

HB253 INTRODUCED



1 AY8I77-1

2 By Representatives Clarke, Drummond, Chestnut, Gray, Pringle,
3 Simpson, Bracy, Jackson, Blackshear, Clouse, Baker, Wilcox,
4 Hall

5 RFD: Ways and Means Education

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

A BILL
TO BE ENTITLED
AN ACT



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29 Relating to taxation; to amend Sections 40-9F-31,
30 40-9F-33, and 40-9F-38, Code of Alabama 1975, to increase the
31 amount of tax credits that may be provided in a tax year; to
32 allow rehabilitation credits to be tied to the year in which
33 the reservation is allocated; to provide for additional
34 rehabilitation credit allocations; and to make nonsubstantive,
35 technical revisions to update the existing code language to
36 current style.

37 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

40 "§40-9F-31

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

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

55 (2) CERTIFIED REHABILITATION. Repairs or alterations to
56 a certified historic structure that is certified by the



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57 commission as meeting the U.S. Secretary of the Interior's
58 Standards for Rehabilitation which meet the requirements
59 ~~contained in Section 47(c)(2)(C) of the Internal Revenue~~
60 ~~Code of 26 U.S.C. § 47~~, as amended, ~~or to a certified historic~~
61 ~~residential structure as defined in subdivision (3).~~

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

64 ~~(4)~~ (3) COMMISSION. The Alabama Historical Commission
65 ~~and~~ or its successor.

66 ~~(5)~~ (4) COMMITTEE. The Historic Tax Credit Evaluating
67 Committee established by this article.

68 ~~(6)~~ (5) DEPARTMENT. The Alabama Department of Revenue or
69 its successor.

70 ~~(7)~~ (6) DISQUALIFYING USE. Any use of a certified
71 historic ~~residential~~ structure that is occupied by an owner
72 and used exclusively as a primary or secondary residence.

73 ~~(8)~~ (7) OWNER. Any taxpayer filing a State of Alabama
74 income tax return or any entity that is exempt from federal
75 income taxation pursuant to ~~Section 501(c) of the Internal~~
76 ~~Revenue Code~~ 26 U.S.C. § 501, as amended, that:

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

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

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

82 ~~(9)~~ (8) QUALIFIED REHABILITATION EXPENDITURES. Any
83 expenditure as defined under ~~Section 47(c)(2)(A) of the~~
84 ~~Internal Revenue Code~~ 26 U.S.C. § 47, as amended, and the



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85 related regulations thereunder, and other reasonable expenses
86 and costs expended in the rehabilitation of a qualified
87 structure. ~~For certified historic residential structures, this~~
88 ~~term shall mean expenses incurred by the taxpayer in the~~
89 ~~certified rehabilitation of a certified historic residential~~
90 ~~structure, including but not limited to preservation and~~
91 ~~rehabilitation work done to the exterior of a certified~~
92 ~~historic residential structure, repair and stabilization of~~
93 ~~historic structural systems, restoration of historic plaster,~~
94 ~~energy efficiency measures except insulation in frame walls,~~
95 ~~repairs or rehabilitation of heating, air conditioning, or~~
96 ~~ventilation systems, repairs or rehabilitation of electrical~~
97 ~~or plumbing systems exclusive of new electrical appliances and~~
98 ~~electrical or plumbing fixtures, and architectural,~~
99 ~~engineering, and land surveying fees.~~ Qualified rehabilitation
100 expenditures do not include the cost of acquisition of the
101 qualified structure, the personal labor by the owner, or any
102 cost associated with the rehabilitation of an outbuilding of
103 the qualified structure, unless the outbuilding is certified
104 by the commission to contribute to the historical significance
105 of the qualified structure.

106 ~~(10)~~ (9) QUALIFIED STRUCTURE. Certified historic
107 structures which are certified by the commission as meeting
108 the requirements contained in ~~Section 47(e)(1)(A)(i) and (ii)~~
109 ~~of the Internal Revenue Code~~ 26 U.S.C. § 47, as amended, ~~and to~~
110 ~~certified historic residential structures as defined herein.~~

111 ~~(11)~~ (10) REGISTERED HISTORIC DISTRICT. Any district
112 listed in the National Register of Historic Places and any



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113 district which is either of the following:

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

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

121 ~~(12)~~ (11) REHABILITATION PLAN. Construction plans and
122 specifications for the proposed rehabilitation of a qualified
123 structure in sufficient detail to enable the commission to
124 evaluate compliance with the standards developed under this
125 article.

126 ~~(13)~~ (12) SUBSTANTIAL REHABILITATION. Rehabilitation of
127 a qualified structure for which the qualified rehabilitation
128 expenditures exceed 50 percent of the owner's original
129 purchase price of the qualified structure or twenty-five
130 thousand dollars (\$25,000), whichever is greater."

131 "§40-9F-33

132 (a) The state portion of any tax credit against the tax
133 imposed by Chapter 18 for the taxable year in which the
134 reservation is allocated to a project or the certified
135 rehabilitation is placed in service shall be equal to 25
136 percent of the qualified rehabilitation expenditures for
137 certified historic structures. No tax credit claimed for any
138 certified rehabilitation may exceed five million dollars
139 (\$5,000,000) for all allowable property types ~~except a~~
140 ~~certified historic residential structure, and fifty thousand~~



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141 ~~dollars (\$50,000) for a certified historic residential~~
142 ~~structure.~~

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

155 (c) The entire tax credit must be claimed by the
156 taxpayer for the taxable year in which the reservation is
157 allocated to a project or the certified rehabilitation is
158 placed in service. Where the taxes owed by the taxpayer are
159 less than the tax credit, the taxpayer shall be entitled to
160 claim a refund for the difference. In the event that any
161 additional credit is allocated to the taxpayer for a given
162 project, the additional credit must be claimed in the taxable
163 year the additional credit is allocated to the taxpayer.

164 (d) (1) For the tax years 2018 through ~~2027~~2022, the
165 aggregate amount of all tax credits that may be reserved in
166 any one of such years by the commission and certification of
167 rehabilitation plans under ~~subsection (c) of~~ Section
168 40-9F-32 (c) shall not exceed twenty million dollars



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169 (\$20,000,000), plus any amount of previous reservations of tax
170 credits that were rescinded under ~~subsection (c) of Section~~
171 40-9F-32 (c) during the tax year. However, if all of the
172 allowable tax credit amount for any tax year is not requested
173 and reserved, any unreserved tax credits may be utilized by
174 the commission in awarding tax credits in subsequent years;
175 provided, however, that in no event shall a total of more than
176 two hundred million dollars (\$200,000,000) be reserved by the
177 commission during the period from May 25, 2017, through
178 December 31, ~~2027~~2022. Applications shall not be received by
179 the commission after the Historic Tax Credit Evaluating
180 Committee has ranked projects with a total amount exceeding
181 two hundred million dollars (\$200,000,000). ~~For purposes of~~
182 ~~this article, tax year shall mean the calendar year.~~

183 (2) For the tax years 2023 through 2027, the aggregate
184 amount of all tax credits that may be reserved in any one of
185 such years by the commission and certification of
186 rehabilitation plans under Section 40-9F-32(c) shall not
187 exceed forty million dollars (\$40,000,000), plus any amount of
188 previous reservations of tax credits that were rescinded under
189 Section 40-9F-32(c) during the tax year. However, if all of
190 the allowable tax credit amount for any tax year is not
191 requested and reserved, any unreserved tax credits may be
192 utilized by the commission in awarding tax credits in
193 subsequent years; provided, however, that in no event shall a
194 total of more than two hundred million dollars (\$200,000,000)
195 be reserved by the commission during the period from January
196 1, 2023, through December 31, 2027.



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

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

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

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

215 (g) All or any portion of the income tax credits under
216 this section and Section 40-9F-32 shall be transferable and
217 assignable, subject to any notice and verification
218 requirements to be determined by the department, without the
219 requirement of transferring any ownership interest in the
220 qualified structure or any interest in the entity which owns
221 the qualified structure. Any tax credits transferred shall be
222 at a value of at least 85 percent of the present value of the
223 credits. However, once a credit is transferred, only the
224 transferee may utilize ~~such~~ the credit and the credit ~~cannot~~



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225 may not be transferred again. A transferee of the tax credits
226 may use the amount of tax credits transferred to offset any
227 income tax under Chapter 18. The entire tax credit must be
228 claimed by the transferee for the taxable year in which the
229 reservation is allocated to a project or the certified
230 rehabilitation is placed in service. When the taxes owed by
231 the transferee are less than the tax credit, the transferee
232 shall be entitled to claim a refund for the difference. The
233 department shall adopt a form transfer statement to be filed
234 by the transferor with the department prior to the purported
235 transfer of any credit issued under this article. The transfer
236 statement form shall include the name and federal taxpayer
237 identification number of the transferor and each transferee
238 listed therein along with the amount of the tax credit to be
239 transferred to each transferee listed on the form. The
240 transfer statement form shall also contain any other
241 information as the department may from time to time reasonably
242 require. For each transfer, the transferor shall file: (1) a
243 completed transfer statement form; (2) a copy of the tax
244 credit certificate issued by the commission documenting the
245 amount of tax credits which the transferor intends to
246 transfer; (3) a copy of the proposed written transfer
247 agreement; and (4) a transfer fee payable to the department in
248 the amount of one thousand dollars (\$1,000) per transferee
249 listed on the transfer statement form. The transferor shall
250 file with the department a fully executed copy of the written
251 transfer agreement with each transferee within 30 days after
252 the completed transfer. Filing of the written transfer



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253 agreement with the department shall perfect the transfer with
254 respect to the transferee. Within 30 days after the
255 department's receipt of the fully executed written transfer
256 agreement, the department shall issue a tax credit certificate
257 to each transferee listed in the agreement in the amount of
258 the tax credit so transferred. The certificate shall be used
259 by the transferee in claiming the tax credit pursuant to
260 subsections (e) and (f) of Section 40-9F-32. The department
261 may adopt additional rules as are necessary to permit
262 verification of the ownership of the tax credits, but shall
263 not adopt any rules which unduly restrict or hinder the
264 transfer of the tax credits."

265 "§40-9F-38

266 (a) There is established the Historic Tax Credit
267 Evaluating Committee, which shall review qualifying projects,
268 approve credits for projects, and rank projects in the order
269 in which the projects should receive tax credit reservations
270 based on criteria established by the commission. The
271 commission shall establish a review cycle for the committee
272 beginning on January 1, 2018, provided that the committee
273 shall meet at least quarterly unless no credits remain to be
274 allocated. The Commissioner of Revenue shall be a nonvoting
275 member of the committee and provide advisory and technical
276 support. The committee shall consist of the following:

277 (1) The Director of the Alabama Office of Minority
278 Affairs.

279 (2) The Executive Director of the Alabama Historical
280 Commission.



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281 (3) The Finance Director.

282 (4) The Director of the Alabama Department of Economic
283 and Community Affairs.

284 (5) The Secretary of Commerce.

285 (6) Two members of the Alabama House of
286 Representatives, at least one of which shall be a member of
287 the minority party, to be appointed by the Speaker of the
288 House of Representatives.

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

292 (b) (1) The Alabama Historical Commission shall adopt
293 rules that shall set forth guidelines to be used by the
294 committee in determining the allocation of credits. The
295 guidelines shall set forth factors to be considered by the
296 committee including all of the following:-

297 a. Relative~~The relative~~ value of the proposed project
298 to the particular community, including the maintenance of the
299 historic fabric of the community~~.-~~

300 b. The possible return on investment for the community
301 in which the proposed project is located~~.-~~

302 c. the~~The~~ geographic distribution of projects~~.-~~

303 d. the~~The~~ likelihood of the project proceeding without
304 the historic tax credit authorized in this article~~.-~~

305 e. and~~The~~ strength of local support for the proposed
306 project.-

307 (2) Included in the information to be required for the
308 evaluation submitted in the application of any project shall



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309 be any additional tax credits or state, federal, or local
310 government grants that the applicant expects to utilize for
311 the construction of the project."

312 Section 2. This act shall become effective immediately
313 following its passage and approval by the Governor, or its
314 otherwise becoming law.