ACT #2017-380

HB345

186323-3

By Representatives Gaston, Faulkner, Buskey, Garrett, Drummond, Clarke, McMillan, Shiver, Ingram, Greer, Ainsworth, Clouse, Faust, Collins, Scott, Givan, Moore (M), Millican, Johnson (R), Tuggle, Hurst, Ledbetter, Fridy, Sanderford, Farley, Todd, Hall, Butler, Blackshear, Harbison, Boyd, Alexander, Jackson, Carns, Beech, Knight, Fincher, Drake, Black, Lindsey, Ford, Davis, Williams (JW), Sessions, Nordgren, Johnson (K), Pringle, Coleman, Rogers, Shedd, Pettus, Patterson, Wood, Ball, Rich, Harper, Weaver, Rowe, Standridge, South, England, Martin, Lee, Crawford, Lovvorn, Baker, Warren, McClammy, Ellis, Chesteen, Bandy, Beckman, Howard, Whorton (I), Treadaway, Boothe, McCutcheon, Mooney, Hanes, Williams (JD), Polizos, Wingo, Whorton (R), Wadsworth, Brown, Moore (B), Daniels and Bracy

RFD: Ways and Means Education

First Read: 02-MAR-17
ENROLLED, An Act,

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

(1) CERTIFIED HISTORIC STRUCTURE. A property located
in Alabama which is at least sixty years old, unless the
structure is an historic structure located within the
boundaries of a National Monument or Park as declared by the
United States Congress or the President of the United States,
in which case the federal age provisions shall apply, and is
certified by the Alabama Historical Commission as being
individually listed in the National Register of Historic
Places, eligible for listing in the National Register of
Historic Places, or certified by the Commission as
contributing to the historic significance of a Registered
Historic District.

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

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

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

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

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

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

a. owns title to a qualified structure, or

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

An owner as defined herein shall not be considered a private user as defined in Section 40-9A-1, Code of Alabama 1975.

(8) QUALIFIED REHABILITATION EXPENDITURES. Any expenditure as defined under Section 47(c)(2)(A) of the Internal Revenue Code, as amended, and the related regulations
thereunder, and other reasonable expenses and costs expended in the rehabilitation of a qualified structure. For certified historic residential structures, this term shall mean expenses incurred by the taxpayer in the certified rehabilitation of a certified historic residential structure, including but not limited to preservation and rehabilitation work done to the exterior of a certified historic residential structure, repair and stabilization of historic structural systems, restoration of historic plaster, energy efficiency measures except insulation in frame walls, repairs or rehabilitation of heating, air conditioning, or ventilation systems, repairs or rehabilitation of electrical or plumbing systems exclusive of new electrical appliances and electrical or plumbing fixtures, and architectural, engineering, and land surveying fees. Qualified rehabilitation expenditures do not include the cost of acquisition of the qualified structure, the personal labor by the owner, or any cost associated with the rehabilitation of an outbuilding of the qualified structure, unless the outbuilding is certified by the Commission to contribute to the historical significance of the qualified structure.

(9) QUALIFIED STRUCTURE. Certified historic structures which are certified by the Commission as meeting the requirements contained in Section 47(c)(1)(A)(i) and (ii) of the Internal Revenue Code, as amended, and to certified historic residential structures as defined herein.
(10) REGISTERED HISTORIC DISTRICT. Any district listed in the National Register of Historic Places and any district which is either of the following:

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

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

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

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

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

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

(c) The Commission shall review the application and
rehabilitation plan to determine that the information
contained therein is complete. If the Commission determines
that the application and rehabilitation plan are complete, the
Commission shall recommend the project to the Committee for
the reservation of a tax credit. If the project is approved
for a tax credit by the Committee, the Commission shall
reserve, for the benefit of the owner, an allocation for a tax
credit as provided in Section 4 of this act, and the
Commission shall notify the owner in writing of the amount of
the reservation. The reservation of tax credits does not
entitle the owner to an issuance of tax credits until the
owner complies with all other requirements of this chapter for
the issuance of the tax credits. The reservation of tax
credits shall be made by the Commission in the order in which
the Committee has ranked completed applications and
rehabilitation plans. Reservations of tax credits shall be
issued by the Commission within a reasonable time from the
filing of a completed application and rehabilitation plan.
Only the property for which a property address, legal
description, or other specific location is provided in the
application shall be reviewed. Ownership of an entity that is
the owner of property contained in the application shall not
be a factor in the Commission's review of the application and
no subsequent change in the ownership structure of such entity
shall result in the loss or rescission of a reservation of tax
credits. The owner shall not be permitted to request the
review of another property for approval in the place of the
property contained in the application. Any application
disapproved by the Commission or the Committee shall be
removed from the review process, and the Commission shall
notify the owner in writing of the decision to remove the
application. A disapproved application may be resubmitted, but
shall be deemed to be a new submission and may be charged a
new application fee. In the event the reservations of tax
credits equal the total amount available for reservations
during the tax year, all owners with applications then
awaiting approval or thereafter submitted shall be notified by
the Commission that no additional tax credits shall be granted
during that tax year. The applications shall remain in active
status from the date of the original application and shall be
considered for recommendations of tax credits in the event
that additional credits become available due to recission by
the Commission or when a new tax year's allocation of tax
credits becomes available.

Owners receiving a reservation of tax credits shall
commence rehabilitation, if rehabilitation has not previously
begun, within 18 months of the date of issuance of the written
notice from the Commission to the owner granting the tax
credits. "Commencement of rehabilitation" shall mean that, as
of the date in which actual physical work contemplated by the
rehabilitation plan submitted with the application has begun,
the owner has incurred no less than 20 percent of the
estimated costs of rehabilitation provided in the application.
Within 36 months of the date of issuance of the written notice
from the Commission to the owner granting the tax credit
reservation, the owner must have incurred an additional 50
percent of the estimated costs of rehabilitation provided in
the application. Within 60 months of the date of issuance of
the written notice from the Commission to the owner granting
the tax credit reservation, the project must be completed.
Owners receiving a reservation of tax credits shall submit evidence of compliance with the provisions of this subsection. If the Commission determines that an owner has failed to comply with the requirements provided under this section, the reservation of tax credits for the owner may be rescinded and, if so, the amount of tax credits shall then be included in the total amount of available tax credits provided for in subsection (c) of Section 4 of this act, from which reservations may be granted. Any owner whose reservation of tax credits are rescinded shall be notified of the rescission from the Commission and, upon receipt of the notice, may submit a new application but may be charged a new application fee.

(d) Following the completion of a substantial rehabilitation of a qualified structure, the owner shall notify the Commission that the substantial rehabilitation has been completed and shall certify the qualified rehabilitation expenditures incurred with respect to the rehabilitation plan. In addition, the owner shall provide the Commission with: (i) a cost and expense certification, prepared by a licensed certified public accountant that is not an affiliate of the owner, certifying the total qualified rehabilitation expenditures and the total amount of tax credits against any state tax due that is specified in this chapter for which the owner is eligible under Section 4 of this act and, if the
qualified rehabilitation expenditures exceed two hundred thousand dollars ($200,000), the cost and expense certification must be audited by the licensed certified public accountant; and (ii) an appraisal of the qualified structure prepared by an independent MAI designated and licensed real estate appraiser. The Commission shall review the documentation of the rehabilitation and verify its compliance with the rehabilitation plan. The Commission shall also review the content of the cost and expense certification as well as the appraisal to ensure compliance with standards adopted by rule of the Commission. Within 90 days after receipt and approval of the foregoing documentation from the owner, the Commission shall issue a tax credit certificate in an amount equivalent to the lesser of: (i) the amount of the tax credit reservation issued for the project under the provisions of subsection (c), or (ii) 25 percent of the actual qualified rehabilitation expenditures for certified historic structures. In the event the amount of qualified rehabilitation expenditures incurred by the owner would result in the issuance of an amount of tax credits in excess of the amount of tax credits reserved for the owner under subsection (c), the owner may apply to the Commission for issuance of tax credits in an amount equal to the excess. Applications for issuance of tax credits in excess of the amount of tax credits reserved for the owner shall be made on a form prescribed by
the Commission and shall represent a separate certificate that shall be issued, subject to all provisions regarding priority provided in Section 9 of this act.

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

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

(g) For processing the taxpayer's application for a tax credit, the Commission may impose the following application fees:
(i) For qualified rehabilitation expenses of one
million dollars ($1,000,000) or less, a fee equal to one
percent (1%) of the qualified rehabilitation expenditures.

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

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

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

(h) The Commission shall report to the Legislature
in the third year following passage of this chapter, and
annually thereafter, on the overall economic activity, usage,
and impact to the state from the substantial rehabilitation of
qualified structures for which tax credits have been allowed.
The information in the reports shall be consistent with the
information required by the Legislature pursuant to, and shall
be provided by the Commission to the Legislature in accordance
with, Section 40-1-50, Code of Alabama 1975, and rules adopted
thereunder. Information provided pursuant to this section is

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

(b) There is created within the Education Trust Fund a separate account named the Historic Preservation Income Tax Credit Account. The Commissioner of Revenue shall certify to the Comptroller the amount of income tax credits under this section and the Comptroller shall transfer into the Historic Preservation Income Tax Credit Account only the amount from sales tax revenues within the Education Trust Fund that is sufficient for the Department of Revenue to use to cover the income tax credits for the applicable tax year. The Commissioner of Revenue shall distribute the funds in the Historic Preservation Income Tax Credit Account pursuant to this section.
(c) The entire tax credit must be claimed by the taxpayer for the taxable year in which the certified rehabilitation is placed in service. Where the taxes owed by the taxpayer are less than the tax credit, the taxpayer shall be entitled to claim a refund for the difference.

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

(e) Of the annual amount of the tax credits provided for in subsection (d), 40% shall be reserved to taxpayers with a certified rehabilitation project located in a county in which the population does not exceed 175,000 according to the
2010 decennial census. In the event applications are not received and credits are not allocated for projects in these areas by the close of the second quarter of the program year, the funds may revert for allocations of other project applications.

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

(g) All or any portion of the income tax credits under this section and Sections 3 of this act shall be transferable and assignable, subject to any notice and verification requirements to be determined by the Department, without the requirement of transferring any ownership interest in the qualified structure or any interest in the entity which owns the qualified structure. Any tax credits transferred shall be at a value of at least eighty-five percent (85%) of the present value of the credits. However, once a credit is transferred, only the transferee may utilize such credit and the credit cannot be transferred again. A transferee of the tax credits may use the amount of tax credits transferred to offset any income tax under Chapter 18 of Title 40. The Department shall promulgate a form transfer statement to be filed by the transferor with the Department prior to the purported transfer of any credit issued under this chapter.
The transfer statement form shall include the name and federal taxpayer identification number of the transferor and each transferee listed therein along with the amount of the tax credit to be transferred to each transferee listed on the form. The transfer statement form shall also contain such other information as the Department may from time to time reasonably require. For each transfer, the transferor shall file (1) a completed transfer statement form; (2) a copy of the tax credit certificate issued by the Commission documenting the amount of tax credits which the transferor intends to transfer; (3) a copy of the proposed written transfer agreement; and (4) a transfer fee payable to the Department in the amount of one thousand dollars ($1,000) per transferee listed on the transfer statement form. The transferor shall file with the Department a fully executed copy of the written transfer agreement with each transferee within 30 days after the completed transfer. Filing of the written transfer agreement with the Department shall perfect such transfer with respect to such transferee. Within 30 days after the Department's receipt of the fully executed written transfer agreement, the Department shall issue a tax credit certificate to each transferee listed in such agreement in the amount of the tax credit so transferred. Such certificate shall be used by the transferee in claiming the tax credit pursuant to Section 3(e) and (f) of this act. The Department
may promulgate such additional rules as are necessary to
permit verification of the ownership of the tax credits but
shall not promulgate any rules which unduly restrict or hinder
the transfer of the tax credits.

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

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

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

Section 7. The tax credits authorized by this chapter for the substantial rehabilitation of qualified structures shall not be available to owners of qualified structures that submit an application and rehabilitation plan after December 31, 2022. No action or inaction on the part of the Legislature shall reduce or suspend the tax credits authorized by this chapter in any past or future calendar year with respect to a qualified structure if the owner thereof submits an application and rehabilitation plan with the Commission and the Commission reserves an allocation for a tax credit on or prior to December 31, 2022, even if the qualified structure is placed into service after December 31, 2022, and shall not affect the owner of a qualified structure if the commission has reserved an allocation for a tax credit on or prior to December 31, 2022.

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

Section 9. (a) There is hereby established the Historic Tax Credit Evaluating Committee, which shall review qualifying projects, approve credits for projects, and rank projects in the order in which the projects should receive tax credit reservations based on criteria established by the Commission. The Commission shall establish a review cycle for the Committee beginning on January 1, 2018, provided that the Committee shall meet at least quarterly unless no credits remain to be allocated. The Commissioner of Revenue shall be a non-voting member of the Committee and provide advisory and technical support. The Committee shall consist of the following:

1. Director of the Governor's Office of Minority Affairs;
2. The Executive Director of the Alabama Historical Commission;
3. The Finance Director;
4. The Director of the Alabama Department of Economic and Community Affairs;
5. The Secretary of Commerce;
6. Two members of the Alabama House of Representatives, at least one of which shall be a member of
the minority party, to be appointed by the Speaker of the
House of Representatives; and

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

(b) The Alabama Historical Commission shall
promulgate rules that shall set forth guidelines to be
utilized by the Committee in determining the allocation of
credits. The guidelines shall set forth factors to be
considered by the Committee including: relative value of the
proposed project to the particular community, including the
maintenance of the historic fabric of the community; possible
return on investment for the community in which the proposed
project is located; the geographic distribution of projects;
and strength of local support for the proposed project.

Included in the information to be required for the evaluation
of any project shall be any additional tax credits or state,
federal, or local government grants that the applicant expects
to utilize for the construction of the project.

Section 10. The provisions of this act are
severable. If any part of this act is declared invalid or
unconstitutional, that declaration shall not affect the part
which remains.
Section 11. This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law.
HB345

Speaker of the House of Representatives

Mac McCayle

President and Presiding Officer of the Senate

DeMuth

House of Representatives
I hereby certify that the within Act originated in and was passed by the House 18-APR-17, as amended.

Jeff Woodard
Clerk

Senate 09-MAY-17

Amended and Passed

House 19-MAY-17

Concurred in Senate Amendment

APPROVED 5-24-2017

TIME 4:05 PM

Kay Ivey
GOVERNOR

Alabama Secretary Of State
Act Num.: 2017-380
Bill Num.: H-345
Recvd 05/25/17 09:33amSLF
HOUSE ACTION

I HEREBY CERTIFY THAT THE RESOLUTION AS REQUIRED IN SECTION C OF ACT NO. 81-889 WAS ADOPTED AND IS ATTACHED TO THE BILL, H.B. 345

YEAS 92  NAYS 4

JEFF WOODARD, Clerk

SENATE ACTION

DATE: 6-19  2017

This Bill was referred to the Standing Committee of the Senate on

and was acted upon by such Committee in session and is by order of the Committee returned therefrom with a favorable report w/amend(s) __ w/sub __ by a vote of

YEAS 13  NAYS 0  abstain 0

this __ day of _May_ 2017

Chairperson

CONFERENCE COMMITTEE

House Conferees: 

RE-REFERRED  □  RE-COMMITTED  □

Committee: 

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill, HB 345

YEAS 29  NAYS 1

PATRICK HARRIS, Secretary