



# ACT #2023 - 522

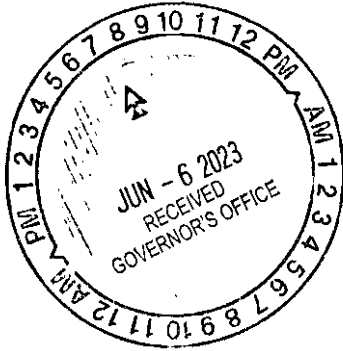
1 AY8I77-3

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

5 RFD: Ways and Means Education

6 First Read: 04-Apr-23

7 2023 Regular Session





## HB253 Enrolled

1 Enrolled, An Act,

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4 Relating to taxation; to amend Sections 40-9F-31,  
5 40-9F-33, and 40-9F-38, Code of Alabama 1975; to further  
6 provide certain age restrictions for structures to qualify for  
7 tax credits; to allow rehabilitation credits to be tied to the  
8 year in which the reservation is allocated; to provide for  
9 additional rehabilitation credit allocations; to further  
10 provide for the membership of the Historic Tax Credit  
11 Evaluating Committee and the factors considered by the  
12 committee; and to make nonsubstantive, technical revisions to  
13 update the existing code language to current style.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

17 "§40-9F-31

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

20 (1) CERTIFIED HISTORIC STRUCTURE. A property located in  
21 ~~Alabama~~ this state which is at least 60 years of age, unless  
22 the structure is a historic structure located within the  
23 boundaries of a National Monument or Park as declared by the  
24 United States Congress or the President of the United States,  
25 in which case the federal age provisions shall apply, and is  
26 certified by the Alabama Historical Commission as being  
27 individually listed in the National Register of Historic  
28 Places, eligible for listing in the National Register of

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29 Historic Places, or certified by the commission as  
30 contributing to the historic significance of a Registered  
31 Historic District. For applications submitted after June 1,  
32 2023, a property must be 75 years of age.

33 (2) CERTIFIED REHABILITATION. Repairs or alterations to  
34 a certified historic structure that is certified by the  
35 commission as meeting the U.S. Secretary of the Interior's  
36 Standards for Rehabilitation which meet the requirements  
37 ~~contained in Section 47(e)(2)(C) of the Internal Revenue~~  
38 ~~Code of 26 U.S.C. § 47, as amended, or to a certified historic~~  
39 ~~residential structure as defined in subdivision (3).~~

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

42 ~~(4)~~ (3) COMMISSION. The Alabama Historical Commission  
43 and or its successor.

44 ~~(5)~~ (4) COMMITTEE. The Historic Tax Credit Evaluating  
45 Committee established by this article.

46 ~~(6)~~ (5) DEPARTMENT. The Alabama Department of Revenue or  
47 its successor.

48 ~~(7)~~ (6) DISQUALIFYING USE. Any use of a certified  
49 historic ~~residential~~ structure that is occupied by an owner  
50 and used exclusively as a primary or secondary residence.

51 ~~(8)~~ (7) OWNER. Any taxpayer filing a State of Alabama  
52 income tax return or any entity that is exempt from federal  
53 income taxation pursuant to ~~Section 501(e) of the Internal~~  
54 ~~Revenue Code~~ 26 U.S.C. § 501, as amended, that:

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

56 b. ~~Owns~~ owns a leasehold interest in a qualified



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57 structure for a term of not less than 39 years.

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

60 ~~(9)~~ (8) QUALIFIED REHABILITATION EXPENDITURES. Any  
61 expenditure as defined under ~~Section 47(c)(2)(A) of the~~  
62 ~~Internal Revenue Code~~ 26 U.S.C. § 47, as amended, and the  
63 related regulations thereunder, and other reasonable expenses  
64 and costs expended in the rehabilitation of a qualified  
65 structure. ~~For certified historic residential structures, this~~  
66 ~~term shall mean expenses incurred by the taxpayer in the~~  
67 ~~certified rehabilitation of a certified historic residential~~  
68 ~~structure, including but not limited to preservation and~~  
69 ~~rehabilitation work done to the exterior of a certified~~  
70 ~~historic residential structure, repair and stabilization of~~  
71 ~~historic structural systems, restoration of historic plaster,~~  
72 ~~energy efficiency measures except insulation in frame walls,~~  
73 ~~repairs or rehabilitation of heating, air conditioning, or~~  
74 ~~ventilation systems, repairs or rehabilitation of electrical~~  
75 ~~or plumbing systems exclusive of new electrical appliances and~~  
76 ~~electrical or plumbing fixtures, and architectural,~~  
77 ~~engineering, and land surveying fees.~~ Qualified rehabilitation  
78 expenditures do not include the cost of acquisition of the  
79 qualified structure, the personal labor by the owner, or any  
80 cost associated with the rehabilitation of an outbuilding of  
81 the qualified structure, unless the outbuilding is certified  
82 by the commission to contribute to the historical significance  
83 of the qualified structure.

84 ~~(10)~~ (9) QUALIFIED STRUCTURE. Certified historic

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85 structures which are certified by the commission as meeting  
86 the requirements contained in ~~Section 47(e)(1)(A)(i) and (ii)~~  
87 ~~of the Internal Revenue Code~~26 U.S.C. § 47, as amended, and to  
88 ~~certified historic residential structures as defined herein.~~

89 ~~(11)~~(10) REGISTERED HISTORIC DISTRICT. Any district  
90 listed in the National Register of Historic Places and any  
91 district which is either of the following:

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

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

99 ~~(12)~~(11) REHABILITATION PLAN. Construction plans and  
100 specifications for the proposed rehabilitation of a qualified  
101 structure in sufficient detail to enable the commission to  
102 evaluate compliance with the standards developed under this  
103 article.

104 ~~(13)~~(12) SUBSTANTIAL REHABILITATION. Rehabilitation of  
105 a qualified structure for which the qualified rehabilitation  
106 expenditures exceed 50 percent of the owner's original  
107 purchase price of the qualified structure or twenty-five  
108 thousand dollars (\$25,000), whichever is greater."

109 "\$40-9F-33

110 (a) The state portion of any tax credit against the tax  
111 imposed by Chapter 18 for the taxable year in which the  
112 reservation is allocated to a project or the certified

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113 rehabilitation is placed in service shall be equal to 25  
114 percent of the qualified rehabilitation expenditures for  
115 certified historic structures. No tax credit claimed for any  
116 certified rehabilitation may exceed five million dollars  
117 (\$5,000,000) for all allowable property types ~~except a~~  
118 ~~certified historic residential structure, and fifty thousand~~  
119 ~~dollars (\$50,000) for a certified historic residential~~  
120 ~~structure.~~

121 (b) There is created within the Education Trust Fund a  
122 separate account named the Historic Preservation Income Tax  
123 Credit Account. The Commissioner of Revenue shall certify to  
124 the Comptroller the amount of income tax credits under this  
125 section and the Comptroller shall transfer into the Historic  
126 Preservation Income Tax Credit Account only the amount from  
127 sales tax revenues within the Education Trust Fund that is  
128 sufficient for the Department of Revenue to use to cover the  
129 income tax credits for the applicable tax year. The  
130 Commissioner of Revenue shall distribute the funds in the  
131 Historic Preservation Income Tax Credit Account pursuant to  
132 this section.

133 (c) The entire tax credit must be claimed by the  
134 taxpayer for the taxable year in which the reservation is  
135 allocated to a project or the certified rehabilitation is  
136 placed in service. Tax credits shall not be claimed prior to  
137 the taxable year in which the certified rehabilitation is  
138 placed in service. Where the taxes owed by the taxpayer are  
139 less than the tax credit, the taxpayer shall be entitled to  
140 claim a refund for the difference. In the event that any



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141 additional credit is allocated to the taxpayer for a given  
142 project, the additional credit must be claimed in the taxable  
143 year the additional credit is allocated to the taxpayer.

144 (d) (1) For the tax years 2018 through ~~2027~~2022, the  
145 aggregate amount of all tax credits that may be reserved in  
146 any one of such years by the commission and certification of  
147 rehabilitation plans under ~~subsection (e) of Section~~  
148 ~~40-9F-32~~(c) shall not exceed twenty million dollars  
149 (\$20,000,000), plus any amount of previous reservations of tax  
150 credits that were rescinded under ~~subsection (e) of Section~~  
151 ~~40-9F-32~~(c) during the tax year. However, if all of the  
152 allowable tax credit amount for any tax year is not requested  
153 and reserved, any unreserved tax credits may be utilized by  
154 the commission in awarding tax credits in subsequent years;  
155 provided, however, that in no event shall a total of more than  
156 two hundred million dollars (\$200,000,000) be reserved by the  
157 commission during the period from May 25, 2017, through  
158 December 31, ~~2027~~2022, pursuant to this article. Applications  
159 shall not be received by the commission after the Historic Tax  
160 Credit Evaluating Committee has ranked projects with a total  
161 amount exceeding two hundred million dollars (\$200,000,000).  
162 ~~For purposes of this article, tax year shall mean the calendar~~  
163 ~~year.~~

164 (2) For the tax years 2023 through 2027, the aggregate  
165 amount of all tax credits that may be reserved in any one of  
166 such years by the commission and certification of  
167 rehabilitation plans under Section 40-9F-32(c) shall not  
168 exceed ~~forty million dollars (\$40,000,000)~~twenty million



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169 dollars (\$20,000,000), plus any amount of previous  
170 reservations of tax credits that were rescinded under 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, pursuant to this article.

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

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

184       (5) In addition to the limits in subdivision (2), for  
185 tax years 2024 through 2027, the commission may utilize an  
186 additional amount up to a total of five million dollars  
187 (\$5,000,000) to reduce the backlog of qualified applications.

188       (e) Of the annual amount of the tax credits provided  
189 for in subsection (d), 40 percent shall be reserved to  
190 taxpayers with a certified rehabilitation project located in a  
191 county in which the population does not exceed 175,000  
192 according to the most recent federal decennial census. In the  
193 event applications are not received and credits are not  
194 allocated for projects in these areas by the close of the  
195 third quarter of the program year, the funds may revert for  
196 allocations of other project applications.





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

201 (g) All or any portion of the income tax credits under  
202 this section and Section 40-9F-32 shall be transferable and  
203 assignable, subject to any notice and verification  
204 requirements to be determined by the department, without the  
205 requirement of transferring any ownership interest in the  
206 qualified structure or any interest in the entity which owns  
207 the qualified structure. Any tax credits transferred shall be  
208 at a value of at least 85 percent of the present value of the  
209 credits. However, once a credit is transferred, only the  
210 transferee may utilize ~~such~~ the credit and the credit ~~cannot~~  
211 may not be transferred again. A transferee of the tax credits  
212 may use the amount of tax credits transferred to offset any  
213 income tax under Chapter 18. The entire tax credit must be  
214 claimed by the transferee for the taxable year in which the  
215 reservation is allocated to a project or the certified  
216 rehabilitation is placed in service. When the taxes owed by  
217 the transferee are less than the tax credit, the transferee  
218 shall be entitled to claim a refund for the difference. The  
219 department shall adopt a form transfer statement to be filed  
220 by the transferor with the department prior to the purported  
221 transfer of any credit issued under this article. The transfer  
222 statement form shall include the name and federal taxpayer  
223 identification number of the transferor and each transferee  
224 listed therein along with the amount of the tax credit to be



225 transferred to each transferee listed on the form. The  
226 transfer statement form shall also contain any other  
227 information as the department may from time to time reasonably  
228 require. For each transfer, the transferor shall file: (1) a  
229 completed transfer statement form; (2) a copy of the tax  
230 credit certificate issued by the commission documenting the  
231 amount of tax credits which the transferor intends to  
232 transfer; (3) a copy of the proposed written transfer  
233 agreement; and (4) a transfer fee payable to the department in  
234 the amount of one thousand dollars (\$1,000) per transferee  
235 listed on the transfer statement form. The transferor shall  
236 file with the department a fully executed copy of the written  
237 transfer agreement with each transferee within 30 days after  
238 the completed transfer. Filing of the written transfer  
239 agreement with the department shall perfect the transfer with  
240 respect to the transferee. Within 30 days after the  
241 department's receipt of the fully executed written transfer  
242 agreement, the department shall issue a tax credit certificate  
243 to each transferee listed in the agreement in the amount of  
244 the tax credit so transferred. The certificate shall be used  
245 by the transferee in claiming the tax credit pursuant to  
246 subsections (e) and (f) of Section 40-9F-32. The department  
247 may adopt additional rules as are necessary to permit  
248 verification of the ownership of the tax credits, but shall  
249 not adopt any rules which unduly restrict or hinder the  
250 transfer of the tax credits."

251            "\$40-9F-38

252            (a) There is established the Historic Tax Credit

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253 Evaluating Committee, which shall review qualifying projects,  
254 approve credits for projects, and rank projects in the order  
255 in which the projects should receive tax credit reservations  
256 based on criteria established by the commission. The  
257 commission shall establish a review cycle for the committee  
258 beginning on January 1, 2018, provided that the committee  
259 shall meet at least quarterly unless no credits remain to be  
260 allocated. The Commissioner of Revenue shall be a nonvoting  
261 member of the committee and provide advisory and technical  
262 support. The committee shall consist of the following:

263 (1) The Director of the Alabama Office of Minority  
264 Affairs.

265 (2) The Executive Director of the Alabama Historical  
266 Commission.

267 (3) The Finance Director.

268 (4) The Director of the Alabama Department of Economic  
269 and Community Affairs.

270 (5) The Secretary of Commerce.

271 (6) Two members of the Alabama House of  
272 Representatives, at least one of which shall be a member of  
273 the minority party, to be appointed by the Speaker of the  
274 House of Representatives.

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

278 (8) The Chair of the Senate Finance Taxation Education  
279 Committee or his or her designee.

280 (9) The Chair of the House Ways and Means Education



281 Committee or his or her designee.

282 (b) (1) The Alabama Historical Commission shall adopt  
283 rules that shall set forth guidelines to be used by the  
284 committee in determining the allocation of credits. The  
285 guidelines shall set forth factors to be considered by the  
286 committee including all of the following:

287 a. ~~Relative~~The relative value of the proposed project  
288 to the particular community, including the maintenance of the  
289 historic fabric of the community~~+~~.

290 b. The possible return on investment for the community  
291 in which the proposed project is located~~+~~.

292 c. ~~the~~The geographic distribution of projects~~+~~.

293 d. ~~the~~The likelihood of the project proceeding without  
294 the historic tax credit authorized in this article~~+~~.

295 e. ~~and~~The strength of local support for the proposed  
296 project.

297 f. The leveraged investment ratio of the project, as  
298 determined by the total project investment divided by the  
299 amount of tax credits requested.

300 g. The number of net new jobs the project will create  
301 in the state.

302 h. The amount of overall project financing for which  
303 the applicant has firm, secured commitments prior to  
304 submitting its application.

305 (2) Included in the information to be required for the  
306 evaluation submitted in the application of any project shall  
307 be any additional tax credits or state, federal, or local  
308 government grants that the applicant expects to utilize for

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309 the construction of the project.

310 (3) The committee shall establish a minimum threshold  
311 that a project must exceed before the project may be funded by  
312 the committee.

313 (c) The committee may meet in person, remotely, or by  
314 using a hybrid model where some members attend in person and  
315 others attend remotely, pursuant to Section 36-25A-5.1."

316 Section 2. This act shall become effective immediately  
317 following its passage and approval by the Governor, or its  
318 otherwise becoming law.

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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 09-May-23, as amended.

John Treadwell  
Clerk

Senate	<u>06-Jun-23</u>	Passed
House	<u>06-Jun-23</u>	Concurred in Senate Amendment

APPROVED 6-14-2023  
TIME 9:30 am

GOVERNOR

Alabama Secretary Of State  
Act Num.....: 2023-522  
Bill Num....: H-253  
Recv'd 06/15/23 09:56amSLF

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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. 253

YEAS 102 NAYS 0

JOHN TREADWELL, Clerk

I HEREBY CERTIFY THAT THE NOTICE & PROOF IS ATTACHED TO THE BILL, H.B. AS REQUIRED IN THE GENERAL ACTS OF ALABAMA, 1975 ACT NO. 919.

JOHN TREADWELL, Clerk

CONFERENCE COMMITTEE

House Conferees

DATE: 5-11 20 23  
RD 1 RFD F + TE

This Bill was referred to the Standing Committee of the Senate on FATE 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) 1 w/sub by a vote of years 14 nays 0 abstain 0 this 31<sup>st</sup> day of May 20 23 Chair

DATE: 5-31 20 23  
RF (Du App 4) RD 2 CAL

DATE: 20  
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  
YEAS NAYS  
PATRICK HARRIS, Secretary

FURTHER SENATE ACTION (OVER)