

1 HB345  
2 183061-3  
3 By Representatives Gaston, Faulkner, Buskey, Garrett,  
4 Drummond, Clarke, McMillan, Shiver, Ingram, Greer, Ainsworth,  
5 Clouse, Faust, Collins, Scott, Givan, Moore (M), Millican,  
6 Johnson (R), Tuggle, Hurst, Ledbetter, Fridy, Sanderford,  
7 Farley, Todd, Hall, Butler, Blackshear, Harbison, Boyd,  
8 Alexander, Jackson, Carns, Beech, Knight, Fincher, Drake,  
9 Black, Lindsey, Ford, Davis, Williams (JW), Sessions,  
10 Nordgren, Johnson (K), Pringle, Coleman, Rogers, Shedd,  
11 Pettus, Patterson, Wood, Ball, Rich, Harper, Weaver, Rowe,  
12 Standridge, South, England, Martin, Lee, Crawford, Lovvorn,  
13 Baker, Warren, McClammy, Ellis, Chesteen, Bandy, Beckman,  
14 Howard, Whorton (I), Treadaway, Boothe, McCutcheon, Mooney,  
15 Hanes, Williams (JD), Polizos, Wingo, Whorton (R), Wadsworth,  
16 Brown, Moore (B), Daniels and Bracy  
17 RFD: Ways and Means Education  
18 First Read: 02-MAR-17



1 as amended, or to a certified historic residential structure  
2 as defined in subdivision (3).

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

5 (4) COMMISSION. The Alabama Historical Commission  
6 and or its successor.

7 (5) COMMITTEE. The Historic Tax Credit Evaluating  
8 Committee established by this act.

9 (6) DEPARTMENT. The Alabama Department of Revenue or  
10 its successor.

11 (7) OWNER. Any taxpayer filing a State of Alabama  
12 ~~tax return for corporate or individual income tax or any~~  
13 income tax return or any entity that is exempt from federal  
14 income taxation pursuant to Section 501(c) of the Internal  
15 Revenue Code, as amended, that:

16 a. owns title to a qualified structure, or

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

19 An owner as defined herein shall not be considered a  
20 private user ~~under this Title~~ as defined in Section 40-9A-1,  
21 Code of Alabama 1975.

22 (8) QUALIFIED REHABILITATION EXPENDITURES. Any  
23 expenditure as defined under Section 47(c)(2)(A) of the  
24 Internal Revenue Code, as amended, and the related regulations  
25 thereunder, and other reasonable expenses and costs expended  
26 in the rehabilitation of a qualified structure. For certified  
27 historic residential structures, this term shall mean expenses

1 incurred by the taxpayer in the certified rehabilitation of a  
2 certified historic residential structure, including but not  
3 limited to preservation and rehabilitation work done to the  
4 exterior of a certified historic residential structure, repair  
5 and stabilization of historic structural systems, restoration  
6 of historic plaster, energy efficiency measures except  
7 insulation in frame walls, repairs or rehabilitation of  
8 heating, air conditioning, or ventilation systems, repairs or  
9 rehabilitation of electrical or plumbing systems exclusive of  
10 new electrical appliances and electrical or plumbing fixtures,  
11 and architectural, engineering, and land surveying fees.

12 Qualified rehabilitation expenditures do not include the cost  
13 of acquisition of the qualified structure, the personal labor  
14 by the owner, or any cost associated with the rehabilitation  
15 of an outbuilding of the qualified structure, unless the  
16 outbuilding is certified by the Commission to contribute to  
17 the historical significance of the qualified structure.

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

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

26 a. Designated under Alabama or local law as  
27 containing criteria which substantially achieves the purpose

1 of preserving and rehabilitating buildings of historic  
2 significance to the district.

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

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

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

17 Section 3. (a) The Commission shall develop  
18 standards for the approval of the substantial rehabilitation  
19 of qualified structures for which a tax credit is sought. The  
20 standards shall take into account whether the substantial  
21 rehabilitation of a qualified structure is consistent with the  
22 historic character of the structure or of the Registered  
23 Historic District in which the property is located.

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

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

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

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

26 Owners receiving a reservation of tax credits shall  
27 commence rehabilitation, if rehabilitation has not previously

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



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

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 -million 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 -million 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, in consultation with the  
25 Department, report to the Legislature in the third year  
26 following passage of this chapter, and annually thereafter, on  
27 the overall economic activity, usage, and impact to the state

1 from the substantial rehabilitation of qualified structures  
2 for which tax credits have been allowed.

3 Section 4. (a) The state portion of any tax credit  
4 against the tax imposed by ~~Chapters 16 and~~ Chapter 18, Title  
5 40, Code of Alabama 1975, for the taxable year in which the  
6 certified rehabilitation is placed in service, shall be equal  
7 to 25 percent of the qualified rehabilitation expenditures for  
8 certified historic structures. No tax credit claimed for any  
9 certified rehabilitation may exceed five million dollars  
10 (\$5,000,000) for all allowable property types except a  
11 certified historic residential structure, and fifty thousand  
12 dollars (\$50,000) for a certified historic residential  
13 structure.

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

26 (c) The entire tax credit must be claimed by the  
27 taxpayer ~~in~~ for the taxable year in which the certified

1 rehabilitation is placed in service. Where the taxes owed by  
2 the taxpayer are less than the tax credit, the taxpayer shall  
3 be entitled to claim a refund for the difference.

4 (d) For the tax years 2018 through ~~2027~~ 2022, the  
5 aggregate amount of all tax credits that may be reserved in  
6 any one of such years by the Commission and certification of  
7 rehabilitation plans under subsection (c) of Section 3 shall  
8 not exceed twenty million dollars (\$20,000,000) plus any  
9 amount of previous reservations of tax credits that were  
10 rescinded under subsection (c) of Section 3 of this act during  
11 the tax year. However, if all of the allowable tax credit  
12 amount for any tax year is not requested and reserved, any  
13 unreserved tax credits may be utilized by the Commission in  
14 awarding tax credits in subsequent years; provided, however,  
15 that in no event shall a total of more than ~~two hundred~~  
16 ~~million dollars (\$200,000,000)~~ one hundred million dollars  
17 (\$100,000,000) be reserved by the Commission during the period  
18 from the effective date of this act through December 31, ~~2027~~  
19 2022. For purposes of this chapter, "tax year" shall mean the  
20 calendar year.

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

25 (f) All or any portion of the income tax credits  
26 under this section and Sections 3 of this act shall be  
27 transferable and assignable, subject to any notice and

1 verification requirements to be determined by the Department,  
2 without the requirement of transferring any ownership interest  
3 in the qualified structure or any interest in the entity which  
4 owns the qualified structure. Any tax credits transferred  
5 shall be at a value of at least eighty-five percent (85%) of  
6 the present value of the credits. However, once a credit is  
7 transferred, only the transferee may utilize such credit and  
8 the credit cannot be transferred again. A transferee of the  
9 tax credits may use the amount of tax credits transferred to  
10 offset any income tax under Chapter 18 of Title 40. The  
11 Department shall promulgate a form transfer statement to be  
12 filed by the transferor with the Department prior to the  
13 purported transfer of any credit issued under this chapter.  
14 The transfer statement form shall include the name and federal  
15 taxpayer identification number of the transferor and each  
16 transferee listed therein along with the amount of the tax  
17 credit to be transferred to each transferee listed on the  
18 form. The transfer statement form shall also contain such  
19 other information as the Department may from time to time  
20 reasonably require. For each transfer, the transferor shall  
21 file (1) a completed transfer statement form; (2) a copy of  
22 the tax credit certificate issued by the Commission  
23 documenting the amount of tax credits which the transferor  
24 intends to transfer; (3) a copy of the proposed written  
25 transfer agreement; and (4) a transfer fee payable to the  
26 Department in the amount of one thousand dollars (\$1,000) per  
27 transferee listed on the transfer statement form. The

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

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

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

1 in the assessment of ad valorem taxes for the tax year in  
2 which the certified rehabilitation was placed in service.

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

16 Section 7. The tax credits authorized by this  
17 chapter for the substantial rehabilitation of qualified  
18 structures shall not be available to owners of qualified  
19 structures that submit an application and rehabilitation plan  
20 after December 31, ~~2027~~ 2022. No action or inaction on the  
21 part of the Legislature shall reduce or suspend the tax  
22 credits authorized by this chapter in any past or future  
23 calendar year with respect to a qualified structure if the  
24 owner thereof submits an application and rehabilitation plan  
25 with the Commission and the Commission reserves an allocation  
26 for a tax credit on or prior to December 31, ~~2027~~ 2022, even  
27 if the qualified structure is placed into service after



1 December 31, ~~2027~~ 2022, and shall not affect the owner of a  
2 qualified structure if the commission has reserved an  
3 allocation for a tax credit on or prior to December 31, ~~2027~~  
4 2022.

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

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

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

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

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House of Representatives

Read for the first time and re-  
ferred to the House of Representa-  
tives committee on Ways and Means  
Education..... . . . . . 02-MAR-17

Read for the second time and placed  
on the calendar 1 amendment ..... . . . . . 06-APR-17

Read for the third time and passed  
as amended..... . . . . . 18-APR-17

Yeas 95, Nays 7, Abstains 0

Jeff Woodard  
Clerk