

1 HB281
2 207896-8
3 By Representatives Gaston, Faulkner, Drummond, Pringle, Rowe,
4 Jones (M), Garrett, Rafferty, Collins, South, Clouse, Coleman,
5 Bracy, Clarke, Faust, McMillan, Brown (C), Wilcox, Stringer
6 and Simpson
7 RFD: Ways and Means Education
8 First Read: 02-FEB-21

1
2 ENROLLED, An Act,

3 Relating to the state income tax credit for the
4 rehabilitation of qualified historic structures; to amend
5 Sections 40-9F-31, 40-9F-32, 40-9F-33, 40-9F-36, and 40-9F-38
6 of the Code of Alabama 1975, to provide for a disqualifying
7 use; to revise audit requirements; to extend the income tax
8 credit through 2027; to limit the tax credits for tax years
9 2023 through 2027 to certain properties; to clarify the
10 refundability of tax credits for transferees; and to further
11 provide for the Historic Tax Credit Evaluating Committee.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. Sections 40-9F-31, 40-9F-32, 40-9F-33 and
14 40-9F-36, 40-9F-36, and 40-9F-38 of the Code of Alabama 1975,
15 are amended as follows:

16 "§40-9F-31.

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

19 (1) CERTIFIED HISTORIC STRUCTURE. A property located
20 in Alabama which is at least sixty years old, unless the
21 structure is an historic structure located within the
22 boundaries of a National Monument or Park as declared by the
23 United States Congress or the President of the United States,
24 in which case the federal age provisions shall apply, and is
25 certified by the Alabama Historical Commission as being

1 individually listed in the National Register of Historic
2 Places, eligible for listing in the National Register of
3 Historic Places, or certified by the commission as
4 contributing to the historic significance of a Registered
5 Historic District.

6 (2) CERTIFIED REHABILITATION. Repairs or alterations
7 to a certified historic structure that is certified by the
8 commission as meeting the U.S. Secretary of the Interior's
9 Standards for Rehabilitation which meet the requirements
10 contained in Section 47(c) (2) (C) of the Internal Revenue Code,
11 as amended, or to a certified historic residential structure
12 as defined in subdivision (3).

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

15 (4) COMMISSION. The Alabama Historical Commission
16 and or its successor.

17 (5) COMMITTEE. The Historic Tax Credit Evaluating
18 Committee established by this article.

19 (6) DEPARTMENT. The Alabama Department of Revenue or
20 its successor.

21 (7) DISQUALIFYING USE. Any use of a certified
22 historic residential structure that is occupied by an Owner
23 and used, exclusively as a primary or secondary residence.

24 ~~(7)~~ (8) OWNER. Any taxpayer filing a State of
25 Alabama income tax return or any entity that is exempt from

1 federal income taxation pursuant to Section 501(c) of the
2 Internal Revenue Code, as amended, that:

3 a. Owns title to a qualified structure, or

4 b. Owns a leasehold interest in a qualified
5 structure for a term of not less than 39 years.

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

8 ~~(8)~~ (9) QUALIFIED REHABILITATION EXPENDITURES. Any
9 expenditure as defined under Section 47(c) (2) (A) of the
10 Internal Revenue Code, as amended, and the related regulations
11 thereunder, and other reasonable expenses and costs expended
12 in the rehabilitation of a qualified structure. For certified
13 historic residential structures, this term shall mean expenses
14 incurred by the taxpayer in the certified rehabilitation of a
15 certified historic residential structure, including but not
16 limited to preservation and rehabilitation work done to the
17 exterior of a certified historic residential structure, repair
18 and stabilization of historic structural systems, restoration
19 of historic plaster, energy efficiency measures except
20 insulation in frame walls, repairs or rehabilitation of
21 heating, air conditioning, or ventilation systems, repairs or
22 rehabilitation of electrical or plumbing systems exclusive of
23 new electrical appliances and electrical or plumbing fixtures,
24 and architectural, engineering, and land surveying fees.

25 Qualified rehabilitation expenditures do not include the cost

1 of acquisition of the qualified structure, the personal labor
 2 by the owner, or any cost associated with the rehabilitation
 3 of an outbuilding of the qualified structure, unless the
 4 outbuilding is certified by the commission to contribute to
 5 the historical significance of the qualified structure.

6 ~~(9)~~ (10) QUALIFIED STRUCTURE. Certified historic
 7 structures which are certified by the commission as meeting
 8 the requirements contained in Section 47(c)(1)(A)(i) and (ii)
 9 of the Internal Revenue Code, as amended, and to certified
 10 historic residential structures as defined herein.

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

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

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

22 ~~(11)~~ (12) REHABILITATION PLAN. Construction plans
 23 and specifications for the proposed rehabilitation of a
 24 qualified structure in sufficient detail to enable the

1 commission to evaluate compliance with the standards developed
2 under this article.

3 ~~(12)~~ (13) SUBSTANTIAL REHABILITATION. Rehabilitation
4 of a qualified structure for which the qualified
5 rehabilitation expenditures exceed 50 percent of the owner's
6 original purchase price of the qualified structure or
7 twenty-five thousand dollars (\$25,000), whichever is greater.

8 "40-9F-32.

9 (a) The commission shall develop standards for the
10 approval of the substantial rehabilitation of qualified
11 structures for which a tax credit is sought. The standards
12 shall (i) take into account whether the substantial
13 rehabilitation of a qualified structure is consistent with the
14 historic character of the structure or of the Registered
15 Historic District in which the property is located and (ii)
16 for tax years 2023 through 2027, establish a mechanism to
17 require owners to confirm that the proposed use for the
18 qualified structure is not a Disqualifying Use (a) in the
19 application, and (b) prior to the commission's issuance of the
20 tax credit certificate for the qualified structure under
21 40-9F-32(d).

22 (b) Prior to beginning any substantial
23 rehabilitation work on a qualified structure, the owner shall
24 submit an application and rehabilitation plan to the
25 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 40-9F-33, and the commission
17 shall notify the owner in writing of the amount of the
18 reservation. The reservation of tax credits does not entitle
19 the owner to an issuance of tax credits until the owner
20 complies with all other requirements of this article for the
21 issuance of the tax credits. The reservation of tax credits
22 shall be made by the commission in the order in which the
23 committee has ranked completed applications and rehabilitation
24 plans. Reservations of tax credits shall be issued by the
25 commission within a reasonable time from the filing of a

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

1 or when a new tax year's allocation of tax credits becomes
2 available.

3 Owners receiving a reservation of tax credits shall
4 commence rehabilitation, if rehabilitation has not previously
5 begun, within 18 months of the date of issuance of the written
6 notice from the commission to the owner granting the tax
7 credits. Commencement of rehabilitation shall mean that, as of
8 the date in which actual physical work contemplated by the
9 rehabilitation plan submitted with the application has begun,
10 the owner has incurred no less than 20 percent of the
11 estimated costs of rehabilitation provided in the application.
12 Within 36 months of the date of issuance of the written notice
13 from the commission to the owner granting the tax credit
14 reservation, the owner must have incurred an additional 50
15 percent of the estimated costs of rehabilitation provided in
16 the application. Within 60 months of the date of issuance of
17 the written notice from the commission to the owner granting
18 the tax credit reservation, the project must be completed.
19 Owners receiving a reservation of tax credits shall submit
20 evidence of compliance with the provisions of this subsection.
21 If the commission determines that an owner has failed to
22 comply with the requirements provided under this section, the
23 reservation of tax credits for the owner may be rescinded and,
24 if so, the amount of tax credits shall then be included in the
25 total amount of available tax credits provided for in

1 subsection (c) of Section 40-9F-33, from which reservations
2 may be granted. Any owner whose reservation of tax credits are
3 rescinded shall be notified of the rescission from the
4 commission and, upon receipt of the notice, may submit a new
5 application but may be charged a new application fee.

6 (d) Following the completion of a substantial
7 rehabilitation of a qualified structure, the owner shall
8 notify the commission that the substantial rehabilitation has
9 been completed and shall certify the qualified rehabilitation
10 expenditures incurred with respect to the rehabilitation plan.
11 In addition, the owner shall provide the commission with: (i)
12 a cost and expense certification, prepared by a licensed
13 certified public accountant that is not an affiliate of the
14 owner, certifying the total qualified rehabilitation
15 expenditures and the total amount of tax credits against any
16 state tax due that is specified in this article for which the
17 owner is eligible under Section 40-9F-33 and, if the qualified
18 rehabilitation expenditures exceed two hundred thousand
19 dollars (\$200,000), the cost and expense certification must be
20 audited by the licensed certified public accountant; and (ii)
21 an appraisal of the qualified structure prepared by an
22 independent MAI designated and licensed real estate appraiser.
23 The commission shall review the documentation of the
24 rehabilitation and verify its compliance with the
25 rehabilitation plan. ~~The commission shall also review the~~

1 ~~content of the cost and expense certification as well as the~~
2 ~~appraisal to ensure compliance with standards adopted by rule~~
3 ~~of the commission. Within 90 days after receipt and approval~~
4 ~~of the foregoing documentation from the owner, the commission~~
5 ~~shall issue a tax credit certificate in an amount equivalent~~
6 ~~to the lesser of: (i) the amount of the tax credit reservation~~
7 ~~issued for the project under the provisions of subsection (c),~~
8 ~~or (ii) 25 percent of the actual qualified rehabilitation~~
9 ~~expenditures for certified historic structures. In the event~~
10 ~~the amount of qualified rehabilitation expenditures incurred~~
11 ~~by the owner would result in the issuance of an amount of tax~~
12 ~~credits in excess of the amount of tax credits reserved for~~
13 ~~the owner under subsection (c), the owner may apply to the~~
14 ~~commission for issuance of tax credits in an amount equal to~~
15 ~~the excess. Applications for issuance of tax credits in excess~~
16 ~~of the amount of tax credits reserved for the owner shall be~~
17 ~~made on a form prescribed by the commission and shall~~
18 ~~represent a separate certificate that shall be issued, subject~~
19 ~~to all provisions regarding priority provided in Section~~
20 ~~40-9F-38.~~

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

1 (f) The department shall grant a tax credit against
2 any state tax due that is specified in this article to a
3 taxpayer holding the tax credit certificate issued under
4 subsection (d) or, in the case of a transferee, issued by the
5 department pursuant to Section 40-9F-33 against any tax due
6 under Chapter 18 in the amount stated on the tax credit
7 certificate. The department shall have the right to audit and
8 to reassess any credit improperly obtained by the owner, in
9 accordance with the Taxpayers' Bill of Rights and the Uniform
10 Revenue Procedures contained in Chapter 2A; provided, however
11 that only the owner initially awarded the tax credit
12 certificate, and not any subsequent transferee of the tax
13 credit certificate or person to whom tax credits have been
14 passed through pursuant to Section 40-9F-33, shall be liable
15 for any credit improperly obtained by the owner.

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

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

22 (ii) For qualified rehabilitation expenses from one
23 million and one dollars (\$1,000,001) to ten million dollars
24 (\$10,000,000), a fee equal to fifteen thousand dollars
25 (\$15,000).

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

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

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

20 "§40-9F-33.

21 "(a) The state portion of any tax credit against the
22 tax imposed by Chapter 18 for the taxable year in which the
23 certified rehabilitation is placed in service, shall be equal
24 to 25 percent of the qualified rehabilitation expenditures for
25 certified historic structures. No tax credit claimed for any

1 certified rehabilitation may exceed five million dollars
2 (\$5,000,000) for all allowable property types except a
3 certified historic residential structure, and fifty thousand
4 dollars (\$50,000) for a certified historic residential
5 structure.

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

18 "(c) The entire tax credit must be claimed by the
19 taxpayer for the taxable year in which the certified
20 rehabilitation is placed in service. Where the taxes owed by
21 the taxpayer are less than the tax credit, the taxpayer shall
22 be entitled to claim a refund for the difference.

23 "(d) For the tax years 2018 through ~~2022-2029~~ 2027,
24 the aggregate amount of all tax credits that may be reserved
25 in any one of such years by the commission and certification

1 of rehabilitation plans under subsection (c) of Section
2 40-9F-32 shall not exceed twenty million dollars
3 (\$20,000,000), plus any amount of previous reservations of tax
4 credits that were rescinded under subsection (c) of Section
5 40-9F-32 during the tax year. However, if all of the allowable
6 tax credit amount for any tax year is not requested and
7 reserved, any unreserved tax credits may be utilized by the
8 commission in awarding tax credits in subsequent years; ;
9 provided, however, that in no event shall a total of more than
10 two hundred million dollars (\$200,000,000) be reserved by the
11 commission during the period from May 25, 2017, through
12 December 31, 2027. Applications shall not be received by the
13 commission after the Historic Tax Credit Evaluating Committee
14 has ranked projects with a total amount exceeding two hundred
15 million dollars (\$200,000,000) provided, however, that in no
16 event shall a total of more than one hundred million dollars
17 (\$100,000,000) be reserved by the commission during the period
18 from May 25, 2017, through December 31, 2022. For purposes of
19 this article, tax year shall mean the calendar year.

20 ~~For tax years 2023 through 2027 tax credits shall~~
21 ~~only be reserved for rehabilitation projects that will be used~~
22 ~~for a commercial or business purpose.~~

23 For tax years 2023 through 2027, no tax credits
24 shall be reserved for qualified structures the end use of
25 which is proposed to be a Disqualifying Use.

1 "(e) Of the annual amount of the tax credits
2 provided for in subsection (d), 40 percent shall be reserved
3 to taxpayers with a certified rehabilitation project located
4 in a county in which the population does not exceed 175,000
5 according to the ~~2010~~ most recent federal decennial census. In
6 the event applications are not received and credits are not
7 allocated for projects in these areas by the close of the
8 ~~second~~ third quarter of the program year, the funds may revert
9 for allocations of other project applications.

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

14 "(g) All or any portion of the income tax credits
15 under this section and Sections 40-9F-32 shall be transferable
16 and assignable, subject to any notice and verification
17 requirements to be determined by the department, without the
18 requirement of transferring any ownership interest in the
19 qualified structure or any interest in the entity which owns
20 the qualified structure. Any tax credits transferred shall be
21 at a value of at least eighty-five percent (85%) of the
22 present value of the credits. However, once a credit is
23 transferred, only the transferee may utilize such credit and
24 the credit cannot be transferred again. A transferee of the
25 tax credits may use the amount of tax credits transferred to

1 offset any income tax under Chapter 18. The entire tax credit
2 must be claimed by the transferee for the taxable year in
3 which the certified rehabilitation is placed in service. When
4 the taxes owed by the transferee are less than the tax credit,
5 the transferee shall be entitled to claim a refund for the
6 difference. The department shall ~~promulgate~~ adopt a form
7 transfer statement to be filed by the transferor with the
8 department prior to the purported transfer of any credit
9 issued under this article. The transfer statement form shall
10 include the name and federal taxpayer identification number of
11 the transferor and each transferee listed therein along with
12 the amount of the tax credit to be transferred to each
13 transferee listed on the form. The transfer statement form
14 shall also contain such other information as the department
15 may from time to time reasonably require. For each transfer,
16 the transferor shall file: (1) a completed transfer statement
17 form; (2) a copy of the tax credit certificate issued by the
18 commission documenting the amount of tax credits which the
19 transferor intends to transfer; (3) a copy of the proposed
20 written transfer agreement; and (4) a transfer fee payable to
21 the department in the amount of one thousand dollars (\$1,000)
22 per transferee listed on the transfer statement form. The
23 transferor shall file with the department a fully executed
24 copy of the written transfer agreement with each transferee
25 within 30 days after the completed transfer. Filing of the

1 written transfer agreement with the department shall perfect
2 such transfer with respect to such transferee. Within 30 days
3 after the department's receipt of the fully executed written
4 transfer agreement, the department shall issue a tax credit
5 certificate to each transferee listed in such agreement in the
6 amount of the tax credit so transferred. Such certificate
7 shall be used by the transferee in claiming the tax credit
8 pursuant to subsections (e) and (f) of Section 40-9F-32. The
9 department may ~~promulgate~~ adopt such additional rules as are
10 necessary to permit verification of the ownership of the tax
11 credits, but shall not ~~promulgate~~ adopt any rules which unduly
12 restrict or hinder the transfer of the tax credits.

13 "§40-9F-36.

14 "The tax credits authorized by this article for the
15 substantial rehabilitation of qualified structures shall not
16 be available to owners of qualified structures that submit an
17 application and rehabilitation plan after December 31, ~~2022~~
18 ~~2029~~ 2027. No action or inaction on the part of the
19 Legislature shall reduce or suspend the tax credits authorized
20 by this article in any past or future calendar year with
21 respect to a qualified structure if the owner thereof submits
22 an application and rehabilitation plan with the commission and
23 the commission reserves an allocation for a tax credit on or
24 prior to December 31, ~~2022-2029~~ 2027, even if the qualified
25 structure is placed into service after December 31, ~~2022-2029~~

1 2027, and shall not affect the owner of a qualified structure
2 if the commission has reserved an allocation for a tax credit
3 on or prior to December 31, ~~2022-2029~~ 2027. Notwithstanding
4 any other provision of this chapter, any application received
5 by the commission (other than an application for a qualified
6 structure the end use of which is proposed to be a
7 Disqualifying Use) in active status on the ranking list of the
8 Historic Tax Credit Evaluating Committee or granted a tax
9 allocation reservation prior to the effective date of the act
10 adding this language shall remain on the ranking list or in
11 reservation status and shall receive a tax credit allocation
12 reservation or a tax credit allocation, as the case may be,
13 when additional credits become available, including in any tax
14 year commencing after 2022."

15 "§40-9F-38.

16 "(a) There is hereby established the Historic Tax
17 Credit Evaluating Committee, which shall review qualifying
18 projects, approve credits for projects, and rank projects in
19 the order in which the projects should receive tax credit
20 reservations based on criteria established by the commission.
21 The commission shall establish a review cycle for the
22 committee beginning on January 1, 2018, provided that the
23 committee shall meet at least quarterly unless no credits
24 remain to be allocated. The Commissioner of Revenue shall be a
25 non-voting member of the committee and provide advisory and

1 technical support. The committee shall consist of the
 2 following:

3 "(1) Director of the Governor's Office of Minority
 4 Affairs.

5 "(2) The Executive Director of the Alabama
 6 Historical Commission.

7 "(3) The Finance Director.

8 "(4) The Director of the Alabama Department of
 9 Economic and Community Affairs.

10 "(5) The Secretary of Commerce.

11 "(6) Two members of the Alabama House of
 12 Representatives, at least one of which shall be a member of
 13 the minority party, to be appointed by the Speaker of the
 14 House of Representatives.

15 "(7) Two members of the Alabama Senate, at least one
 16 of which shall be a member of the minority party, to be
 17 appointed by the President Pro Tem Tempore of the Senate.

18 "(b) The Alabama Historical Commission shall
 19 ~~promulgate~~ adopt rules that shall set forth guidelines to be
 20 utilized by the committee in determining the allocation of
 21 credits. The guidelines shall set forth factors to be
 22 considered by the committee including: relative value of the
 23 proposed project to the particular community, including the
 24 maintenance of the historic fabric of the community; possible
 25 return on investment for the community in which the proposed

1 project is located; the geographic distribution of projects;
2 the likelihood of the project proceeding without the historic
3 tax credit authorized in this article; and strength of local
4 support for the proposed project. Included in the information
5 to be required for the evaluation submitted in the application
6 of any project shall be any additional tax credits or state,
7 federal, or local government grants that the applicant expects
8 to utilize for the construction of the project."

9 Section 2. This act shall become effective
10 immediately following its passage and approval by the
11 Governor, or its otherwise becoming law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 25-FEB-21, as amended.

Jeff Woodard
Clerk

Senate	04-MAY-21	Amended and Passed
House	06-MAY-21	Concurred in Senate Amendment