AMENDED

April 6, 2022

**H. 4817**

Introduced by Reps. Ligon, Simrill, McGarry, B. Newton, Atkinson, R. Williams, Wheeler, Hardee, Gagnon, Hill, Huggins, Taylor and Blackwell

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Read the first time January 19, 2022.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**State Expenditure**

This bill as amended creates a new income tax credit for Class II and Class III railroads, as classified by the United States Surface Transportation Board, based on qualified railroad reconstruction or replacement expenditures.

Commerce is required to administer the tax credit, which includes reviewing and approving the verification of completed projects within thirty days of receipt, issuing tax credit certificates, providing information to DOR, and reporting to the House Ways and Means Committee and Senate Finance Committee annually, among other things. This bill as amended will have no expenditure impact on Commerce because the agency plans to direct the Division of Public Railways, known as Palmetto Railways, to fulfill the duties of the bill as amended.

Additionally, DOR is required to allocate the new income tax credit to eligible taxpayers. DOR reports that the agency can account for any expenditures related to this bill as amended using existing resources.

**State Revenue**

This bill as amended creates a new income tax credit for Class II and Class III railroads, as classified by the United States Surface Transportation Board, based on qualified railroad reconstruction or replacement expenditures. The credit can be taken against individual income tax, corporate income tax, bank tax, or insurance premium tax. Eligible taxpayers are allowed an income tax credit equal to 50 percent of their qualified railroad reconstruction or replacement expenditures. For each eligible taxpayer, the amount of this credit may not exceed $5,000 times the number of miles of railroad track owned or leased within the state by the taxpayer. Any portion of the granted tax credit not used during the year of qualification may be carried forward for each of the five years following that year, and the credit can be transferred to any other eligible transferee. Lastly, the provisions of this bill as amended, upon passage, apply to income tax years beginning after December 31, 2021, and are repealed on December 31, 2026, although a credit may continue to be claimed to its conclusion if earned before the repeal.

Table 1 below lists shortline railways, which mostly fall into the Class II or III categorization, within the state and their estimated miles of track. The Division of Public Railways does business as Palmetto Railways and would be ineligible for the income tax credit. As a result, there are an estimated 281 miles of eligible shortline track in the state.

**Table 1. South Carolina Shortline Railways**

Railroad Owner Estimated

Track Miles

Aiken Railway Western Carolina Railway 19

Carolina Piedmont G&W 34

Carolina Southern RJ Corman 51

Charity Church Palmetto Railways\* 17

Greenville & Western Western Carolina Railway 13

Hampton & Branchfield Palmetto Railways\* 40

Lancaster & Chester Gulf & Ohio 60

Pee Dee River Railway Aberdeen & Rockfish 25

Pickens Railway Pickens Railway 37

Charleston & North Charleston Yards Palmetto Railways\* 5

South Carolina Central G&W 42

Total   343

Source: South Carolina Department of Commerce

\*Track miles owned by Palmetto Railways (the Division of Public Railways) would be ineligible for tax credits

According to the American Short Line and Regional Railroad Association, shortline railroads spend about 24 percent of revenue on track rehabilitation annually. Based upon national data listed in Table 2, shortline railroads spend an estimated $23,444 per mile annually on refurbishment. Using this figure, we estimate that eligible railroads in the state spend approximately $6,588,000 in total on maintenance each year. Allowing a credit for 50 percent of these total maintenance expenses would greatly exceed the total reconstruction credit allotment of $5,000 times the number of miles of eligible shortline track. Given this, we assume that the total credit amount claimed each year will be up to $5,000 times the 281 of miles of eligible shortline track, or $1,405,000.

**Table 2. National Shortline Railroad Statistics**

Total Miles of Shortline Track 47,500

Total Annual Revenue $4.64 billion

Annual Revenue / Mile $97,684

Annual Rehabilitation Cost / Mile $23,444

Source: American Short Line and Regional Railroad Association

Therefore, this bill as amended will decrease general fund individual income tax, corporate income tax, bank tax, or insurance premium tax revenues, or some combination thereof, by up to $1,405,000 annually in FY 2022-23 through FY 2026-27. However, the timing of this impact will depend on the actual claiming of the credits and any carryforward available for five additional years. The impact may be less than $1,405,000 annually depending on the number of miles of track refurbished each year. Alternatively, the impact may be more than $1,405,000 annually if the number of shortline railroad track miles in the state increases.

**Introduced on January 19, 2022**

**State Expenditure**

This bill creates a new income tax credit for Class II and Class III railroads, as classified by the United States Surface Transportation Board, based on qualified railroad reconstruction or replacement expenditures, as well as qualified new rail infrastructure expenditures.

Commerce is required to administer the tax credit, which includes developing standards for preapproval of the credit, reviewing applications and development plans submitted by eligible taxpayers within seventy-five days of filing, imposing application fees, reviewing verification of completed projects, providing information to DOR, and reporting to House Ways and Means Committee and Senate Finance Committee annually, among other things. This bill will have no expenditure impact on Commerce because the agency plans to direct the Division of Public Railways, known as Palmetto Railways, to fulfill the duties of the bill. All related application fees will go to the entity and are expected to cover any operations that cannot be handled with existing entity resources.

Additionally, DOR is required to allocate the new income tax credit to eligible taxpayers. DOR reports that the agency can account for any expenditures related to this bill using existing resources.

**State Revenue**

This bill creates a new income tax credit for Class II and Class III railroads, as classified by the United States Surface Transportation Board, based on qualified railroad reconstruction or replacement expenditures, as well as qualified new rail infrastructure expenditures. The credit can be taken against individual income tax, corporate income tax, bank tax, or insurance premium tax. Eligible taxpayers are allowed an income tax credit equal to 50 percent of their qualified railroad reconstruction or replacement expenditures. For each eligible taxpayer, the amount of this credit may not exceed $5,000 times the number of miles of railroad track owned or leased within the State by the taxpayer. Additionally, eligible taxpayers are allowed an income tax credit equal to 50 percent of their qualified new rail infrastructure expenditures. For each eligible taxpayer, the amount of the new rail construction credit may not exceed $500,000 per project, and the total amount of the new rail construction credit may not exceed $3,000,000 annually. The total amount of credits for both reconstruction or replacement expenditures and new rail construction expenditures cannot exceed $5,000,000 per year. Any portion of the granted tax credit not used during the year of qualification may be carried forward for each of the five years following that year, and the credit can be transferred to any other eligible transferee. Lastly, the provisions of this bill, upon passage, apply to income tax years beginning after December 31, 2021, and are repealed on December 31, 2026, although a credit may continue to be claimed to its conclusion if earned before the repeal.

Table 1 below lists shortline railways, which mostly fall into the Class II or III categorization, within the state and their estimated miles of track. The Division of Public Railways does business as Palmetto Railways and would be ineligible for the income tax credit. As a result, there are an estimated 281 miles of eligible shortline track in the state.

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Pee Dee River Railway Aberdeen & Rockfish 25

Pickens Railway Pickens Railway 37

Charleston & North Charleston Yards Palmetto Railways 5

South Carolina Central G&W 42

Total   343

Source: South Carolina Department of Commerce

According to the America Short Line and Regional Railroad Association, shortline railroads spend about 24 percent of revenue on track rehabilitation annually. Based upon national data listed in Table 2, shortline railroads spend an estimated $23,444 per mile annually on refurbishment. Using this figure, we estimate that eligible railroads in the state spend approximately $6,588,000 in total on maintenance each year. This greatly exceeds the total reconstruction credit allotment of $5,000 times the number of miles of eligible shortline track.

**Table 2. National Shortline Railroad Statistics**

Total Miles of Shortline Track 47,500

Total Annual Revenue $4.64 billion

Annual Revenue / Mile $97,684

Annual Rehabilitation Cost / Mile $23,444

Source: America Short Line and Regional Railroad Association

Additionally, Aberdeen Carolina & Western Railway Company, a shortline railroad in North Carolina, estimates that new track construction costs between $1,000,000 and $2,000,000 per mile. It is not clear, however, how much new shortline railroad track construction takes place annually because most shortline railroad businesses operate existing track that has been purchased or leased from Class I railroads. Because of this, it is difficult to estimate how much will be spent annually on new track construction.

Given the uncertainties related to projected new rail construction and rail refurbishment, we estimate that this bill will decrease general fund individual income tax, corporate income tax, bank tax, or insurance premium tax, or some combination thereof, by up to $5,000,000 annually in FY 2022-23 through FY 2026-27. However, the timing of this impact will depend on the actual claiming of the credits and could extend for five additional years based on the allowable carryforward provision. The impact may be less than $5,000,000 annually depending on the number of miles of track refurbished each year and the number of new miles of track constructed.

Furthermore, this bill creates an application fee equal to one percent of qualified reconstruction or replacement expenditures, not to exceed $2,500. The Division of Public Railways will fulfill the duties of the bill and receive related application fees, the amount of which will depend on the number of applications.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “SHORT LINE RAILROAD MODERNIZATION ACT” BY ADDING SECTION 12‑6‑3810 SO AS TO PROVIDE FOR AN INCOME TAX CREDIT EQUAL TO FIFTY PERCENT OF AN ELIGIBLE TAXPAYER’S QUALIFIED RAILROAD RECONSTRUCTION OR REPLACEMENT EXPENDITURES, AND TO PROVIDE FOR THE ADMINISTRATION OF THE TAX CREDIT.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the “Short Line Railroad Modernization Act”.

SECTION 2. Article 25, Chapter 6, Title 12 of the 1976 Code is amended by adding:

“Section 12‑6‑3810. (A) As used in this section:

(1) ‘Department’ means the South Carolina Department of Commerce.

(2) ‘Eligible taxpayer’ means any railroad owner located in this State that is classified by the United States Surface Transportation Board as a Class II or Class III railroad.

(3) ‘Qualified railroad reconstruction or replacement expenditures’ means gross expenditures for maintenance, reconstruction or replacement of railroad infrastructure, including track, roadbed, bridges, industrial leads and sidings, and track‑related structures owned or leased by a Class II or Class III railroad located in this State.

(4) ‘Eligible transferee’ means any taxpayer subject to tax under Sections 12‑6‑510, 12‑6‑530, 12‑11‑20, or 38‑7‑20.

(B)(1) There is allowed a credit against the tax imposed pursuant to Sections 12‑6‑510, 12‑6‑530, 12‑11‑20, or 38‑7‑20 equal to fifty percent of an eligible taxpayer’s qualified railroad reconstruction or replacement expenditures.

(2) For qualified railroad reconstruction or replacement expenditures the amount of the credit may not exceed five thousand dollars multiplied by the number of miles of railroad track owned or leased within this State by the eligible taxpayer as of the close of the taxable year.

(C)(1) Following the completion of qualified railroad reconstruction or replacement expenditures, the eligible taxpayer shall submit to the Department of Commerce a verification of qualified expenditures on a form provided for that purpose by the Department of Commerce. The verification must include a statement certifying:

(a) the status of the owner or lessee of the railroad as an eligible taxpayer;

(b) certification of the miles of railroad track owned or leased in this State;

(c) the qualified railroad reconstruction or replacement work completed; and

(d) a description of the amount of qualified railroad reconstruction or replacement expenditures paid or incurred.

Within thirty days after receipt and approval of the foregoing documentation from the eligible taxpayer, the department shall issue a tax credit certificate in an amount equivalent to the amount of the qualified railroad reconstruction or replacement expenditures incurred by the eligible taxpayer, not to exceed the amount of the tax credits reserved for the project.

(2) At the end of each year, the department shall furnish to the Department of Revenue a list of all eligible taxpayers who have qualified for the credit along with the amount of the credit authorized.

(3) Section 12‑54‑240 may not apply to any information exchanged between the Department of Commerce and the Department of Revenue relating to the credit allowed pursuant to this section.

(D) The department may adopt rules to implement and administer this section and to enable the certification of the income tax credit amount earned by each eligible taxpayer.

(E) In order to obtain a credit against any state income tax due, an eligible taxpayer shall file the tax credit certificate with the taxpayer’s South Carolina state income tax return.

(F) Any tax credit generated pursuant to the provisions of this section, to the extent not used, may be carried forward for each of the five years following the year of qualification.

(G)(1) An eligible taxpayer may transfer any unused credit to any eligible transferee by written agreement, at any time during the five years following the tax year the qualified railroad reconstruction or replacement expenditures are incurred. Any eligible transferee is entitled to claim the credit only for any period remaining for the tax credit.

(2) The eligible taxpayer and the eligible transferee must file jointly a copy of the written transfer agreement with the Department of Revenue, within thirty days of the transfer. The written agreement must contain the name, address, and taxpayer identification number of the eligible taxpayer and the eligible transferee, the tax year the eligible taxpayer incurred the qualified railroad reconstruction or replacement expenditures, the amount of credit being transferred, and the tax year or years for which the credit maybe claimed.

(H) The department shall report to the Senate Finance Committee and the House Ways and Means Committee by July 1, 2025, and annually thereafter for the duration of the existence of this program, on the use of the credit, including the number of tax credits applied for and the number of tax credits granted from the qualified railroad reconstruction or replacement expenditures for which tax credits have been allowed.”

SECTION 3. This act takes effect upon approval by the Governor and first applies to income tax years beginning after December 31, 2021. The provisions of this act are repealed on December 31, 2026, except that if the credit allowed by Section 12‑6‑3810, as added by this act, is earned before the repeal, then the provisions of Section 12‑6‑3810 continue to apply until the credits have been fully claimed.

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