

1 SENATE BILL 28

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024**

3 INTRODUCED BY

4 Crystal Diamond Brantley and Siah Correa Hemphill and  
5 Rod Montoya  
6

7  
8 FOR THE ECONOMIC AND RURAL DEVELOPMENT AND POLICY COMMITTEE  
9

10 AN ACT

11 RELATING TO TAXATION; CREATING THE RAIL INFRASTRUCTURE INCOME  
12 TAX CREDIT AND THE RAIL INFRASTRUCTURE CORPORATE INCOME TAX  
13 CREDIT; ALLOWING THE TAXATION AND REVENUE DEPARTMENT AND THE  
14 DEPARTMENT OF TRANSPORTATION TO SHARE INFORMATION CONCERNING  
15 RAIL INFRASTRUCTURE INCOME TAX CREDITS AND RAIL INFRASTRUCTURE  
16 CORPORATE INCOME TAX CREDITS.  
17

18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 SECTION 1. A new section of the Income Tax Act is enacted  
20 to read:

21 "[NEW MATERIAL] RAIL INFRASTRUCTURE INCOME TAX CREDIT.--

22 A. For taxable years prior to January 1, 2035, a  
23 taxpayer that is a railroad that is classified by the federal  
24 surface transportation board as a class two or class three  
25 railroad located in New Mexico, or an owner or lessee of a rail

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1 siding, yard track, industrial spur or industry track located  
2 adjacent to any railroad in New Mexico, that incurs qualified  
3 reconstruction or replacement expenditures or qualified new  
4 rail infrastructure expenditures for the maintenance,  
5 reconstruction, replacement or new construction of railroad  
6 track infrastructure may apply for, and the department may  
7 allow, a tax credit against the taxpayer's tax liability  
8 pursuant to the Income Tax Act for the taxable year in which  
9 the credit is approved by the department pursuant to this  
10 section. The tax credit provided by this section may be  
11 referred to as the "rail infrastructure income tax credit".

12 B. The amount of credit that may be allowed  
13 pursuant to this section shall be equal to fifty percent of a  
14 taxpayer's qualified reconstruction or replacement expenditures  
15 or qualified new rail infrastructure expenditures; provided  
16 that:

17 (1) for qualified reconstruction or  
18 replacement expenditures, the amount of tax credit shall not  
19 exceed an amount equal to the product of five thousand dollars  
20 (\$5,000) multiplied by the number of miles of railroad track  
21 owned or leased in the state by the taxpayer as of the close of  
22 the taxable year; and

23 (2) for qualified new rail infrastructure  
24 expenditures, the amount of tax credit shall not exceed one  
25 million dollars (\$1,000,000) for each new rail-served customer

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1 project of the taxpayer; provided that the total amount of  
2 credits that may be allowed in a calendar year shall not exceed  
3 five million dollars (\$5,000,000).

4 C. A taxpayer that seeks to claim a tax credit  
5 provided by this section shall apply for a certificate of  
6 eligibility from the department of transportation after  
7 completion of the maintenance, reconstruction, replacement or  
8 new construction of railroad track infrastructure in New Mexico  
9 for which qualified reconstruction or replacement expenditures  
10 or qualified new rail infrastructure expenditures are made to  
11 determine if the taxpayer is eligible to receive the tax credit  
12 provided by this section. The department of transportation may  
13 certify a maximum annual aggregate amount of credits of six  
14 million dollars (\$6,000,000) per calendar year. That  
15 department shall publish to its website on a regular basis the  
16 number of rail infrastructure income tax credits that have been  
17 certified in that calendar year. Completed applications shall  
18 be made on forms and in the manner prescribed by that  
19 department and considered in the order received.

20 D. If the department of transportation determines  
21 that a taxpayer meets the requirements to claim a tax credit  
22 pursuant to this section, that department may issue a  
23 certificate of eligibility to the taxpayer. The certificate  
24 shall be numbered for identification and declare its date of  
25 issuance, the amount of the tax credit allowed pursuant to this

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1 section and the tax year in which the tax credit may be  
2 claimed. The department of transportation shall provide to the  
3 taxation and revenue department certification information for  
4 all taxpayers to whom certificates are issued in a secure and  
5 regular manner as agreed upon by both departments.

6 E. A certificate may be submitted by the taxpayer  
7 with that taxpayer's return or may be sold, exchanged or  
8 otherwise transferred to another taxpayer. The parties to such  
9 a transaction shall notify the department of the sale, exchange  
10 or transfer within ten days of the sale, exchange or transfer.

11 F. That portion of a tax credit that exceeds a  
12 taxpayer's tax liability in the taxable year in which the tax  
13 credit is claimed shall not be refunded but may be carried  
14 forward for a maximum of five consecutive taxable years.

15 G. To receive a tax credit provided by this  
16 section, a taxpayer shall apply to the department on forms and  
17 in the manner prescribed by the department within twelve months  
18 following the calendar year in which the certificate of  
19 eligibility was issued. The application shall include a  
20 certificate of eligibility issued by the department of  
21 transportation pursuant to this section.

22 H. Married individuals filing separate returns for  
23 a taxable year for which they could have filed a joint return  
24 may each claim only one-half of a tax credit that would have  
25 been claimed on a joint return.

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1           I. A taxpayer may be allocated the right to claim a  
2 tax credit provided by this section in proportion to the  
3 taxpayer's ownership interest if the taxpayer owns an interest  
4 in a business entity that is taxed for federal income tax  
5 purposes as a partnership or limited liability company and that  
6 business entity has met all of the requirements to be eligible  
7 for the credit. The total credit claimed by all members of the  
8 partnership or limited liability company shall not exceed the  
9 allowable amount of credit pursuant to this section.

10           J. A taxpayer allowed a tax credit pursuant to this  
11 section shall report the amount of the credit to the taxation  
12 and revenue department in a manner required by that department.

13           K. The taxation and revenue department shall  
14 compile an annual report on the tax credit provided by this  
15 section that shall include the number of taxpayers approved by  
16 the department to receive the credit, the aggregate amount of  
17 credits approved and any other information necessary to  
18 evaluate the credit. The department shall present the report  
19 to the revenue stabilization and tax policy committee and the  
20 legislative finance committee with an analysis of the cost of  
21 the tax credit.

22           L. As used in this section:

23                   (1) "qualified new rail infrastructure  
24 expenditures" means gross expenditures for new rail  
25 infrastructure incurred by a taxpayer, including the new

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1 construction of industrial leads, switches, sidings, rail  
2 loading docks and transloading structures involved with  
3 servicing new customer locations or existing customer  
4 expansions adjacent to a railroad located in New Mexico; and

5 (2) "qualified reconstruction or replacement  
6 expenditures" means gross expenditures for maintenance,  
7 reconstruction or replacement of railroad infrastructure,  
8 including track, roadbed, bridges, industrial leads, sidings  
9 and track-related structures in New Mexico that are owned or  
10 leased by a taxpayer claiming the credit provided by this  
11 section. "Qualified reconstruction or replacement  
12 expenditures" does not include expenditures used to generate a  
13 federal tax credit or expenditures funded by a state or federal  
14 grant."

15 SECTION 2. A new section of the Corporate Income and  
16 Franchise Tax Act is enacted to read:

17 "[NEW MATERIAL] RAIL INFRASTRUCTURE CORPORATE INCOME TAX  
18 CREDIT.--

19 A. For taxable years prior to January 1, 2035, a  
20 taxpayer that is a railroad that is classified by the federal  
21 surface transportation board as a class two or class three  
22 railroad located in New Mexico, or an owner or lessee of a rail  
23 siding, yard track, industrial spur or industry track located  
24 adjacent to any railroad in New Mexico, that incurs qualified  
25 reconstruction or replacement expenditures or qualified new

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1 rail infrastructure expenditures for the maintenance,  
2 reconstruction, replacement or new construction of railroad  
3 track infrastructure may apply for, and the department may  
4 allow, a tax credit against the taxpayer's tax liability  
5 pursuant to the Corporate Income and Franchise Tax Act for the  
6 taxable year in which the credit is approved by the department  
7 pursuant to this section. The tax credit provided by this  
8 section may be referred to as the "rail infrastructure  
9 corporate income tax credit".

10 B. The amount of credit that may be allowed  
11 pursuant to this section shall be equal to fifty percent of a  
12 taxpayer's qualified reconstruction or replacement expenditures  
13 or qualified new rail infrastructure expenditures; provided  
14 that:

15 (1) for qualified reconstruction or  
16 replacement expenditures, the amount of tax credit shall not  
17 exceed an amount equal to the product of five thousand dollars  
18 (\$5,000) multiplied by the number of miles of railroad track  
19 owned or leased in the state by the taxpayer as of the close of  
20 the taxable year; and

21 (2) for qualified new rail infrastructure  
22 expenditures, the amount of tax credit shall not exceed one  
23 million dollars (\$1,000,000) for each new rail-served customer  
24 project of the taxpayer; provided that the total amount of  
25 credits that may be allowed in a calendar year shall not exceed

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1 five million dollars (\$5,000,000).

2 C. A taxpayer that seeks to claim a tax credit  
3 provided by this section shall apply for a certificate of  
4 eligibility from the department of transportation after  
5 completion of the maintenance, reconstruction, replacement or  
6 new construction of railroad track infrastructure in New Mexico  
7 for which qualified reconstruction or replacement expenditures  
8 or qualified new rail infrastructure expenditures are made to  
9 determine if the taxpayer is eligible to receive the tax credit  
10 provided by this section. The department of transportation may  
11 certify a maximum annual aggregate amount of credits of six  
12 million dollars (\$6,000,000) per calendar year. That  
13 department shall publish to its website on a regular basis the  
14 number of rail infrastructure corporate income tax credits that  
15 have been certified in that calendar year. Completed  
16 applications shall be made on forms and in the manner  
17 prescribed by the department of transportation and considered  
18 in the order received.

19 D. If the department of transportation determines  
20 that a taxpayer meets the requirements to claim a tax credit  
21 pursuant to this section, that department may issue a  
22 certificate of eligibility to the taxpayer. The certificate  
23 shall be numbered for identification and declare its date of  
24 issuance, the amount of the tax credit allowed pursuant to this  
25 section and the tax year in which the tax credit may be

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1 claimed. The department of transportation shall provide to the  
2 taxation and revenue department certification information for  
3 all taxpayers to whom certificates are issued in a secure and  
4 regular manner as agreed upon by both departments.

5 E. A certificate of eligibility issued pursuant to  
6 this section may be submitted by the taxpayer with that  
7 taxpayer's return or may be sold, exchanged or otherwise  
8 transferred to another taxpayer. The parties to such a  
9 transaction shall notify the department of the sale, exchange  
10 or transfer within ten days of the sale, exchange or transfer.

11 F. That portion of a tax credit that exceeds a  
12 taxpayer's tax liability in the taxable year in which the tax  
13 credit is claimed shall not be refunded but may be carried  
14 forward for a maximum of five consecutive taxable years.

15 G. To receive a tax credit provided by this  
16 section, a taxpayer shall apply to the department on forms and  
17 in the manner prescribed by the department within twelve months  
18 following the calendar year in which the certificate of  
19 eligibility was issued. The application shall include a  
20 certificate of eligibility issued by the department of  
21 transportation pursuant to this section.

22 H. A taxpayer allowed a tax credit pursuant to this  
23 section shall report the amount of the credit to the taxation  
24 and revenue department in a manner required by that department.

25 I. The taxation and revenue department shall

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1 compile an annual report on the tax credit provided by this  
2 section that shall include the number of taxpayers approved by  
3 the department to receive the credit, the aggregate amount of  
4 credits approved and any other information necessary to  
5 evaluate the credit. The department shall present the report  
6 to the revenue stabilization and tax policy committee and the  
7 legislative finance committee with an analysis of the cost of  
8 the tax credit.

9 J. As used in this section:

10 (1) "qualified new rail infrastructure  
11 expenditures" means gross expenditures for new rail  
12 infrastructure incurred by a taxpayer, including the new  
13 construction of industrial leads, switches, sidings, rail  
14 loading docks and transloading structures involved with  
15 servicing new customer locations or existing customer  
16 expansions adjacent to a railroad located in New Mexico; and

17 (2) "qualified reconstruction or replacement  
18 expenditures" means gross expenditures for maintenance,  
19 reconstruction or replacement of railroad infrastructure,  
20 including track, roadbed, bridges, industrial leads, sidings  
21 and track-related structures in New Mexico that are owned or  
22 leased by a taxpayer claiming the credit provided by this  
23 section. "Qualified reconstruction or replacement  
24 expenditures" does not include expenditures used to generate a  
25 federal tax credit or expenditures funded by a state or federal

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1 grant."

2 SECTION 3. Section 7-1-8.8 NMSA 1978 (being Laws 2019,  
3 Chapter 87, Section 2, as amended) is amended to read:

4 "7-1-8.8. INFORMATION THAT MAY BE REVEALED TO OTHER STATE  
5 AND LEGISLATIVE AGENCIES.--An employee of the department may  
6 reveal confidential return information to the following  
7 agencies; provided that a person who receives the information  
8 on behalf of the agency shall be subject to the penalties in  
9 Section 7-1-76 NMSA 1978 if the person fails to maintain the  
10 confidentiality required:

11 A. a committee of the legislature for a valid  
12 legislative purpose, return information concerning any tax or  
13 fee imposed pursuant to the Cigarette Tax Act;

14 B. the attorney general, return information  
15 acquired pursuant to the Cigarette Tax Act for purposes of  
16 Section 6-4-13 NMSA 1978 and the master settlement agreement  
17 defined in Section 6-4-12 NMSA 1978;

18 C. the commissioner of public lands, return  
19 information for use in auditing that pertains to rentals,  
20 royalties, fees and other payments due the state under land  
21 sale, land lease or other land use contracts;

22 D. the secretary of [~~human services~~] health care  
23 authority or the secretary's delegate under a written agreement  
24 with the department:

25 (1) the last known address with date of all

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1 names certified to the department as being absent parents of  
2 children receiving public financial assistance, but only for  
3 the purpose of enforcing the support liability of the absent  
4 parents by the child support enforcement division or any  
5 successor organizational unit;

6 (2) return information needed for reports  
7 required to be made to the federal government concerning the  
8 use of federal funds for low-income working families;

9 (3) return information of low-income taxpayers  
10 for the limited purpose of outreach to those taxpayers;  
11 provided that the [~~human services~~] health care authority  
12 department shall pay the department for expenses incurred by  
13 the department to derive the information requested by the  
14 [~~human services~~] health care authority department if the  
15 information requested is not readily available in reports for  
16 which the department's information systems are programmed;

17 (4) return information required to administer  
18 the Health Care Quality Surcharge Act; and

19 (5) return information in accordance with the  
20 provisions of the Easy Enrollment Act;

21 E. the department of information technology, by  
22 electronic media, a database updated quarterly that contains  
23 the names, addresses, county of address and taxpayer  
24 identification numbers of New Mexico personal income tax  
25 filers, but only for the purpose of producing the random jury

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1 list for the selection of petit or grand jurors for the state  
2 courts pursuant to Section 38-5-3 NMSA 1978;

3 F. the state courts, the random jury lists produced  
4 by the department of information technology under Subsection E  
5 of this section;

6 G. the director of the New Mexico department of  
7 agriculture or the director's authorized representative, upon  
8 request of the director or representative, the names and  
9 addresses of all gasoline or special fuel distributors,  
10 wholesalers and retailers;

11 H. the public regulation commission, return  
12 information with respect to the Corporate Income and Franchise  
13 Tax Act required to enable the commission to carry out its  
14 duties;

15 I. the state racing commission, return information  
16 with respect to the state, municipal and county gross receipts  
17 taxes paid by racetracks;

18 J. the gaming control board, tax returns of license  
19 applicants and their affiliates as provided in Subsection E of  
20 Section 60-2E-14 NMSA 1978;

21 K. the director of the workers' compensation  
22 administration or to the director's representatives authorized  
23 for this purpose, return information to facilitate the  
24 identification of taxpayers that are delinquent or noncompliant  
25 in payment of fees required by Section 52-1-9.1 or 52-5-19 NMSA

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1 1978;

2 L. the secretary of workforce solutions or the  
3 secretary's delegate, return information for use in enforcement  
4 of unemployment insurance collections pursuant to the terms of  
5 a written reciprocal agreement entered into by the department  
6 with the secretary of workforce solutions for exchange of  
7 information;

8 M. the New Mexico finance authority, information  
9 with respect to the amount of municipal and county gross  
10 receipts taxes collected by municipalities and counties  
11 pursuant to any local option municipal or county gross receipts  
12 taxes imposed, and information with respect to the amount of  
13 governmental gross receipts taxes paid by every agency,  
14 institution, instrumentality or political subdivision of the  
15 state pursuant to Section 7-9-4.3 NMSA 1978;

16 N. the superintendent of insurance, return  
17 information with respect to the premium tax and the health  
18 insurance premium surtax;

19 O. the secretary of finance and administration or  
20 the secretary's designee, return information concerning a  
21 credit pursuant to the Film Production Tax Credit Act;

22 P. the secretary of economic development or the  
23 secretary's designee, return information concerning a credit  
24 pursuant to the Film Production Tax Credit Act;

25 Q. the secretary of public safety or the

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1 secretary's designee, return information concerning the Weight  
2 Distance Tax Act;

3 R. the secretary of transportation or the  
4 secretary's designee, return information concerning the Weight  
5 Distance Tax Act and return information concerning rail  
6 infrastructure income tax credits and rail infrastructure  
7 corporate income tax credits for which eligibility is certified  
8 or otherwise determined by the secretary or the secretary's  
9 designee;

10 S. the secretary of energy, minerals and natural  
11 resources or the secretary's designee, return information  
12 concerning tax credits or deductions for which eligibility is  
13 certified or otherwise determined by the secretary or the  
14 secretary's designee;

15 T. the secretary of environment or the secretary's  
16 designee, return information concerning tax credits for which  
17 eligibility is certified or otherwise determined by the  
18 secretary or the secretary's designee; and

19 U. the secretary of state or the secretary's  
20 designee, taxpayer information required to maintain voter  
21 registration records and as otherwise provided in the Election  
22 Code."

23 SECTION 4. APPLICABILITY.--The provisions of this act  
24 apply to taxable years beginning on or after January 1, 2024.