HB452

SL9IY87-1

By Representative Pringle

RFD: Ways and Means Education

First Read: 12-Feb-26

SYNOPSIS:

Under existing law, a state income tax credit is provided under certain conditions for qualified rehabilitation expenditures for the substantial rehabilitation of certified historic structures. The aggregate amount of all tax credits is limited for the tax years 2023 through 2027 and the program sunsets following tax year 2027.

This bill would extend the tax credits for qualified rehabilitation expenditures for substantial rehabilitation of certified historic structures through tax year 2032 and increase the annual limit on credits. The bill would also provide certain definitions and increase the credit amount for properties located in rural communities.

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

A BILL

TO BE ENTITLED

AN ACT

Relating to the state income tax credit for the rehabilitation of qualified historic structures; to amend Sections 40-9F-31 through 40-9F-33, and Section 40-9F-36, Code of Alabama 1975, to extend the income tax credit through 2032; to increase the amount of tax credits that may be provided in a tax year; to provide further for credit amounts and the definition of "qualifying structures"; and to make nonsubstantive, technical revisions to update existing code language to current style.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 40-9F-31 through 40-9F-33 and Section 40-9F-36, Code of Alabama 1975, are amended to read as follows:

"§40-9F-31

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

(1) CERTIFIED HISTORIC STRUCTURE. A property located in 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 United States Congress or the President of the United States, in which case the federal age provisions shall apply, and is certified by the Alabama Historical Commission as being individually listed in the National Register of Historic Places, eligible for listing in the National Register of Historic Places, or certified by the commission as contributing to the historic significance of a Registered Historic District. For applications submitted after June 1, 2023, a property must be 75 years of age.

(2) CERTIFIED REHABILITATION. Repairs or alterations to a certified historic structure that is certified by the commission as meeting the U.S. Secretary of the Interior's Standards for Rehabilitation which meet the requirements of 26 U.S.C. § 47.

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

(4) COMMITTEE. The Historic Tax Credit Evaluating Committee established by this article.

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

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

(7) OWNER. Any taxpayer filing a State of Alabama income tax return or any entity that is exempt from federal income taxation pursuant to 26 U.S.C. § 501, that owns title to a qualified structure or owns a leasehold interest in a qualified structure for a term of not less than 39 years. An owner as defined herein shall not be considered a private user as defined in Section 40-9A-1.

(8) QUALIFIED REHABILITATION EXPENDITURES. Any expenditure as defined under 26 U.S.C. § 47, as amended, and the related regulations thereunder, and other reasonable expenses and costs expended in the rehabilitation of a qualified structure. Qualified rehabilitation expenditures do not include the cost of acquisition of the qualified structure, the personal labor by the owner, or any cost

associated with the rehabilitation of an outbuilding of the qualified structure, unless the outbuilding is certified by the commission to contribute to the historical significance of the qualified structure.

(9) QUALIFIED STRUCTURE. Certified historic structures that are certified by the commission as meeting the requirements contained in 26 U.S.C. § 47.

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

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

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

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

(12) RURAL COMMUNITIES. Communities located within counties of this state that have less than 175,000 in population based on the most recent federal decennial census.

~~(12)~~(13) SUBSTANTIAL REHABILITATION. ~~Rehabilitation~~For tax years 2028 through 2032, rehabilitation of a qualified structure for which the qualified rehabilitation expenditures exceed 50 percent of the owner's original purchase price of the qualified structure or twenty-five thousand dollars ($25,000), whichever is greater. For tax years 2028 through 2032, rehabilitation of a qualified structure for which the qualified rehabilitation expenditures exceed 50 percent of the owner's original purchase price of the qualified structure or twenty thousand dollars ($20,000) for qualified structures located in rural communities and twenty-five thousand dollars ($25,000) for properties located in urban communities, whichever is greater.

(14) URBAN COMMUNITIES. Communities located within counties of this state that have greater than 175,000 in population based on the most recent federal decennial census."

"§40-9F-32

(a) The commission shall develop standards for the approval of the substantial rehabilitation of qualified structures for which a tax credit is sought. The standards shall: (i) take into account whether the substantial rehabilitation of a qualified structure is consistent with the historic character of the structure or of the Registered Historic District in which the property is located; and (ii) for tax years 2023 through ~~2027~~2032, establish a mechanism to require owners to confirm that the proposed use for the qualified structure is not a disqualifying use in the application, and prior to the commission's issuance of the tax credit certificate for the qualified structure under ~~Section 40-9F-32(d)~~subsection (d).

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

(c)(1) The commission shall review the application and rehabilitation plan to determine that the information contained therein is complete. If the commission determines that the application and rehabilitation plan are complete, the commission shall recommend the project to the committee for the reservation of a tax credit. If the project is approved for a tax credit by the committee, the commission shall reserve, for the benefit of the owner, an allocation for a tax credit as provided in Section 40-9F-33, and the commission shall notify the owner in writing of the amount of the reservation. The reservation of tax credits does not entitle the owner to an issuance of tax credits until the owner complies with all other requirements of this article for the issuance of the tax credits. The reservation of tax credits shall be made by the commission in the order in which the committee has ranked completed applications and rehabilitation plans. Reservations of tax credits shall be issued by the commission within a reasonable time from the filing of a completed application and rehabilitation plan. Only the property for which a property address, legal description, or other specific location is provided in the application shall be reviewed. Ownership of an entity that is the owner of property contained in the application shall not be a factor in the commission's review of the application and no subsequent change in the ownership structure of such entity shall result in the loss or rescission of a reservation of tax credits. The owner shall not be permitted to request the review of another property for approval in the place of the property contained in the application. Any application disapproved by the commission or the committee shall be removed from the review process, and the commission shall notify the owner in writing of the decision to remove the application. A disapproved application may be resubmitted, but shall be deemed to be a new submission and may be charged a new application fee. In the event the reservations of tax credits equal the total amount available for reservations during the tax year, all owners with applications then awaiting approval or thereafter submitted shall be notified by the commission that no additional tax credits shall be granted during that tax year. The applications shall remain in active status from the date of the original application and shall be considered for recommendations of tax credits in the event that additional credits become available due to rescission by the commission or when a new tax year's allocation of tax credits becomes available.

(2) Owners receiving a reservation of tax credits shall

commence rehabilitation, if rehabilitation has not previously begun, within 18 months of the date of issuance of the written notice from the commission to the owner granting the tax credits. Commencement of rehabilitation shall mean that, as of the date in which actual physical work contemplated by the rehabilitation plan submitted with the application has begun, the owner has incurred no less than 20 percent of the estimated costs of rehabilitation provided in the application. Within 36 months of the date of issuance of the written notice from the commission to the owner granting the tax credit reservation, the owner must have incurred an additional 50 percent of the estimated costs of rehabilitation provided in the application. Within 60 months of the date of issuance of the written notice from the commission to the owner granting the tax credit reservation, the project must be completed. Owners receiving a reservation of tax credits shall submit evidence of compliance with this subsection. If the commission determines that an owner has failed to comply with the requirements provided under this section, the reservation of tax credits for the owner may be rescinded and, if so, the amount of tax credits shall then be included in the total amount of available tax credits provided for in ~~subsection (c) of~~ Section 40-9F-33(c), from which reservations may be granted. Any owner whose reservation of tax credits are rescinded shall be notified of the rescission from the commission and, upon receipt of the notice, may submit a new application but may be charged a new application fee.

(d) Following the completion of a substantial rehabilitation of a qualified structure, the owner shall notify the commission that the substantial rehabilitation has been completed and shall certify the qualified rehabilitation expenditures incurred with respect to the rehabilitation plan. In addition, the owner shall provide the commission with: (i) a cost and expense certification, prepared by a licensed certified public accountant that is not an affiliate of the owner, certifying the total qualified rehabilitation expenditures and the total amount of tax credits against any state tax due that is specified in this article for which the owner is eligible under Section 40-9F-33; and (ii) an appraisal of the qualified structure prepared by an independent MAI designated and licensed real estate appraiser. The commission shall review the documentation of the rehabilitation and verify its compliance with the rehabilitation plan. ~~Within~~For tax years 2023 through 2027, within 90 days after receipt and approval of the foregoing documentation from the owner, the commission shall issue a tax credit certificate in an amount equivalent to the lesser of: (i) the amount of the tax credit reservation issued for the project under the provisions of subsection (c); or (ii) 25 percent of the actual qualified rehabilitation expenditures for certified historic structures. For tax years 2028 through 2032, within 90 days after receipt and approval of the foregoing documentation from the owner, the commission shall issue a tax credit certificate in an amount equivalent to the lesser of: (i) the amount of the tax credit reservation issued for the project under the provisions of subsection (c); (ii)

30 percent of the actual qualified rehabilitation expenditures for certified historic structures located in rural communities; or (iii) 25 percent of the actual qualified rehabilitation expenditures for certified historic structures located in urban communities. In the event the amount of qualified rehabilitation expenditures incurred by the owner would result in the issuance of an amount of tax credits in excess of the amount of tax credits reserved for the owner under subsection (c), the owner may apply to the commission for issuance of tax credits in an amount equal to the excess. Applications for issuance of tax credits in excess of the amount of tax credits reserved for the owner shall be made on a form prescribed by the commission and shall represent a separate certificate that shall be issued, subject to all provisions regarding priority provided in Section 40-9F-38.

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

(f) The department shall grant a tax credit against any state tax due that is specified in this article to a taxpayer holding the tax credit certificate issued under subsection (d) or, in the case of a transferee, issued by the department pursuant to Section 40-9F-33 against any tax due under Chapter 18 in the amount stated on the tax credit certificate. The department shall have the right to audit and to reassess any credit improperly obtained by the owner, in accordance with the Taxpayers' Bill of Rights and the Uniform Revenue

Procedures contained in Chapter 2A~~;~~, provided~~, however~~ that only the owner initially awarded the tax credit certificate, and not any subsequent transferee of the tax credit certificate or person to whom tax credits have been passed through pursuant to Section 40-9F-33, shall be liable for any credit improperly obtained by the owner.

(g) For processing the taxpayer's application for a tax credit, the commission may impose the following application fees:

(1) For qualified rehabilitation expenses of one million dollars ($1,000,000) or less, a fee equal to 1 percent of the qualified rehabilitation expenditures.

(2) For qualified rehabilitation expenses from one million and one dollars ($1,000,001) to ten million dollars ($10,000,000), a fee equal to fifteen thousand dollars ($15,000).

(3) For qualified rehabilitation expenses over ten million dollars ($10,000,000), a fee equal to twenty thousand dollars ($20,000).

(h) Any fees collected by the commission under this section shall be deposited in the State Treasury to the credit of the commission and all such funds are to be appropriated to the commission to defray the expenses incurred in carrying out this article.

(i) The commission shall report to the Legislature in the third year following passage of this article, and annually thereafter, on the overall economic activity, usage, and impact to the state from the substantial rehabilitation of qualified structures for which tax credits have been allowed. The information in the reports shall be consistent with the information required by the Legislature pursuant to, and shall be provided by the commission to the Legislature in accordance with, Section 40-1-50, and rules adopted thereunder. Information provided pursuant to this section is exempt from the confidentiality provisions of Section 40-2A-10."

"§40-9F-33

(a) ~~The state portion of~~For tax years 2023 through 2027, any tax credit against the tax imposed by Chapter 18 for the taxable year in which the reservation is allocated to a project or the certified rehabilitation is placed in service shall be equal to 25 percent of the qualified rehabilitation expenditures for certified historic structures. For tax years 2028 through 2032, any tax credit against the tax imposed by Chapter 18 for the taxable year in which the reservation is allocated to a project or the certified rehabilitation is placed in service shall be equal to: (i) 30 percent of the qualified rehabilitation expenditures for certified historic structures located in rural communities; or (ii) 25 percent of the qualified rehabilitation expenditures for certified historic structures located in urban communities. No tax credit claimed for any certified rehabilitation may exceed five million dollars ($5,000,000) for all allowable property types.

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

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

(d)(1) For the tax years 2018 through 2022, the aggregate amount of all tax credits that may be reserved in any one of such years by the commission and certification of rehabilitation plans under Section 40-9F-32(c) shall not exceed twenty million dollars ($20,000,000), plus any amount of previous reservations of tax credits that were rescinded under Section 40-9F-32(c) during the tax year. However, if all of the allowable tax credit amount for any tax year is not requested and reserved, any unreserved tax credits may be utilized by the commission in awarding tax credits in subsequent years; provided, however, that in no event shall a total of more than two hundred million dollars ($200,000,000) be reserved by the commission during the period from May 25, 2017, through December 31, 2022, pursuant to this article. Applications shall not be received by the commission after the Historic Tax Credit Evaluating Committee has ranked projects with a total amount exceeding two hundred million dollars ($200,000,000).

(2) For the tax years 2023 through 2027, the aggregate amount of all tax credits that may be reserved in any one of such years by the commission and certification of rehabilitation plans under Section 40-9F-32(c) shall not exceed twenty million dollars ($20,000,000), plus any amount of previous reservations of tax credits that were rescinded under Section 40-9F-32(c) during the tax year. However, if all of the allowable tax credit amount for any tax year is not requested and reserved, any unreserved tax credits may be utilized by the commission in awarding tax credits in subsequent years~~;~~, provided~~, however,~~ that in no event shall a total of more than two hundred million dollars ($200,000,000) be reserved by the commission during the period from May 25, 2017, through December 31, 2027, pursuant to this article.

(3) For the tax years 2028 through 2032, the aggregate amount of all tax credits that may be reserved in any one of such years by the commission and certification of rehabilitation plans under Section 40-9F-32(c) shall not

exceed twenty-five million dollars ($25,000,000), plus any amount of previous reservations of tax credits that were rescinded under Section 40-9F-32(c) during the tax year. However, if all of the allowable tax credit amount for any tax year is not requested and reserved, any unreserved tax credits may be utilized by the commission in awarding tax credits in subsequent years, provided that in no event shall a total of more than three hundred twenty-five million dollars ($325,000,000) be reserved by the commission during the period from May 25, 2017, through December 31, 2032, pursuant to this article.

~~(3)~~(4) For tax years 2023 through ~~2027~~2032, no tax credits shall be reserved for qualified structures the end use of which is proposed to be a disqualifying use.

~~(4)~~(5) For purposes of this article, "tax year" shall mean calendar year.

~~(5)~~(6) In addition to the limits in subdivision (2), for tax years 2024 through ~~2027~~2032, the commission may utilize an additional amount up to a total of five million dollars ($5,000,000) to reduce the backlog of qualified applications.

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

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

(g) All or any portion of the income tax credits under this section and Section 40-9F-32 shall be transferable and assignable, subject to any notice and verification requirements to be determined by the department, without the requirement of transferring any ownership interest in the qualified structure or any interest in the entity which owns the qualified structure. Any tax credits transferred shall be at a value of at least 85 percent of the present value of the credits. However, once a credit is transferred, only the transferee may utilize the credit and the credit may not be transferred again. A transferee of the tax credits may use the amount of tax credits transferred to offset any income tax under Chapter 18. The entire tax credit must be claimed by the transferee for the taxable year in which the reservation is allocated to a project or the certified rehabilitation is placed in service. When the taxes owed by the transferee are less than the tax credit, the transferee shall be entitled to claim a refund for the difference. The department shall adopt a form transfer statement to be filed by the transferor with the department prior to the purported transfer of any credit issued under this article. The transfer statement form shall include the name and federal taxpayer identification number of the transferor and each transferee listed therein along with the amount of the tax credit to be transferred to each transferee listed on the form. The transfer statement form shall also contain any other information as the department may from time to time reasonably require. For each transfer, the transferor shall file: ~~(1)~~(i) a completed transfer statement form; ~~(2)~~(ii) a copy of the tax credit certificate issued by the commission documenting the amount of tax credits which the transferor intends to transfer; ~~(3)~~(iii) a copy of the proposed written transfer agreement; and ~~(4)~~(iv) a transfer fee payable to the department in the amount of one thousand dollars ($1,000) per transferee listed on the transfer statement form. The transferor shall file with the department a fully executed copy of the written transfer agreement with each transferee within 30 days after the completed transfer. Filing of the written transfer agreement with the department shall perfect the transfer with respect to the transferee. Within 30 days after the department's receipt of the fully executed written transfer agreement, the department shall issue a tax credit certificate to each transferee listed in the agreement in the amount of the tax credit so transferred. The certificate shall be used by the transferee in claiming the tax credit pursuant to ~~subsections (e) and (f) of~~ Section 40-9F-32(e) and (f). The department may adopt additional rules as are necessary to permit verification of the ownership of the tax credits, but shall not adopt any rules which unduly restrict or hinder the transfer of the tax credits."

"§40-9F-36

The tax credits authorized by this article for the substantial rehabilitation of qualified structures shall not be available to owners of qualified structures that submit an application and rehabilitation plan after December 31, ~~2027~~2032. No action or inaction on the part of the Legislature shall reduce or suspend the tax credits authorized by this article in any past or future calendar year with respect to a qualified structure if the owner thereof submits an application and rehabilitation plan with the commission and the commission reserves an allocation for a tax credit on or prior to December 31, ~~2027~~2032, even if the qualified structure is placed into service after December 31, ~~2027~~2032, and shall not affect the owner of a qualified structure if the commission has reserved an allocation for a tax credit on or prior to December 31, ~~2027~~2032. Notwithstanding any other provision of this chapter, any application received by the commission, other than an application for a qualified structure the end use of which is proposed to be a disqualifying use, in active status on the ranking list of the Historic Tax Credit Evaluating Committee or granted a tax allocation reservation prior to ~~May 14, 2021~~the effective date of this article, shall remain on the ranking list or in reservation status and shall receive a tax credit allocation reservation or a tax credit allocation, as the case may be, when additional credits become available~~, including in any tax year commencing after 2022~~."

Section 2. This act shall become effective on October 1, 2026.