

1 HB457  
2 200105-5  
3 By Representatives Scott and Garrett  
4 RFD: Ways and Means Education  
5 First Read: 16-APR-19

1 ENGROSSED

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4 A BILL  
5 TO BE ENTITLED  
6 AN ACT  
7

8 Relating to tax credits; to create The Railroad  
9 Modernization Act of 2019; to authorize a tax credit against  
10 the income tax liability of an eligible taxpayer for qualified  
11 railroad rehabilitation expenditures; to authorize the  
12 transfer of the credit; and to sunset the credit after three  
13 years.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

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

26 (4) ELIGIBLE TAXPAYER. A railroad subject to the  
27 state income tax that owns or leases railroad infrastructure

1 in Alabama and is classified by the United States Surface  
2 Transportation Board as a Class II or Class III railroad.

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

6 (6) QUALIFIED RAILROAD REHABILITATION EXPENDITURES.  
7 Expenditures within the taxable year for the maintenance,  
8 reconstruction, or replacement of railroad infrastructure  
9 within the state that is owned or leased by an eligible  
10 taxpayer. The term includes new construction of industrial  
11 leads, switches, spurs, sidings, and extensions of existing  
12 sidings by an eligible taxpayer. The term does not include  
13 expenditures for which an income tax deduction has been  
14 claimed.

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

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

22 Section 3. (a) Within three months following the  
23 effective date of this act, the Department of Commerce shall  
24 develop standards for the approval of qualified railroad  
25 rehabilitation expenditures for which a tax credit is being  
26 sought. The standards shall consider the availability of  
27 additional public or private funding for the project, the

1 expected completion time of the project, and the anticipated  
2 impact of the project on usage of the railroad infrastructure.

3 (b) Prior to beginning any qualified railroad  
4 rehabilitation work the eligible taxpayer shall submit an  
5 application and rehabilitation plan to the Department and an  
6 estimate of the qualified railroad rehabilitation expenditures  
7 under the rehabilitation plan; provided, however, the eligible  
8 taxpayer, at its own risk, may incur qualified railroad  
9 rehabilitation expenditures no earlier than six months prior  
10 to the submission of the application and rehabilitation plan.

11 (c) The Department shall review the application and  
12 rehabilitation plan to determine if the information contained  
13 therein is complete. If the Department determines that the  
14 application and rehabilitation plan are complete, the  
15 Department shall reserve, for the benefit of the eligible  
16 taxpayer, an allocation for a tax credit as provided in this  
17 act and shall notify the eligible taxpayer in writing of the  
18 amount of the reservation. The reservation of tax credits does  
19 not entitle the taxpayer to an issuance of tax credits until  
20 the owner complies with all other requirements of this act for  
21 the issuance of the tax credits. Reservations of tax credits  
22 shall be issued by the Department within a reasonable time  
23 from the filing of a completed application and rehabilitation  
24 plan. Any application disapproved by the Department shall be  
25 removed from the review process, and the Department shall  
26 notify the taxpayer in writing of the decision to remove the  
27 application. A disapproved application may be resubmitted, but

1 shall be deemed to be a new submission and may be charged a  
2 new application fee. In the event the reservations of tax  
3 credits equal the total amount available for reservations  
4 during the tax year, all eligible taxpayers with applications  
5 then awaiting approval or thereafter submitted shall be  
6 notified by the Department that no additional tax credits  
7 shall be granted during that tax year. The applications shall  
8 remain in active status from the date of the original  
9 application and shall be considered for recommendations of tax  
10 credits in the event that additional credits become available  
11 due to rescission by the Department or when a new tax year's  
12 allocation of tax credits becomes available.

13 (d) Following the completion of a qualified railroad  
14 rehabilitation project, the eligible taxpayer shall notify the  
15 Department that the rehabilitation has been completed and  
16 shall certify the qualified railroad rehabilitation  
17 expenditures incurred with respect to the rehabilitation plan.  
18 Within 90 days after receipt and approval of the foregoing  
19 documentation from the eligible taxpayer, the Department shall  
20 issue a tax credit certificate in an amount equivalent to the  
21 amount of the qualified railroad rehabilitation expenditures  
22 incurred with respect to the rehabilitation plan as certified  
23 by the taxpayer, not to exceed the amount of the tax credit  
24 reservation issued for the project.

25 (e) In order to obtain a credit against any state  
26 income tax due that is specified in this article, an eligible  
27 taxpayer shall file the tax credit certificate with the

1 taxpayer's Alabama state tax return. The tax credit  
2 certificate shall satisfy all requirements of the Department  
3 of Revenue pertaining to the eligibility of the person  
4 claiming the credit. All information submitted to the  
5 Department of Revenue by taxpayers claiming or seeking  
6 certification of a credit shall be subject to the  
7 confidentiality provisions of Section 40-2A-10, Code of  
8 Alabama 1975.

9 (f) For processing the taxpayer's application for a  
10 tax credit, the Department may impose an application fee equal  
11 to one percent (1%) of the qualified rehabilitation  
12 expenditures, not to exceed a fee equal to ten thousand  
13 dollars (\$10,000). Any fees collected by the Department under  
14 this subsection shall be deposited in the State Treasury to  
15 the credit of the Department and all such funds are to be  
16 appropriated to the Department to defray the expenses incurred  
17 in carrying out this article.

18 (g) The Department shall report to the Legislature  
19 in the third year following passage of this act, and annually  
20 thereafter, on the overall economic activity, usage, and  
21 impact to the state from the rehabilitation of railroad  
22 infrastructure for which tax credits have been allowed. The  
23 information in the reports shall be consistent with the  
24 information required by the Legislature pursuant to, and shall  
25 be provided by the Department to the Legislature in accordance  
26 with, Section 40-1-50, and rules adopted thereunder.

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

3 Section 4. (a) For tax years beginning after  
4 December 31, 2019, there is a credit allowed against the state  
5 income tax levied by Section 40-18-2 Code of Alabama, 1975,  
6 equal to 50 percent of an eligible taxpayer's qualified  
7 railroad rehabilitation expenditures. The tax credit allowed  
8 under this section may not exceed three thousand five hundred  
9 dollars (\$3,500) multiplied by the number of miles of railroad  
10 track owned or leased within the state by the eligible  
11 taxpayer at the close of the taxable year.

12 (b) There is created within the Education Trust Fund  
13 a separate account named the Railroad Rehabilitation Income  
14 Tax Credit Account. The Commissioner of Revenue shall certify  
15 to the Comptroller the amount of income tax credits under this  
16 section and the Comptroller shall transfer into the Railroad  
17 Rehabilitation Income Tax Credit Account only the amount from  
18 sales tax revenues within the Education Trust Fund that is  
19 sufficient for the Department of Revenue to use to cover the  
20 income tax credits for the applicable tax year. The  
21 Commissioner of Revenue shall distribute the funds in the  
22 Railroad Rehabilitation Income Tax Credit Account pursuant to  
23 this section.

24 (c) The entire tax credit may be claimed by the  
25 taxpayer in the taxable year in which the qualified railroad  
26 rehabilitation expenditures are completed and placed into  
27 service. Where the taxes owed by the eligible taxpayer are

1 less than the tax credit, the eligible taxpayer may be  
2 entitled to claim a refund for the difference.

3 (d) For the calendar years 2020, 2021, and 2022, the  
4 aggregate amount of all tax credits that may be reserved in  
5 any one of such years by the Department upon certification of  
6 rehabilitation plans shall not exceed five million dollars  
7 (\$5,000,000) plus any amount of previous reservations of tax  
8 credits that were rescinded during the tax year. However, if  
9 all of the allowable tax credit amount for any tax year is not  
10 requested and reserved, any unreserved tax credits may be  
11 utilized by the Department in awarding tax credits in  
12 subsequent years; provided, however, that in no event shall a  
13 total of more than fifteen million dollars (\$15,000,000) be  
14 reserved by the Department during the period of August 1, 2019  
15 through August 1, 2022. For purposes of this article, "tax  
16 year" shall mean the calendar year.

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

21 (f) All or any portion of the income tax credit  
22 authorized under this section may be transferable and  
23 assignable by written transfer agreement and subject to any  
24 notice and verification requirements to be determined by the  
25 Department of Revenue. Any tax credits transferred shall be at  
26 a value of at least eighty-five percent (85%) of the present  
27 value of the credits. However, once a credit is transferred,



1 only the transferee may utilize the credit and the credit may  
2 not be transferred again. An eligible transferee of the credit  
3 may use the amount of credits transferred to offset any income  
4 tax due under Chapter 18. The Department of Revenue, by rule,  
5 shall adopt a written transfer agreement form. The transfer  
6 statement form shall include the name and federal taxpayer  
7 identification number of the transferor and each transferee  
8 listed therein along with the amount of the tax credit to be  
9 transferred to each transferee listed on the form. The  
10 transfer statement form shall also contain such other  
11 information as the Department of Revenue may from time to time  
12 reasonably require. For each transfer, the transferor shall  
13 file: (1) a completed transfer statement form; (2) a copy of  
14 the tax credit certificate issued by the commission  
15 documenting the amount of tax credits which the transferor  
16 intends to transfer; (3) a copy of the proposed written  
17 transfer agreement; and (4) a transfer fee payable to the  
18 department in the amount of one thousand dollars (\$1,000) per  
19 transferee listed on the transfer statement form. The  
20 transferor shall file with the Department of Revenue a fully  
21 executed copy of the written transfer agreement with each  
22 transferee within 30 days after the completed transfer. Filing  
23 of the written transfer agreement with the Department of  
24 Revenue shall perfect such transfer with respect to such  
25 transferee. Within 30 days after the department's receipt of  
26 the fully executed written transfer agreement, the department  
27 shall issue a tax credit certificate to each transferee listed

1 in such agreement in the amount of the tax credit so  
2 transferred. Such certificate shall be used by the transferee  
3 in claiming the tax credit. The Department of Revenue may  
4 promulgate such additional rules as are necessary to permit  
5 verification of the ownership of the tax credits but shall not  
6 promulgate any rules which unduly restrict or hinder the  
7 transfer of the tax credits.

8 Section 5. The Department of Commerce shall  
9 promulgate by October 1, 2019, any and all rules and  
10 regulations necessary to implement this act. Applications for  
11 the reservation of tax credits shall be accepted beginning  
12 November 1, 2019.

13 Section 6. The tax credit allowed under this section  
14 shall be effective for the 2020 tax year and shall continue  
15 through the 2022 tax year, unless extended by act of the  
16 Legislature.

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

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House of Representatives

Read for the first time and re-  
ferred to the House of Representa-  
tives committee on Ways and Means  
Education..... 16-APR-19

Read for the second time and placed  
on the calendar with 1 substitute  
and 1 amendment..... 02-MAY-19

Read for the third time and passed  
as amended..... 14-MAY-19

Yeas 88, Nays 6, Abstains 4

Jeff Woodard  
Clerk