~~
233 may not be transferred again. A transferee of the tax credits
234 may use the amount of tax credits transferred to offset any
235 income tax under Chapter 18. The entire tax credit must be
236 claimed by the transferee for the taxable year in which the
237 reservation is allocated to a project or the certified
238 rehabilitation is placed in service. When the taxes owed by
239 the transferee are less than the tax credit, the transferee
240 shall be entitled to claim a refund for the difference. The
241 department shall adopt a form transfer statement to be filed
242 by the transferor with the department prior to the purported
243 transfer of any credit issued under this article. The transfer
244 statement form shall include the name and federal taxpayer
245 identification number of the transferor and each transferee
246 listed therein along with the amount of the tax credit to be
247 transferred to each transferee listed on the form. The
248 transfer statement form shall also contain any other
249 information as the department may from time to time reasonably
250 require. For each transfer, the transferor shall file: (1) a
251 completed transfer statement form; (2) a copy of the tax
252 credit certificate issued by the commission documenting the



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253 amount of tax credits which the transferor intends to
254 transfer; (3) a copy of the proposed written transfer
255 agreement; and (4) a transfer fee payable to the department in
256 the amount of one thousand dollars (\$1,000) per transferee
257 listed on the transfer statement form. The transferor shall
258 file with the department a fully executed copy of the written
259 transfer agreement with each transferee within 30 days after
260 the completed transfer. Filing of the written transfer
261 agreement with the department shall perfect the transfer with
262 respect to the transferee. Within 30 days after the
263 department's receipt of the fully executed written transfer
264 agreement, the department shall issue a tax credit certificate
265 to each transferee listed in the agreement in the amount of
266 the tax credit so transferred. The certificate shall be used
267 by the transferee in claiming the tax credit pursuant to
268 subsections (e) and (f) of Section 40-9F-32. The department
269 may adopt additional rules as are necessary to permit
270 verification of the ownership of the tax credits, but shall
271 not adopt any rules which unduly restrict or hinder the
272 transfer of the tax credits."

273 "§40-9F-38

274 (a) There is established the Historic Tax Credit
275 Evaluating Committee, which shall review qualifying projects,
276 approve credits for projects, and rank projects in the order
277 in which the projects should receive tax credit reservations
278 based on criteria established by the commission. The
279 commission shall establish a review cycle for the committee
280 beginning on January 1, 2018, provided that the committee



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281 shall meet at least quarterly unless no credits remain to be
282 allocated. The Commissioner of Revenue shall be a nonvoting
283 member of the committee and provide advisory and technical
284 support. The committee shall consist of the following:

285 (1) The Director of the Alabama Office of Minority
286 Affairs.

287 (2) The Executive Director of the Alabama Historical
288 Commission.

289 (3) The Finance Director.

290 (4) The Director of the Alabama Department of Economic
291 and Community Affairs.

292 (5) The Secretary of Commerce.

293 (6) Two members of the Alabama House of
294 Representatives, at least one of which shall be a member of
295 the minority party, to be appointed by the Speaker of the
296 House of Representatives.

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

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

302 (9) The Chair of the House Ways and Means Education
303 Committee or his or her designee.

304 (b) (1) The Alabama Historical Commission shall adopt
305 rules that shall set forth guidelines to be used by the
306 committee in determining the allocation of credits. The
307 guidelines shall set forth factors to be considered by the
308 committee including all of the following:



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309 a. ~~Relative~~The relative value of the proposed project
310 to the particular community, including the maintenance of the
311 historic fabric of the community~~†~~.

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

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

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

317 e. ~~and~~The strength of local support for the proposed
318 project.

319 f. The leveraged investment ratio of the project, as
320 determined by the total project investment divided by the
321 amount of tax credits requested.

322 g. The number of net new jobs the project will create
323 in the state.

324 h. The amount of overall project financing for which
325 the applicant has firm, secured commitments prior to
326 submitting its application.

327 (2) Included in the information to be required for the
328 evaluation submitted in the application of any project shall
329 be any additional tax credits or state, federal, or local
330 government grants that the applicant expects to utilize for
331 the construction of the project.

332 (3) The committee shall establish a minimum threshold
333 that a project must exceed before the project may be funded by
334 the committee.

335 (c) The committee may meet in person, remotely, or by
336 using a hybrid model where some members attend in person and



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337 others attend remotely, pursuant to Section 36-25A-5.1."

338 Section 2. This act shall become effective immediately
339 following its passage and approval by the Governor, or its
340 otherwise becoming law.