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3 HOUSE WAYS AND MEANS EDUCATION COMMITTEE SUBSTITUTE FOR HB457
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8 SYNOPSIS: This bill would allow a tax credit against
9 the income tax liability of an eligible taxpayer
10 for qualified railroad rehabilitation expenditures,
11 which includes the maintenance, reconstruction, or
12 replacement of railroad infrastructure within the
13 state that is owned or leased by the eligible
14 taxpayer.

15 This bill would allow an eligible taxpayer
16 who receives the tax credit to transfer the tax
17 credit under certain conditions and would sunset
18 the tax credit in three years.

19
20 A BILL
21 TO BE ENTITLED
22 AN ACT
23

24 Relating to tax credits; to create The Railroad
25 Modernization Act of 2019; to authorize a tax credit against
26 the income tax liability of an eligible taxpayer for qualified
27 railroad rehabilitation expenditures; to authorize the

1 transfer of the credit; and to sunset the credit after three
2 years.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. This act shall be known and may be cited
5 as The Railroad Modernization Act of 2019.

6 Section 2. As used in this act, the following words
7 shall have the following meanings:

8 (1) CLASS II RAILROAD. A carrier classified as a
9 Class II railroad pursuant to 49 CFR § 1201, or other rule
10 adopted by the United States Surface Transportation Board.

11 (2) CLASS III RAILROAD. A carrier classified as a
12 Class III railroad pursuant to 49 CFR § 1201, or other rule
13 adopted by the United States Surface Transportation Board.

14 (3) DEPARTMENT. The Alabama Department of Commerce.

15 (4) ELIGIBLE TAXPAYER. A railroad subject to the
16 state income tax that owns or leases railroad infrastructure
17 in Alabama and is classified by the United States Surface
18 Transportation Board as a Class II or Class III railroad.

19 (5) ELIGIBLE TRANSFEREE. A taxpayer subject to the
20 state income tax who is transferred a tax credit allowed by
21 this act by an eligible taxpayer.

22 (6) QUALIFIED RAILROAD REHABILITATION EXPENDITURES.
23 Expenditures within the taxable year for the maintenance,
24 reconstruction, or replacement of railroad infrastructure
25 within the state that is owned or leased by an eligible
26 taxpayer. The term includes new construction of industrial
27 leads, switches, spurs, sidings, and extensions of existing

1 sidings by an eligible taxpayer. The term does not include
2 expenditures for which an income tax deduction has been
3 claimed.

4 (7) RAILROAD INFRASTRUCTURE. Includes, but is not
5 limited to, the track, roadbed, bridges, signaling systems and
6 train control, industrial leads, and track-related structures
7 owned or leased by an eligible taxpayer.

8 (8) REHABILITATION PLAN. Detailed construction plans
9 and specifications for the proposed rehabilitation of railroad
10 infrastructure under this article.

11 Section 3. (a) Within three months following the
12 effective date of this act, the Department of Commerce shall
13 develop standards for the approval of qualified railroad
14 rehabilitation expenditures for which a tax credit is being
15 sought. The standards shall consider the availability of
16 additional public or private funding for the project, the
17 expected completion time of the project, and the anticipated
18 impact of the project on usage of the railroad infrastructure.

19 (b) Prior to beginning any qualified railroad
20 rehabilitation work the eligible taxpayer shall submit an
21 application and rehabilitation plan to the Department and an
22 estimate of the qualified railroad rehabilitation expenditures
23 under the rehabilitation plan; provided, however, the eligible
24 taxpayer, at its own risk, may incur qualified railroad
25 rehabilitation expenditures no earlier than six months prior
26 to the submission of the application and rehabilitation plan.

1 (c) The Department shall review the application and
2 rehabilitation plan to determine if the information contained
3 therein is complete. If the Department determines that the
4 application and rehabilitation plan are complete, the
5 Department shall reserve, for the benefit of the eligible
6 taxpayer, an allocation for a tax credit as provided in this
7 act and shall notify the eligible taxpayer in writing of the
8 amount of the reservation. The reservation of tax credits does
9 not entitle the taxpayer to an issuance of tax credits until
10 the owner complies with all other requirements of this act for
11 the issuance of the tax credits. Reservations of tax credits
12 shall be issued by the Department within a reasonable time
13 from the filing of a completed application and rehabilitation
14 plan. Any application disapproved by the Department shall be
15 removed from the review process, and the Department shall
16 notify the taxpayer in writing of the decision to remove the
17 application. A disapproved application may be resubmitted, but
18 shall be deemed to be a new submission and may be charged a
19 new application fee. In the event the reservations of tax
20 credits equal the total amount available for reservations
21 during the tax year, all eligible taxpayers with applications
22 then awaiting approval or thereafter submitted shall be
23 notified by the Department that no additional tax credits
24 shall be granted during that tax year. The applications shall
25 remain in active status from the date of the original
26 application and shall be considered for recommendations of tax
27 credits in the event that additional credits become available

1 due to rescission by the Department or when a new tax year's
2 allocation of tax credits becomes available.

3 (d) Following the completion of a qualified railroad
4 rehabilitation project, the eligible taxpayer shall notify the
5 Department that the rehabilitation has been completed and
6 shall certify the qualified railroad rehabilitation
7 expenditures incurred with respect to the rehabilitation plan.
8 Within 90 days after receipt and approval of the foregoing
9 documentation from the eligible taxpayer, the Department shall
10 issue a tax credit certificate in an amount equivalent to the
11 amount of the tax credit reservation issued for the project.

12 (e) In order to obtain a credit against any state
13 income tax due that is specified in this article, an eligible
14 taxpayer shall file the tax credit certificate with the
15 taxpayer's Alabama state tax return. The tax credit
16 certificate shall satisfy all requirements of the Department
17 of Revenue pertaining to the eligibility of the person
18 claiming the credit. All information submitted to the
19 Department of Revenue by taxpayers claiming or seeking
20 certification of a credit shall be subject to the
21 confidentiality provisions of Section 40-2A-10, Code of
22 Alabama 1975.

23 (f) For processing the taxpayer's application for a
24 tax credit, the Department may impose an application fee equal
25 to one percent (1%) of the qualified rehabilitation
26 expenditures, not to exceed a fee equal to ten thousand
27 dollars (\$10,000). Any fees collected by the Department under

1 this subsection shall be deposited in the State Treasury to
2 the credit of the Department and all such funds are to be
3 appropriated to the Department to defray the expenses incurred
4 in carrying out this article.

5 (g) The Department shall report to the Legislature
6 in the third year following passage of this act, and annually
7 thereafter, on the overall economic activity, usage, and
8 impact to the state from the rehabilitation of railroad
9 infrastructure for which tax credits have been allowed. The
10 information in the reports shall be consistent with the
11 information required by the Legislature pursuant to, and shall
12 be provided by the Department to the Legislature in accordance
13 with, Section 40-1-50, and rules adopted thereunder.

14 Information provided pursuant to this section is exempt from
15 the confidentiality provisions of Section 40-2A-10.

16 Section 4. (a) For tax years beginning after
17 December 31, 2019, there is a credit allowed against the state
18 income tax equal to 50 percent of an eligible taxpayer's
19 qualified railroad rehabilitation expenditures. The tax credit
20 allowed under this section may not exceed three thousand five
21 hundred dollars (\$3,500) multiplied by the number of miles of
22 railroad track owned or leased within the state by the
23 eligible taxpayer at the close of the taxable year.

24 (b) There is created within the Education Trust Fund
25 a separate account named the Railroad Rehabilitation Income
26 Tax Credit Account. The Commissioner of Revenue shall certify
27 to the Comptroller the amount of income tax credits under this

1 section and the Comptroller shall transfer into the Railroad
2 Rehabilitation Income Tax Credit Account only the amount from
3 sales tax revenues within the Education Trust Fund that is
4 sufficient for the Department of Revenue to use to cover the
5 income tax credits for the applicable tax year. The
6 Commissioner of Revenue shall distribute the funds in the
7 Railroad Rehabilitation Income Tax Credit Account pursuant to
8 this section.

9 (c) The entire tax credit may be claimed by the
10 taxpayer in the taxable year in which the qualified railroad
11 rehabilitation expenditures are completed and placed into
12 service. Where the taxes owed by the eligible taxpayer are
13 less than the tax credit, the eligible taxpayer may be
14 entitled to claim a refund for the difference.

15 (d) For the calendar years 2020, 2021, and 2022, the
16 aggregate amount of all tax credits that may be reserved in
17 any one of such years by the Department upon certification of
18 rehabilitation plans shall not exceed five million dollars
19 (\$5,000,000) plus any amount of previous reservations of tax
20 credits that were rescinded during the tax year. However, if
21 all of the allowable tax credit amount for any tax year is not
22 requested and reserved, any unreserved tax credits may be
23 utilized by the Department in awarding tax credits in
24 subsequent years; provided, however, that in no event shall a
25 total of more than fifteen million dollars (\$15,000,000) be
26 reserved by the Department during the period of August 1, 2019

1 through August 1, 2022. For purposes of this article, "tax
2 year" shall mean the calendar year.

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

7 (f) All or any portion of the income tax credit
8 authorized under this section may be transferable and
9 assignable by written transfer agreement and subject to any
10 notice and verification requirements to be determined by the
11 Department of Revenue. Any tax credits transferred shall be at
12 a value of at least eighty-five percent (85%) of the present
13 value of the credits. However, once a credit is transferred,
14 only the transferee may utilize the credit and the credit may
15 not be transferred again. An eligible transferee of the credit
16 may use the amount of credits transferred to offset any income
17 tax due under Chapter 18. The Department of Revenue, by rule,
18 shall adopt a written transfer agreement form. The transfer
19 statement form shall include the name and federal taxpayer
20 identification number of the transferor and each transferee
21 listed therein along with the amount of the tax credit to be
22 transferred to each transferee listed on the form. The
23 transfer statement form shall also contain such other
24 information as the Department of Revenue may from time to time
25 reasonably require. For each transfer, the transferor shall
26 file: (1) a completed transfer statement form; (2) a copy of
27 the tax credit certificate issued by the commission

1 documenting the amount of tax credits which the transferor
2 intends to transfer; (3) a copy of the proposed written
3 transfer agreement; and (4) a transfer fee payable to the
4 department in the amount of one thousand dollars (\$1,000) per
5 transferee listed on the transfer statement form. The
6 transferor shall file with the Department of Revenue a fully
7 executed copy of the written transfer agreement with each
8 transferee within 30 days after the completed transfer. Filing
9 of the written transfer agreement with the Department of
10 Revenue shall perfect such transfer with respect to such
11 transferee. Within 30 days after the department's receipt of
12 the fully executed written transfer agreement, the department
13 shall issue a tax credit certificate to each transferee listed
14 in such agreement in the amount of the tax credit so
15 transferred. Such certificate shall be used by the transferee
16 in claiming the tax credit. The Department of Revenue may
17 promulgate such additional rules as are necessary to permit
18 verification of the ownership of the tax credits but shall not
19 promulgate any rules which unduly restrict or hinder the
20 transfer of the tax credits.

21 Section 5. The Department of Commerce shall
22 promulgate by October 1, 2019, any and all rules and
23 regulations necessary to implement this act. Applications for
24 the reservation of tax credits shall be accepted beginning
25 November 1, 2019.

26 Section 6. The tax credit allowed under this section
27 shall be effective for the 2020 tax year and shall continue

1 through the 2022 tax year, unless extended by act of the
2 Legislature.

3 Section 7. This act shall become effective on the
4 first day of the third month following its passage and
5 approval by the Governor, or its otherwise becoming law.