

1 SB262  
2 183061-2  
3 By Senators Waggoner, Blackwell, Marsh, Holley, McClendon,  
4 Glover, Shelnut, Livingston, Albritton, Stutts,  
5 Coleman-Madison, Dunn, Beasley, Smitherman, Ward, Hightower,  
6 Whatley, Reed, Allen, Holtzclaw, Scofield, Dial, Brewbaker,  
7 Sanders, Bussman, Williams, Melson, Chambliss and Singleton  
8 RFD: Finance and Taxation Education  
9 First Read: 28-FEB-17

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8 SYNOPSIS: Under current law, the state tax credit  
9 program for the rehabilitation, preservation, or  
10 development of certified historic structures  
11 expired in calendar year 2016.

12 This bill would establish a new income tax  
13 credit against the tax liability of the taxpayer  
14 for the rehabilitation, preservation, or  
15 development of certified historic structures.

16  
17 A BILL  
18 TO BE ENTITLED  
19 AN ACT

20  
21 To provide an income tax credit against the tax  
22 liability of the taxpayer for the rehabilitation,  
23 preservation, and development of historic structures.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. This chapter shall apply to qualified  
26 structures throughout the State of Alabama.

1           Section 2. As used in this chapter, the following  
2 terms shall have the following meanings:

3           (1) CERTIFIED HISTORIC STRUCTURE. A property located  
4 in Alabama which is certified by the Alabama Historical  
5 Commission as being individually listed in the National  
6 Register of Historic Places, eligible for listing in the  
7 National Register of Historic Places, or certified by the  
8 Commission as contributing to the historic significance of a  
9 Registered Historic District.

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

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

19          (4) COMMISSION. The Alabama Historical Commission  
20 and or its successor.

21          (5) COMMITTEE. The Historic Tax Credit Evaluating  
22 Committee established by this act.

23          (6) DEPARTMENT. The Alabama Department of Revenue or  
24 its successor.

25          (7) OWNER. Any taxpayer filing a State of Alabama  
26 tax return for corporate or individual income tax or any

1 entity that is exempt from federal income taxation pursuant to  
2 Section 501(c) of the 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 under this Title.

8 (8) 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  
26 of acquisition of the qualified structure, the personal labor  
27 by the owner, or any cost associated with the rehabilitation

1 of an outbuilding of the qualified structure, unless the  
2 outbuilding is certified by the Commission to contribute to  
3 the historical significance of the qualified structure.

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

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

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

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

20 (11) REHABILITATION PLAN. Construction plans and  
21 specifications for the proposed rehabilitation of a qualified  
22 structure in sufficient detail to enable the Commission to  
23 evaluate compliance with the standards developed under this  
24 chapter.

25 (12) SUBSTANTIAL REHABILITATION. Rehabilitation of a  
26 qualified structure for which the qualified rehabilitation  
27 expenditures exceed 50 percent of the owner's original

1 purchase price of the qualified structure or twenty-five  
2 thousand dollars (\$25,000), whichever is greater.

3 Section 3. (a) The Commission shall develop  
4 standards for the approval of the substantial rehabilitation  
5 of qualified structures for which a tax credit is sought. The  
6 standards shall take into account whether the substantial  
7 rehabilitation of a qualified structure is consistent with the  
8 historic character of the structure or of the Registered  
9 Historic District in which the property is located.

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

21 (c) The Commission shall review the application and  
22 rehabilitation plan to determine that the information  
23 contained therein is complete. If the Commission determines  
24 that the application and rehabilitation plan are complete, the  
25 Commission shall recommend the project to the Committee for  
26 the reservation of a tax credit. If the project is approved  
27 for a tax credit by the Committee, the Commission shall

1 reserve, for the benefit of the owner, an allocation for a tax  
2 credit as provided in Section 4 of this act, and the  
3 Commission shall notify the owner in writing of the amount of  
4 the reservation. The reservation of tax credits does not  
5 entitle the owner to an issuance of tax credits until the  
6 owner complies with all other requirements of this chapter for  
7 the issuance of the tax credits. The reservation of tax  
8 credits shall be made by the Commission in the order in which  
9 the Committee has ranked completed applications and  
10 rehabilitation plans. Reservations of tax credits shall be  
11 issued by the Commission within a reasonable time from the  
12 filing of a completed application and rehabilitation plan.  
13 Only the property for which a property address, legal  
14 description, or other specific location is provided in the  
15 application shall be reviewed. Ownership of an entity that is  
16 the owner of property contained in the application shall not  
17 be a factor in the Commission's review of the application and  
18 no subsequent change in the ownership structure of such entity  
19 shall result in the loss or rescission of a reservation of tax  
20 credits. The owner shall not be permitted to request the  
21 review of another property for approval in the place of the  
22 property contained in the application. Any application  
23 disapproved by the Commission or the Committee shall be  
24 removed from the review process, and the Commission shall  
25 notify the owner in writing of the decision to remove the  
26 application. A disapproved application may be resubmitted, but  
27 shall be deemed to be a new submission and may be charged a

1 new application fee. In the event the reservations of tax  
2 credits equal the total amount available for reservations  
3 during the tax year, all owners with applications then  
4 awaiting approval or thereafter submitted shall be notified by  
5 the Commission that no additional tax credits shall be granted  
6 during that tax year. The applications shall remain in active  
7 status from the date of the original application and shall be  
8 considered for recommendations of tax credits in the event  
9 that additional credits become available due to rescission by  
10 the Committee or when a new tax year's allocation of tax  
11 credits becomes available.

12 Owners receiving a reservation of tax credits shall  
13 commence rehabilitation, if rehabilitation has not previously  
14 begun, within 18 months of the date of issuance of the written  
15 notice from the Committee to the owner granting the tax  
16 credits. "Commencement of rehabilitation" shall mean that, as  
17 of the date in which actual physical work contemplated by the  
18 rehabilitation plan submitted with the application has begun,  
19 the owner has incurred no less than 20 percent of the  
20 estimated costs of rehabilitation provided in the application.  
21 Within 36 months of the date of issuance of the written notice  
22 from the Commission to the owner granting the tax credit  
23 reservation, the owner must have incurred an additional 50  
24 percent of the estimated costs of rehabilitation provided in  
25 the application. Within 60 months of the date of issuance of  
26 the written notice from the Commission to the owner granting  
27 the tax credit reservation, the project must be completed.



1 Owners receiving a reservation of tax credits shall submit  
2 evidence of compliance with the provisions of this subsection.  
3 If the Commission determines that an owner has failed to  
4 comply with the requirements provided under this section, the  
5 reservation of tax credits for the owner may be rescinded and,  
6 if so, the amount of tax credits shall then be included in the  
7 total amount of available tax credits provided for in  
8 subsection (c) of Section 4 of this act, from which  
9 reservations may be granted. Any owner whose reservation of  
10 tax credits shall be rescinded shall be notified of the  
11 rescission from the Commission and, upon receipt of the  
12 notice, may submit a new application but may be charged a new  
13 application fee.

14 (d) Following the completion of a substantial  
15 rehabilitation of a qualified structure, the owner shall  
16 notify the Commission that the substantial rehabilitation has  
17 been completed and shall certify the qualified rehabilitation  
18 expenditures incurred with respect to the rehabilitation plan.  
19 In addition, the owner shall provide the Commission with: (i)  
20 a cost and expense certification, prepared by a licensed  
21 certified public accountant that is not an affiliate of the  
22 owner, certifying the total qualified rehabilitation  
23 expenditures and the total amount of tax credits against any  
24 state tax due that is specified in this chapter for which the  
25 owner is eligible under Section 4 of this act and, if the  
26 qualified rehabilitation expenditures exceed two hundred  
27 thousand dollars (\$200,000), the cost and expense

1 certification must be audited by the licensed certified public  
2 accountant; and (ii) an appraisal of the qualified structure  
3 prepared by an independent MAI designated and licensed real  
4 estate appraiser. The Commission shall review the  
5 documentation of the rehabilitation and verify its compliance  
6 with the rehabilitation plan. The Commission shall also review  
7 the content of the cost and expense certification as well as  
8 the appraisal to ensure compliance with standards adopted by  
9 rule of the Commission. Within 90 days after receipt and  
10 approval of the foregoing documentation from the owner, the  
11 Commission shall issue a tax credit certificate in an amount  
12 equivalent to the lesser of: (i) the amount of the tax credit  
13 reservation issued for the project under the provisions of  
14 subsection (c), or (ii) 25 percent of the actual qualified  
15 rehabilitation expenditures for certified historic structures.  
16 In the event the amount of qualified rehabilitation  
17 expenditures incurred by the owner would result in the  
18 issuance of an amount of tax credits in excess of the amount  
19 of tax credits reserved for the owner under subsection (c),  
20 the owner may apply to the Commission for issuance of tax  
21 credits in an amount equal to the excess. Applications for  
22 issuance of tax credits in excess of the amount of tax credits  
23 reserved for the owner shall be made on a form prescribed by  
24 the Commission and shall represent a separate certificate that  
25 shall be issued, subject to all provisions regarding priority  
26 provided in this section.

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

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

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

23 (i) For qualified rehabilitation expenses of one  
24 -million dollars (\$1,000,000) or less, a fee equal to one  
25 percent (1%) of the qualified rehabilitation expenditures.

26 (ii) For qualified rehabilitation expenses from one  
27 -million and one dollars (\$1,000,001) to ten million dollars

1 (\$10,000,000), a fee equal to fifteen thousand dollars  
2 (\$15,000).

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

6 (iv) Any fees collected by the Commission under this  
7 section shall be deposited in the State Treasury to the credit  
8 of the Commission and all such funds are to be appropriated to  
9 the Commission to defray the expenses incurred in carrying out  
10 the provisions of this act.

11 (h) The Commission shall, in consultation with the  
12 Department, report to the Legislature in the third year  
13 following passage of this chapter, and annually thereafter, on  
14 the overall economic activity, usage, and impact to the state  
15 from the substantial rehabilitation of qualified structures  
16 for which tax credits have been allowed.

17 Section 4. (a) The state portion of any tax credit  
18 against the tax imposed by Chapters 16 and 18, for the taxable  
19 year in which the certified rehabilitation is placed in  
20 service, shall be equal to 25 percent of the qualified  
21 rehabilitation expenditures for certified historic structures.  
22 No tax credit claimed for any certified rehabilitation may  
23 exceed five million dollars (\$5,000,000) for all allowable  
24 property types except a certified historic residential  
25 structure, and fifty thousand dollars (\$50,000) for a  
26 certified historic residential structure.

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

13           (c) The entire tax credit must be claimed by the  
14 taxpayer in the taxable year in which the certified  
15 rehabilitation is placed in service. Where the taxes owed by  
16 the taxpayer are less than the tax credit, the taxpayer shall  
17 be entitled to claim a refund for the difference.

18           (d) For the tax years 2018 through 2027, the  
19 aggregate amount of all tax credits that may be reserved in  
20 any one of such years by the Commission and certification of  
21 rehabilitation plans under subsection (c) of Section 3 shall  
22 not exceed twenty million dollars (\$20,000,000) plus any  
23 amount of previous reservations of tax credits that were  
24 rescinded under subsection (c) of Section 3 of this act during  
25 the tax year. However, if all of the allowable tax credit  
26 amount for any tax year is not requested and reserved, any  
27 unreserved tax credits may be utilized by the Commission in

1       awarding tax credits in subsequent years; provided, however,  
2       that in no event shall a total of more than two-hundred  
3       million dollars (\$200,000,000) be reserved by the Commission  
4       during the period from the effective date of this act through  
5       December 31, 2027. For purposes of this chapter, "tax year"  
6       shall mean the calendar year.

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

11              (f) All or any portion of the income tax credits  
12      under this section and Sections 3 of this act shall be  
13      transferable and assignable, subject to any notice and  
14      verification requirements to be determined by the Department,  
15      without the requirement of transferring any ownership interest  
16      in the qualified structure or any interest in the entity which  
17      owns the qualified structure. Any tax credits transferred  
18      shall be at a value of at least eighty-five percent (85%) of  
19      the present value of the credits. However, once a credit is  
20      transferred, only the transferee may utilize such credit and  
21      the credit cannot be transferred again. A transferee of the  
22      tax credits may use the amount of tax credits transferred to  
23      offset any income tax under Chapter 18 of Title 40. The  
24      Department shall promulgate a form transfer statement to be  
25      filed by the transferor with the Department prior to the  
26      purported transfer of any credit issued under this chapter.  
27      The transfer statement form shall include the name and federal

1 taxpayer identification number of the transferor and each  
2 transferee listed therein along with the amount of the tax  
3 credit to be transferred to each transferee listed on the  
4 form. The transfer statement form shall also contain such  
5 other information as the Department may from time to time  
6 reasonably require. For each transfer, the transferor shall  
7 file (1) a completed transfer statement form; (2) a copy of  
8 the tax credit certificate issued by the Commission  
9 documenting the amount of tax credits which the transferor  
10 intends to transfer; (3) a copy of the proposed written  
11 transfer agreement; and (4) a transfer fee payable to the  
12 Department in the amount of one thousand dollars (\$1,000) per  
13 transferee listed on the transfer statement form. The  
14 transferor shall file with the Department a fully executed  
15 copy of the written transfer agreement with each transferee  
16 within 30 days after the completed transfer. Filing of the  
17 written transfer agreement with the Department shall perfect  
18 such transfer with respect to such transferee. Within 30 days  
19 after the Department's receipt of the fully executed written  
20 transfer agreement, the Department shall issue a tax credit  
21 certificate to each transferee listed in such agreement in the  
22 amount of the tax credit so transferred. Such certificate  
23 shall be used by the transferee in claiming the tax credit  
24 pursuant to Section 3(e) and (f) of this act. The Department  
25 may promulgate such additional rules as are necessary to  
26 permit verification of the ownership of the tax credits but

1 shall not promulgate any rules which unduly restrict or hinder  
2 the transfer of the tax credits.

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

7 (b) In the taxable year the certified rehabilitation  
8 is placed in service for any structure for which a tax credit  
9 has been issued, the Commission shall provide notice of the  
10 certified rehabilitation and a copy of the appraisal provided  
11 by the owner to the taxing authority responsible for the  
12 assessment of ad valorem taxes. Upon notification, the taxing  
13 authority responsible for the assessment of ad valorem taxes  
14 shall complete a new assessment for the structure to be used  
15 in the assessment of ad valorem taxes for the tax year in  
16 which the certified rehabilitation was placed in service.

17 Section 6. Owners or their duly authorized  
18 representatives may appeal any state official decision,  
19 including all preliminary or final reservations, approvals,  
20 and denials, made by the Commission, Committee or the  
21 Department with regard to an application and rehabilitation  
22 plan submitted under Section 3 of this act, in accordance with  
23 the Alabama Administrative Procedure Act contained in Chapter  
24 22 of Title 41. Appeals shall constitute an administrative  
25 review of the decision appealed from and shall not be  
26 conducted as an adjudicative proceeding. Appeals shall be  
27 submitted within 30 days of receipt by the owner or the



1 owner's duly authorized representative of the decision that is  
2 the subject of the appeal.

3 Section 7. The tax credits authorized by this  
4 chapter for the substantial rehabilitation of qualified  
5 structures shall not be available to owners of qualified  
6 structures that submit an application and rehabilitation plan  
7 after December 31, 2027. No action or inaction on the part of  
8 the Legislature shall reduce or suspend the tax credits  
9 authorized by this chapter in any past or future calendar year  
10 with respect to a qualified structure if the owner thereof  
11 submits an application and rehabilitation plan with the  
12 Commission and the Commission reserves an allocation for a tax  
13 credit on or prior to December 31, 2027, even if the qualified  
14 structure is placed into service after December 31, 2027, and  
15 shall not affect the owner of a qualified structure if the  
16 commission has reserved an allocation for a tax credit on or  
17 prior to December 31, 2027.

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

23 Section 9. (a) There is hereby established the  
24 Historic Tax Credit Evaluating Committee, which shall review  
25 qualifying projects, approve credits for projects, and rank  
26 projects in the order in which the projects should receive tax  
27 credit reservations based on criteria established by the

1 Commission. The Committee shall meet by the sixtieth day of  
2 each quarter for the purpose of evaluating all applications  
3 for projects submitted to and approved by the Commission by  
4 the thirtieth day of that quarter and allocating tax credits  
5 available pursuant to this act. The Commissioner of Revenue  
6 shall be a non-voting member of the Committee and provide  
7 advisory and technical support. The Committee shall consist of  
8 the following:

9 (1) Director of the Governor's Office of Minority  
10 Affairs;

11 (2) The Executive Director of the Alabama Historic  
12 Commission;

13 (3) The Finance Director;

14 (4) The Director of the Alabama Department of  
15 Economic and Community Affairs;

16 (5) The Secretary of Commerce;

17 (6) Two members of the Alabama House of  
18 Representatives, at least one of which shall be a member of  
19 the minority party, to be appointed by the Speaker of the  
20 House of Representatives; and

21 (7) Two members of the Alabama Senate, at least one  
22 of which shall be a member of the minority party, to be  
23 appointed by the President Pro Tem of the Senate.

24 (b) The Alabama Historic Commission shall promulgate  
25 rules that shall set forth guidelines to be utilized by the  
26 Committee in determining the allocation of credits. The  
27 guidelines shall set forth factors to be considered by the

1 Committee including: relative value of the proposed project to  
2 the particular community, including the maintenance of the  
3 historic fabric of the community; possible return on  
4 investment for the community in which the proposed project is  
5 located; the geographic distribution of projects; and strength  
6 of local support for the proposed project. Included in the  
7 information to be required for the evaluation of any project  
8 shall be any additional tax credits or state, federal, or  
9 local government grants that the applicant expects to utilize  
10 for the construction of the project.

11 Section 10. The provisions of this act are  
12 severable. If any part of this act is declared invalid or  
13 unconstitutional, that declaration shall not affect the part  
14 which remains.

15 Section 11. This act shall become effective  
16 immediately following its passage and approval by the  
17 Governor, or its otherwise becoming law.