# REPORT OF THE ECONOMIC DEVELOPMENT SUBCOMMITTEE

(Ballentine, Clyburn, Hosey, Whitmire, & Lowe - Staff Contact: Teesha Trapp)

# HOUSE BILL 4817

H. 4817 -- Reps. Ligon and Simrill: 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.

***Received by Ways and Means:*** **January 19, 2022**

***Summary of Bill:***

This bill allows a tax credit to small businesses who purchased marginal or unprofitable segments of large railroads after years of deferred maintenance. These unprofitable segments of railroads are categorized as Class II or III railroads (also known as short line).

The tax credit is for qualified:

(1) Railroad reconstruction or replacement capped at $5,000 per track mile owned or leased by a short line railroad; and
(2) New rail infrastucture expenditures servicing new or expanded customer locations capped at $500,000 per project ($3,000,000 annually).

The credit is equal to 50% of qualified expenditures and cannot exceed an annual total of $5,000,000 for all taxpayers.

The Department of Commerce will review & approve applications and development plans; reserve tax credits (actual credits cannot be claimed until all requirements have been satisified); issue tax credit certificates; and provide a list at year-end to DOR of authorized tax credits.

Unused credits can be transferred to any eligible taxpayer during the five years for which the credit can be claimed following or during the time of incurred qualified expenditures.

***Estimated Revenue Impact:***

It is estimated 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.

***Subcommittee Recommendation:*** Passed Economic Development Subcommittee favorably on March 10, 2022.

**SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE**
**STATEMENT OF ESTIMATED FISCAL IMPACT**
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*This fiscal impact statement is produced in compliance with the South Carolina Code of Laws and House and Senate rules. The focus of the analysis is on governmental expenditure and revenue impacts and may not provide a comprehensive summary of the legislation.*

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|---|---|
| **Bill Number:** | H. 4817 Introduced on January 19, 2022 |
| Author: | Ligon |
| Subject: | Shortline Railroad Modernization Act |
| Requestor: | House Ways and Means |
| RFA Analyst(s): | Coomer |
| Impact Date: | March 10, 2022 |

## Fiscal Impact Summary

This bill creates a new income tax credit for Class II and Class III railroads based on qualified railroad reconstruction or replacement expenditures, as well as qualified new rail infrastructure expenditures. Any portion of the 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.

This bill will have no fiscal impact on the Department of Commerce (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.

This bill will have no expenditure impact on the Department of Revenue (DOR) because the agency can account for any expenditures related to allocating the new tax credit to eligible taxpayers using existing resources.

This bill will decrease General Fund individual income tax, corporate income tax, bank tax, or insurance premium tax revenues, 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 any carryforward available for five additional years. 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.

## Explanation of Fiscal Impact

### 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.

**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

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.

**Local Expenditure**
N/A

**Local Revenue**
N/A

Frank A. Rainwater, Executive Director

**South Carolina General Assembly**
124th Session, 2021-2022

**H. 4817**

## STATUS INFORMATION

General Bill
Sponsors: Reps. Ligon, Simrill, McGarry, B. Newton, Atkinson, R. Williams, Wheeler, Hardee, Gagnon, Hill, Huggins and Taylor
Document Path: l:\council\bills\df\13099sa22.docx

Introduced in the House on January 19, 2022
Currently residing in the House Committee on **Ways and Means**

Summary: Shortline Railroad Modernization Act

## HISTORY OF LEGISLATIVE ACTIONS

| Date | Body | Action Description with journal page number |
|---|---|---|
| 1/19/2022 | House | Introduced and read first time (House Journal-page 7) |
| 1/19/2022 | House | Referred to Committee on **Ways and Means** (House Journal-page 7) |
| 2/1/2022 | House | Member(s) request name added as sponsor: McGarry, B.Newton |
| 2/15/2022 | House | Member(s) request name added as sponsor: Atkinson |
| 2/16/2022 | House | Member(s) request name added as sponsor: R.Williams, Wheeler |
| 2/23/2022 | House | Member(s) request name added as sponsor: Hardee |
| 3/8/2022 | House | Member(s) request name added as sponsor: Gagnon, Hill |
| 3/10/2022 | House | Member(s) request name added as sponsor: Huggins |
| 3/15/2022 | House | Member(s) request name added as sponsor: Taylor |

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## VERSIONS OF THIS BILL

1/19/2022

# 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.

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) 'Qualified new rail infrastructure expenditures' means gross expenditures for new construction of industrial leads,

switches, sidings, and extensions of existing sidings, new rail infrastructure, for servicing new customer locations or expansions in this State by a Class II or Class III railroad located in this State.

(5) '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) 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 new rail infrastructure expenditures.

(3) 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.

(4) For qualified new rail infrastructure expenditures, the amount of the credit may not exceed five hundred thousand dollars for each new rail-served customer project and the total amount of credits authorized for new construction serving new customer locations or expansions in this State may not exceed three million dollars annually.

(5) The total amount of credits allowed pursuant to this section may not exceed in the aggregate five million dollars each year. Each year, the Department of Revenue shall reserve an amount of the total available tax credits equal to the product of five thousand dollars and the number of miles of railroad track owned or leased within this State by a Class II or Class III railroad in this State for qualified railroad reconstruction or replacement expenditures. The remaining tax credits must be made available for qualified new rail infrastructure expenditures for serving new customer locations or expansions in this State on a first-come, first-served basis, provided the total amount of credits available to be taken, whether for maintenance, reconstructions, replacement or new construction, for all taxpayers in a taxable year, may not exceed five million dollars in the aggregate.

(C)(1) The department shall develop standards for the preapproval of a tax credit being sought for the qualified new rail infrastructure expenditures for serving new customer locations or expansions in this State. The standards must consider the availability of additional public or private funding for the project, the expected completion time of the project, and the anticipated impact of the project on usage of the railroad infrastructure.

(2) Before beginning any qualified new rail infrastructure expenditures, the eligible taxpayer shall submit an application and development plan to the department and an estimate of the qualified expenditures for the construction of new rail infrastructure under the development plan; provided, however, the eligible taxpayer, at its own risk, may incur qualified new rail infrastructure expenditures no earlier than six months before the submission of the application and development plan.

(3) The department shall review the application and development plan for qualified new rail infrastructure expenditures to determine if the information contained therein is complete. If the department determines that the application and development plan are complete, the department shall reserve, for the benefit of the eligible taxpayer, an allocation for a tax credit as provided in this section and shall notify the eligible taxpayer in writing of the amount of the reservation. The reservation of tax credits does not entitle the taxpayer to the tax credits until the owner complies with all other requirements of this section. Reservations of tax credits must be issued by the department within seventy-five days from the filing of a completed application and development plan. The application must be submitted by the eligible taxpayer before the end of the calendar year for which a tax credit is applied for. Any application disapproved by the department must be removed from the review process, and the department shall notify the taxpayer in writing of the decision to remove the application. A disapproved application may be resubmitted but is considered to be a new submission and may be charged a new application fee. In the event the reservations of tax credits equal the total amount available for reservations during the tax year, all eligible taxpayers with applications then awaiting approval or thereafter submitted must be notified by the department that no additional tax credits may be granted during that tax year. The unapproved applications must remain in active status from the date of the original application and must be considered for recommendations of tax credits in the event that additional credits become available due to rescission by the department of tax credits. Unapproved applications must be carried over and considered when a new tax year's allocation of tax credits becomes available.

(4) For processing a taxpayer's application for a tax credit for qualified new rail infrastructure expenditures, the department may impose an application fee equal to one percent of the qualified

railroad reconstruction or replacement expenditures, not to exceed a fee equal to two thousand five hundred dollars. The department may retain and expend the funds to implement the provisions of this section.

(5) Following the completion of a qualified new rail infrastructure expenditure project, the eligible taxpayer shall notify the Department of Commerce that the project has been completed and shall certify the qualified new rail infrastructure expenditures incurred with respect to the development plan. After receipt and approval of the foregoing documentation from the eligible taxpayer, the Department of Revenue shall issue a tax credit certificate in an amount equivalent to the amount of the qualified new rail infrastructure expenditures incurred with respect to the development plan as certified by the eligible taxpayer, not to exceed the amount of the tax credit reservation issued for the project.

(6) 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.

(7) 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.

(8) 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 or the qualified new rail infrastructure expenditures are incurred or at any time during the five years following the tax year the qualified new railroad infrastructure 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 or the tax year the eligible taxpayer incurred the qualified new rail infrastructure 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 and qualified new rail infrastructure 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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