FISCAL IMPACT REPORT

		LAST UPDATED	
SPONSOR	Brantley	**ORIGINAL DATE**	1/26/2025
SHORT TITLE	Rail Infrastructure Tax Credit	**BILL NUMBER**	Senate Bill 129
		ANALYST	Graeser

REVENUE*
(dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
CIT only		($3,000) to ($6,000)	($3,000) to ($6,000	($3,000) to ($6,000	($3,000) to ($6,000	Recurring	General Fund

Parentheses ( ) indicate revenue decreases.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
TRD Operating		$47.8		$47.8	Nonrecurring	General Fund
TRD Operating		$75.0	$75.0	$150.0	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.

Sources of Information
LFC Files

Agency Analysis Received From
Taxation and Revenue Department (TRD)

Agency Analysis was Solicited but Not Received From
Department of Transportation (NMDOT)

SUMMARY

Synopsis of Senate Bill 129

Senate Bill 129 proposes a rail infrastructure corporate income tax credit for class 2 and 3 railroads[1] in the state that construct or reconstruct railroad systems. The credit is 50 percent of a taxpayer's qualified reconstruction or replacement costs or qualified new rail infrastructure costs, with total credits limited to $1 million for new rail infrastructure expenditures. For reconstruction or replacement expenditures, the amount of credit shall not exceed $5,000 multiplied by the number of miles of railroad track owned or leased in the state at the end of the taxable year. The

[1] Railroads are placed in three classes based on revenue. Class 1 railroads are the highest earners.

certification for these credits is done by the Department of Transportation (NMDOT), which may certify a maximum aggregate of $6 million per calendar year. The credit is not refundable but the amount that exceeds the tax liability in the taxable year may be carried forward for five consecutive years. The credit may be sold, exchanged, or transferred to another taxpayer.

The bill also amends Section 7-1-8.8 NMSA 1978 to allow for information sharing between the Taxation and Revenue Department (TRD) and NMDOT for the purpose of this credit.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted. The credits are applicable to tax years beginning January 1, 2025, and sunset for expenditures after December 31, 2035.

FISCAL IMPLICATIONS

This bill creates or expands a tax expenditure. LFC has serious concerns about the substantial risk to state revenues from tax expenditures and the increase in revenue volatility from erosion of the revenue base. The committee recommends the bill adhere to the LFC tax expenditure policy principles for vetting, targeting, and reporting or action be postponed until the implications can be more fully studied.

TRD also raises concerns about tax incentives:

> The increasing number of such incentives adds complexity to the tax code, creating special treatment and exceptions that result in increased tax expenditures and a narrower tax base. This can have a negative impact on the general fund. The introduction of more tax incentives increases the compliance burden on both taxpayers and on [TRD] Rev. Adding complexity and exceptions to the tax code creates tension with the principles of sound tax policy.

TRD notes the following potential impact on the state's economy:

> New Mexico's major rail companies have several ongoing and upcoming initiatives to improve rail connectivity, enhance freight movement, and support economic growth. The Belen Yard, a prominent New Mexico rail hub, is a junction for multiple freight rail lines. Plans are underway to expand and modernize the yard to accommodate increased freight traffic, improve operational efficiency, and support economic development in the region. Double-tracking initiatives aim to add a second track along certain sections of existing rail lines. This expansion improves capacity, allows faster and more efficient train movements, and supports increased freight and passenger rail service.

While TRD supports the sunset (expiration) of the tax credit in 2036, it suggests the cap on the credit, in combination with the ability to carry over the credit for five years, may end the credit before then:

> If a cap is reached in year 1, certifications can be carried over to the next taxable year where credit capacity is still available. The credit has a sunset in 2036. The total cap, including all years through 2035, may be reached well before January 1, 2036, depending on the number of projects undertaken and credits applied for.

SIGNIFICANT ISSUES

TRD suggests the tax credit might not be large enough to act as an incentive because railroad construction is very expensive:

> While tax incentives can provide support for industries and encourage specific social and economic behaviors, the high cost of railroad projects may not be large enough for this tax credit to serve as a significant source of incentive. … Rail companies have historically been responsible for maintaining their own business interests. These companies are actively expanding their operations to generate more profit, and it is likely that they would continue to do so even without the presence of this tax credit. The credit may create an unnecessary distortion to economic activity in New Mexico by incentivizing economic activity that would occur even in the absence of the incentive and by providing economic support to a mature and profitable business sector.

TRD also raises concerns about the multiple credit caps in the bill:

> The bill contains three different caps: a per-credit cap based on the qualified expenditures; an additional cap limiting the amount of each individual credit, based either on miles of track owned or the number of new customers served; and, an overall annual cap on the total amount of credits that may be approved. This number of caps may lead to confusion among taxpayers and increases the complexity of administering the proposed credit.

The department recommends eliminating at least one of the cap formulas.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is met with the general requirement to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the credit. Tax & Rev is now required by Section 7-1-84 NMSA 1978 to compile and present a tax expenditure budget, which includes the number of taxpayers that claim and the amount of claims for a tax expenditure. Credits are seen as a tax expenditure and will be included on this report.

ADMINISTRATIVE IMPLICATIONS

TRD reports moderate impact on its operations from the provisions of this bill:, with costs associated with updating information systems, forms, and publications; staff training; systems testing; and monitoring and tracking the credit through transfers.

TECHNICAL ISSUES

TRD points out a number of potential confusions and technical issues.

> Subsection B(1), page 2, lines 10-15. This subsection limits the tax credit for qualified construction and replacement expenditures to $5,000 times "the number of miles of railroad track owned or leased in the state by the taxpayer as of the close of the taxable year." It is not clear which taxable year, though it might be inferred that it is the taxable year in which the expenditures are made. However, it is also the case that

taxpayers may apply for this credit before the end of the taxable year. Tax & Rev suggests stating "at the time of the application for the credit" rather than "as of the close of the taxable year."

Subsection G, page 4, lines 12 through 15, Tax & Rev suggests adding language to limit the amount of the credit that may be transferred. After 'taxpayer' add the following language: "in increments of not less than one million dollars ($1,000,000); provided that if the total amount certified is less than one million dollars ($1,000,000), a certificate of the entire amount of the credit may be transferred." This proposed language is proposed to be consistent with the Advanced Energy Equipment Corporate Income Tax Credit, 7-2A-19.3 D NMSA 1978. Without this limitation, the number of times the tax credit can be transferred or sold may lead to an administrative burden to track the claiming of the original certified credit.

Subsection G, page 4, lines 15 through 17, Tax & Rev suggests adding language for taxpayers to notify the department via electronic communication of a sale, exchange or transfer of the credit. Adding language that gives the format to be prescribed by the department allows Tax & Rev to control the medium that the credits are transferred with, track, and use technology to improve processing times. The following language is consistent with other credit language: "The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer in an electronic format prescribed by the department."

OTHER SUBSTANTIVE ISSUES

In assessing all tax legislation, LFC staff considers whether the proposal is aligned with committee-adopted tax policy principles. Those five principles:

- **Adequacy**: Revenue should be adequate to fund needed government services.
- **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
- **Equity**: Different taxpayers should be treated fairly.
- **Simplicity**: Collection should be simple and easily understood.
- **Accountability**: Preferences should be easy to monitor and evaluate

In addition, staff reviews whether the bill meets principles specific to tax expenditures. Those policies and how this bill addresses those issues:

Tax Expenditure Policy Principle	Met?	Comments
Vetted: The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee, to review fiscal, legal, and general policy parameters.	✓	**This is the fourth time the bill has been introduced**
Targeted: The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals. Clearly stated purpose Long-term goals Measurable targets	 ✗ ✗ ✗	The goal is that annual expenditures will meet or exceed the $6 million cap.
Transparent: The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies	✓	Tax Expenditure Report
Accountable: The required reporting allows for analysis by members of		

the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date. Public analysis Expiration date	✓	
Effective: The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions "but for" the existence of the tax expenditure. Fulfills stated purpose Passes "but for" test	✗	TRD asserts that this tax credit may not pass the "but for" test
Efficient: The tax expenditure is the most cost-effective way to achieve the desired results.	?	Not clear that the industry needs additional support to be profitable
Key: ✓ Met ✗ Not Met ? Unclear		

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