BILL ANALYSIS AND FISCAL IMPACT REPORT
Taxation and Revenue Department

January 24, 2025

Bill: SB-129 **Sponsor:** Senator Crystal R. Brantley

Short Title: Rail Infrastructure Tax Credit

Description: This bill creates a new section of the Corporate Income and Franchise Tax Act providing the "Rail Infrastructure Income Tax Credit" for a taxpayer that is a railroad, for tax years prior to January 1, 2036. The credit is equal to 50% of a taxpayer's qualified reconstruction or replacement expenditures or qualified new rail infrastructure expenditures. However, that amount is limited to an amount equal to $1,000,000 for each new rail-served customer project 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 certification for these credits is done by the Department of Transportation (DOT), who 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 (Tax & Rev) and DOT for the purpose of this credit.

Effective Date: Not specified; 90 days following adjournment (June 20, 2025). Applies to taxable years beginning on or after January 1, 2025.

Taxation and Revenue Department Analyst: Lucinda Sydow

Estimated Revenue Impact*					R or NR**	Fund(s) Affected
FY2025	FY2026	FY2027	FY2028	FY2029		
--	($3,000) – Up to ($6,000)_	($3,000) – Up to ($6,000)_	($3,000) – Up to ($6,000)_	($3,000) – Up to ($6,000)_	R	General Fund

* In thousands of dollars. Parentheses ( ) indicate a revenue loss. ** Recurring (R) or Non-Recurring (NR).

Methodology for Estimated Revenue Impact: 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. Some upcoming double-tracking projects in New Mexico include portions of the Burlington Northern and Santa Fe (BNSF) Railway mainline. In summary, New Mexico's rail authorities and transportation agencies have ongoing programs to inspect, repair, and upgrade tracks, bridges, signals, and other essential components of the rail network. These endeavors will capture a significant portion of the tax credits offered in the bill.

Policy Issues: 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. 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. Additionally, the introduction of more tax incentives increases the compliance burden on both taxpayers and on Tax & Rev. Adding complexity and exceptions to the tax code creates tension with the principles of sound tax policy.

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.

The credit has a defined end date to claim the tax credit and thus a sunset date. Tax & Rev supports sunset dates for policymakers to review the impact of tax expenditures before extending them.

The bill contains three (3) different caps: (i) a per-credit cap based on the amount of qualified expenditures; (ii) an additional cap limiting the amount of each individual credit, based either on miles of track owned or number of new projects; and, (3) 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. Tax & Rev recommends eliminating at least one of the cap formulas. Tax & Rev further notes that 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.

Technical Issues:
[Section 1]

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 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.”

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. For that reason, Tax & Rev recommends that on page 5, subsection I, lines 2 through 5 are stricken in full.

Subsection K under both subsections (1) and (2) on page 5 the following term needs to be defined:

- "gross" expenditures" to clarify what is included in expenditures

Other Issues: The bill piggybacks on the classes defined by the federal surface transportation board (STB). Each year the STB applies a deflator factor to determine classes. There are also many other financial reporting requirements, which may impact the amount of credit.

This tax credit is only covered under the corporate income tax act. If a railroad is formed as a limited liability company (LLC) or S corporation and file as a partnership the bill does not have statute to allocate portions of the credit to partners.

Administrative & Compliance Impact: Tax & Rev will need to make information system changes and update forms, instructions and publications. Staff training to administer the credit will need to take place. This implementation will be included in the annual tax year changes.

Tax & Rev's Administrative Services Division (ASD) will test credit sourcing and perform other systems testing. It is anticipated this work will take approximately 40 hours split between 2.0 FTE of a pay band 70 and a pay band 80 at a cost of approximately $2,500. Pay band 70 hours are estimated at time and ½ due to extra hours worked required for implementation.

Implementing this bill will have a moderate impact on Tax & Rev's Information Technology Division (ITD), approximately 680 hours or about four months and an estimated staff workload cost of $45,315. The estimate for staff workload includes the effort required to implement an interface for a new data exchange with DOT for sharing certificates of eligibility in an electronic format.

In the event the division of credits results in multiple transfers, sales and exchanges of the credit, the Revenue Processing Division (RPD) at Tax & Rev will see an increase in manual tracking and administration of the credit. This additional administration will require additional staff to aid in the workload and will need a reduction in the forced vacancy rate to be equal to one position. This FTE is based on a Tax Examiner Advanced, pay band 60.

Estimated Additional Operating Budget Impact*				**R or NR****	**Fund(s) or Agency Affected**
FY2025	**FY2026**	**FY2027**	**3 Year Total Cost**		
--	$2.5	--	$2.5	NR	Tax & Rev- ASD staff workload
--	$45.3	--	$45.3	NR	Tax & Rev- ITD staff workload
--	$75.0	$75.0	$150.0	R	Tax & Rev – RPD FTE

* In thousands of dollars. Parentheses ( ) indicate a cost saving. ** Recurring (R) or Non-Recurring (NR).

Related Bills: Similar to SB-28 (2024 Regular Legislative Session)