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**SUBSTITUTE HOUSE BILL 1371**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** House Finance (originally sponsored by Representatives Barkis, Leavitt, Orcutt, Fey, Barnard, Chapman, Low, Connors, Goehner, Chambers, Chandler, Couture, Griffey, Hutchins, Robertson, Volz, Walsh, Christian, Doglio, Schmick, and Gregerson)

READ FIRST TIME 02/24/23.

1 AN ACT Relating to government incentives for improving freight  
2 railroad infrastructure; adding new sections to chapter 82.04 RCW;  
3 adding a new section to chapter 82.08 RCW; adding a new section to  
4 chapter 82.12 RCW; adding new sections to chapter 82.16 RCW; creating  
5 new sections; providing an effective date; and providing expiration  
6 dates.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** The legislature finds that railroads play  
9 a crucial role in economic development, serving nearly every  
10 industrial, wholesale, retail, and resource-based sector in  
11 Washington's economy. The legislature further finds that freight  
12 railroad infrastructure is an essential link in the supply chain and  
13 provides an efficient way to connect Washington's economy to national  
14 and international markets. The legislature further finds that  
15 maintenance and improvements to the railroad system are needed to  
16 support modern 286,000 pound railcars, foster economic development,  
17 increase infrastructure resiliency, avoid supply chain disturbances,  
18 and meet carbon reduction goals for transportation greenhouse gases.  
19 The legislature intends to provide incentives to the rail industry  
20 that can lead to a more effective short line rail system.

1        NEW SECTION.    **Sec. 2.**    A new section is added to chapter 82.04  
2    RCW to read as follows:

3        (1) A credit is allowed against taxes due under this chapter of  
4    expenditures made by an eligible taxpayer pursuant to subsection (2)  
5    of this section.

6        (2) Qualified expenditures incurred by an eligible taxpayer may  
7    be used to generate a credit for the following amounts:

8        (a) For qualified short line railroad maintenance expenditures, a  
9    credit is allowed against the taxes due under this chapter in an  
10   amount equal to 50 percent of the qualified short line railroad  
11   maintenance expenditures. The amount of the credit may not exceed an  
12   amount equal to \$5,000 multiplied by the number of miles of railroad  
13   track owned or leased in the state by the eligible taxpayer as of the  
14   close of the calendar year.

15       (b) For qualified new rail development expenditures, a credit is  
16   allowed against the taxes due under this chapter in an amount equal  
17   to 100 percent of the new rail development expenditures of an  
18   eligible taxpayer. The amount of the credit for new rail development  
19   expenditures may not exceed \$2,000,000 for each eligible taxpayer in  
20   a calendar year. Credits are available on a first-in-time basis. The  
21   department must disallow any credits, or portions thereof, that would  
22   cause the total amount of credits claimed under this section during  
23   any calendar year to exceed \$15,000,000.

24       (c) For qualified railroad modernization and rehabilitation  
25   expenditures, a credit is allowed against the taxes due under this  
26   chapter in an amount equal to 100 percent of the qualified railroad  
27   modernization and rehabilitation expenditures by an eligible  
28   taxpayer.

29       (3) The credit claimed may not exceed the tax that would  
30   otherwise be due under this chapter. Refunds may not be granted in  
31   the place of credits. Expenditures not used to earn a credit in one  
32   fiscal year may be carried forward for no more than five years  
33   immediately following the year that the credit was allowed.

34       (4) An eligible taxpayer may assign distribution of all or a  
35   portion of the allowed credit or an unused portion of the credit by  
36   written agreement to any taxpayer subject to the tax imposed under  
37   this section at any time during the year in which the credit is  
38   earned and five years following the year that the credit is earned.  
39   The taxpayer originally allowed the credit and the subsequent  
40   transferee shall jointly file a copy of the written credit transfer

1 agreement with the department. The agreement shall include the names,  
2 addresses, and taxpayer identification numbers of the parties to the  
3 transfer, the amount of the credit being transferred, the year the  
4 credit was originally allowed to the transferring taxpayer, and the  
5 tax year or years for which the credit may be claimed.

6 (5) The department shall administer the credit. The department  
7 shall provide a simple credit application form that the department  
8 shall post on its website.

9 (6) No new credits may be issued after June 30, 2034, except  
10 credits that are being carried forward from prior years may be  
11 applied in accordance with subsection (3) of this section.

12 (7) For the purposes of this section, the following definitions  
13 apply:

14 (a) "Class I railroad" means a railroad that is classified by the  
15 United States surface transportation board as a class I railroad, as  
16 defined in 49 C.F.R. Sec. 1201.1-1(a) and in effect January 1, 2023.

17 (b) "Eligible taxpayer" means:

18 (i) Any railroad subject to the tax under this chapter that is  
19 classified by the United States surface transportation board as a  
20 class II or class III railroad, as defined in 49 C.F.R. Sec.  
21 1201.1-1(a), as in effect January 1, 2023;

22 (ii) Any railroad owned by a port, city, or county in the state  
23 of Washington; or

24 (iii) Any owner or lessee of rail siding, industrial spur, or  
25 industry track located on or adjacent to a class II or class III  
26 railroad in the state of Washington.

27 (c) "Industrial spur" means a secondary track used by railroads  
28 and customers at a location to load and unload railcars without  
29 interfering with other railroad operations.

30 (d) "Qualified new rail development expenditures" means  
31 expenditures for new rail development by an eligible taxpayer, which  
32 includes the construction of new track, industrial leads, switches,  
33 industrial spurs, sidings, rail loading docks, and transloading  
34 structures involved with providing rail services to new customer  
35 locations or existing customer expansions in the state by an eligible  
36 taxpayer.

37 (e) "Qualified railroad modernization and rehabilitation  
38 expenditures" means expenditures by an eligible taxpayer to upgrade  
39 less than 90 pound rail and switches, 286,000 capacity rail upgrades  
40 to the mainline track, major rail and tie replacement projects, track

1 capacity enhancements, bridge rehabilitation or bridge replacement  
2 projects, or other track-related projects determined to enhance or  
3 modernize the existing track infrastructure in the state by an  
4 eligible taxpayer.

5 (f) "Qualified short line railroad maintenance expenditures"  
6 means expenditures for railroad infrastructure including, but not  
7 limited to, rail, ties, tie plates, joint bars, fasteners, switches,  
8 ballast, subgrade, roadbed, bridges, industrial leads, sidings,  
9 signs, safety barriers, crossing signals and gates, and related track  
10 structures owned or leased by a class II or class III railroad.

11 (g) "Siding" means a short section of track, distinct from a  
12 mainline, branch line, or spur, connected by switches to a main track  
13 and used for storage, passing, or other purposes.

14 (8) This section does not apply to class I railroads or short  
15 line railroads owned by a class I railroad or any of its  
16 subsidiaries.

17 (9) This section expires July 1, 2039.

18 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.04  
19 RCW to read as follows:

20 (1) Any owner or operator of a class I railroad, or owner of a  
21 company that recycles railroad material, is eligible for an exemption  
22 from the tax under this chapter in the form of a credit as provided  
23 in this section if:

24 (a) The class I railroad transfers to an eligible taxpayer  
25 railroad rail, ties, tie plates, joint bars, fasteners, switches,  
26 ballast, or other equipment or materials that are part of the rail  
27 infrastructure it has removed from use on the main railroad line to  
28 be installed on tracks used by class II and class III railroads; or

29 (b) The owner of a company that recycles railroad materials  
30 transfers to an eligible taxpayer rail, ties, fasteners, switches,  
31 ballast, or other equipment or materials that are part of the rail  
32 infrastructure to be installed on tracks used by class II and class  
33 III railroads.

34 (2) The credit is equal to the fair market value of the donated  
35 materials used for track maintenance, expansion, or modernization.  
36 Materials must be given to a qualifying recipient without  
37 consideration to receive a credit.

38 (3) An owner or operator of a class I railroad, or owner of a  
39 company that recycles railroad material, may assign distribution of

1 all or a portion of the allowed credit or an unused portion of the  
2 credit by written agreement to any taxpayer subject to the tax  
3 imposed under this section at any time during the year in which the  
4 credit is earned and five years following the year that the credit is  
5 earned. The taxpayer originally allowed the credit and the subsequent  
6 transferee shall jointly file a copy of the written credit transfer  
7 agreement with the department. The agreement shall include the names,  
8 addresses, and taxpayer identification numbers of the parties to the  
9 transfer, the amount of the credit being transferred, the year the  
10 credit was originally allowed to the transferring taxpayer, and the  
11 tax year or years for which the credit may be claimed.

12 (4) The department shall administer the credit. The department  
13 shall provide a simple credit application form that the department  
14 shall post on its website.

15 (5) No new credits may be issued after June 30, 2034, except  
16 credits that are being carried forward from prior years may be  
17 applied in accordance with subsection (2) of this section.

18 (6) For purposes of this section, the following definitions  
19 apply.

20 (a) "Class I railroad" means a railroad that is classified by the  
21 United States surface transportation board as a class I railroad, as  
22 defined in 49 C.F.R. Sec. 1201.1-1(a) and in effect January 1, 2023.

23 (b) "Eligible taxpayer" means:

24 (i) Any railroad subject to the tax under this chapter that is  
25 classified by the United States surface transportation board as a  
26 class II or class III railroad, as defined in 49 C.F.R. Sec.  
27 1201.1-1(a), as in effect January 1, 2023;

28 (ii) Any railroad owned by a port, city, or county in the state  
29 of Washington; or

30 (iii) Any owner or lessee of rail siding, industrial spur, or  
31 industry track located on or adjacent to a class II or class III  
32 railroad in the state of Washington.

33 (c) "Industrial spur" means a secondary track used by railroads  
34 and customers at a location to load and unload railcars without  
35 interfering with other railroad operations.

36 (d) "Siding" means a short section of track, distinct from a  
37 mainline, branch line, or spur, connected by switches to a main track  
38 and used for storage, passing, or other purposes.

39 (7) Refunds are not allowed for the credits created in this  
40 section.

1 (8) This section does not apply to short line railroads owned by  
2 a class I railroad or any of its subsidiaries.

3 (9) This section expires July 1, 2039.

4 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.08  
5 RCW to read as follows:

6 (1) The tax levied by RCW 82.08.020 does not apply to sales of  
7 materials required for track maintenance to:

8 (a) Owners and operators of class II or class III railroad  
9 operators;

10 (b) Any railroad or freight rail facility owned by a port, city,  
11 or county in the state of Washington; or

12 (c) Any owner or lessee of a rail siding, industrial spur, or  
13 industry track located on or adjacent to a class II or class III  
14 railroad in the state of Washington.

15 (2) For the purposes of this section, the following definitions  
16 apply.

17 (a) "Class I railroad" means a railroad that is classified by the  
18 United States surface transportation board as a class I railroad, as  
19 defined in 49 C.F.R. Sec. 1201.1-1(a) and in effect January 1, 2023.

20 (b) "Class II or class III railroad" means railroads that are  
21 classified by the United States surface transportation board as a  
22 class II or class III railroad, as defined in 49 C.F.R. Sec.  
23 1201.1-1(a), as in effect January 1, 2023.

24 (c) "Freight rail facilities" means the infrastructure used to  
25 transport freight by rail, specifically to rail yards, terminals,  
26 sidings, and marshalling yards that play an important role in the  
27 transportation and distribution and shipping of goods over long  
28 distances.

29 (d) "Industrial spur" means a secondary track used by railroads  
30 and customers at a location to load and unload railcars without  
31 interfering with other railroad operations.

32 (e) "Materials required for track maintenance" means rail, ties,  
33 tie plates, joint bars, fasteners, switches, ballast, subgrade,  
34 roadbed, bridges, industrial leads, sidings, signs, safety barriers,  
35 crossing signals and gates, and track.

36 (f) "Siding" means a short section of track, distinct from a  
37 mainline, branch line, or spur, connected by switches to a main track  
38 and used for storage, passing, or other purposes.

1 (3) This section does not apply to class I railroads or short  
2 line railroads owned by a class I railroad or any of its  
3 subsidiaries.

4 (4) This section expires July 1, 2034.

5 NEW SECTION. **Sec. 5.** A new section is added to chapter 82.12  
6 RCW to read as follows:

7 (1) The provisions of this chapter do not apply with respect to  
8 materials required for track maintenance to:

9 (a) Owners and operators of class II or class III railroad  
10 operators;

11 (b) Any railroad or freight rail facility owned by a port, city,  
12 or county in the state of Washington; or

13 (c) Any owner or lessee of a rail siding, industrial spur, or  
14 industry track located on or adjacent to a class II or class III  
15 railroad in the state of Washington.

16 (2) For purposes of this section, the following definitions  
17 apply.

18 (a) "Class I railroad" means a railroad that is classified by the  
19 United States surface transportation board as a class I railroad, as  
20 defined in 49 C.F.R. Sec. 1201.1-1(a) and in effect January 1, 2023.

21 (b) "Class II or class III railroad" means railroads that are  
22 classified by the United States surface transportation board as a  
23 class II or class III railroad, as defined in 49 C.F.R. Sec.  
24 1201.1-1(a), as in effect January 1, 2023.

25 (c) "Freight rail facilities" means the infrastructure used to  
26 transport freight by rail, specifically to rail yards, terminals,  
27 sidings, and marshalling yards that play an important role in the  
28 transportation and distribution and shipping of goods over long  
29 distances.

30 (d) "Industrial spur" means a secondary track used by railroads  
31 and customers at a location to load and unload railcars without  
32 interfering with other railroad operations.

33 (e) "Materials required for track maintenance" has the same  
34 meaning as in section 4 of this act.

35 (f) "Siding" means a short section of track, distinct from a  
36 mainline, branch line, or spur, connected by switches to a main track  
37 and used for storage, passing, or other purposes.

1 (3) This section does not apply to class I railroads or short  
2 line railroads owned by a class I railroad or any of its  
3 subsidiaries.

4 (4) This section expires July 1, 2034.

5 NEW SECTION. **Sec. 6.** A new section is added to chapter 82.16  
6 RCW to read as follows:

7 (1) A credit is allowed against taxes due under this chapter of  
8 expenditures made by an eligible taxpayer pursuant to subsection (2)  
9 of this section.

10 (2) Qualified expenditures incurred by an eligible taxpayer may  
11 be used to generate a credit for the following amounts:

12 (a) For qualified short line railroad maintenance expenditures, a  
13 credit is allowed against the taxes due under this chapter in an  
14 amount equal to 50 percent of the qualified short line railroad  
15 maintenance expenditures. The amount of the credit may not exceed an  
16 amount equal to \$5,000 multiplied by the number of miles of railroad  
17 track owned or leased in the state by the eligible taxpayer as of the  
18 close of the calendar year.

19 (b) For qualified new rail development expenditures, a credit is  
20 allowed against the taxes due under this chapter in an amount equal  
21 to 100 percent of the new rail development expenditures of an  
22 eligible taxpayer. The amount of the credit for new rail development  
23 expenditures may not exceed \$2,000,000 for each eligible taxpayer in  
24 a calendar year. Credits are available on a first-in-time basis. The  
25 department must disallow any credits, or portions thereof, that would  
26 cause the total amount of credits claimed under this section during  
27 any calendar year to exceed \$15,000,000.

28 (c) For qualified railroad modernization and rehabilitation  
29 expenditures, a credit is allowed against the taxes due under this  
30 chapter in an amount equal to 100 percent of the qualified railroad  
31 modernization and rehabilitation expenditures by an eligible  
32 taxpayer.

33 (3) The credit claimed may not exceed the tax that would  
34 otherwise be due under this chapter. Refunds may not be granted in  
35 the place of credits. Expenditures not used to earn a credit in one  
36 fiscal year may be carried forward for no more than five years  
37 immediately following the year that the credit was allowed.

38 (4) An eligible taxpayer may assign distribution of all or a  
39 portion of the allowed credit or an unused portion of the credit by



1 written agreement to any taxpayer subject to the tax imposed under  
2 this section at any time during the year in which the credit is  
3 earned and five years following the year that the credit is earned.  
4 The taxpayer originally allowed the credit and the subsequent  
5 transferee shall jointly file a copy of the written credit transfer  
6 agreement with the department. The agreement shall include the names,  
7 addresses, and taxpayer identification numbers of the parties to the  
8 transfer, the amount of the credit being transferred, the year the  
9 credit was originally allowed to the transferring taxpayer, and the  
10 tax year or years for which the credit may be claimed.

11 (5) The department shall administer the credit. The department  
12 shall provide a simple credit application form that the department  
13 shall post on its website.

14 (6) No new credits may be issued after June 30, 2034, except  
15 credits that are being carried forward from prior years may be  
16 applied in accordance with subsection (3) of this section.

17 (7) For the purposes of this section, the following definitions  
18 apply:

19 (a) "Class I railroad" means a railroad that is classified by the  
20 United States surface transportation board as a class I railroad, as  
21 defined in 49 C.F.R. Sec. 1201.1-1(a) and in effect January 1, 2023.

22 (b) "Eligible taxpayer" means:

23 (i) Any railroad subject to the tax under this chapter that is  
24 classified by the United States surface transportation board as a  
25 class II or class III railroad, as defined in 49 C.F.R. Sec.  
26 1201.1-1(a), as in effect January 1, 2023;

27 (ii) Any railroad owned by a port, city, or county in the state  
28 of Washington; or

29 (iii) Any owner or lessee of rail siding, industrial spur, or  
30 industry track located on or adjacent to a class II or class III  
31 railroad in the state of Washington.

32 (c) "Industrial spur" means a secondary track used by railroads  
33 and customers at a location to load and unload railcars without  
34 interfering with other railroad operations.

35 (d) "Qualified new rail development expenditures" means  
36 expenditures for new rail development by an eligible taxpayer, which  
37 includes the construction of new track, industrial leads, switches,  
38 industrial spurs, sidings, rail loading docks, and transloading  
39 structures involved with providing rail services to new customer

1 locations or existing customer expansions in the state by an eligible  
2 taxpayer.

3 (e) "Qualified railroad modernization and rehabilitation  
4 expenditures" means expenditures by an eligible taxpayer to upgrade  
5 less than 90 pound rail and switches, 286,000 capacity rail upgrades  
6 to the mainline track, major rail and tie replacement projects, track  
7 capacity enhancements, bridge rehabilitation or bridge replacement  
8 projects, or other track-related projects determined to enhance or  
9 modernize the existing track infrastructure in the state by an  
10 eligible taxpayer.

11 (f) "Qualified short line railroad maintenance expenditures"  
12 means expenditures for railroad infrastructure including, but not  
13 limited to, rail, ties, tie plates, joint bars, fasteners, switches,  
14 ballast, subgrade, roadbed, bridges, industrial leads, sidings,  
15 signs, safety barriers, crossing signals and gates, and related track  
16 structures owned or leased by a class II or class III railroad.

17 (g) "Siding" means a short section of track, distinct from a  
18 mainline, branch line, or spur, connected by switches to a main track  
19 and used for storage, passing, or other purposes.

20 (8) This section does not apply to class I railroads or short  
21 line railroads owned by a class I railroad or any of its  
22 subsidiaries.

23 (9) This section expires July 1, 2039.

24 NEW SECTION. **Sec. 7.** A new section is added to chapter 82.16  
25 RCW to read as follows:

26 (1) Any owner or operator of a class I railroad, or owner of a  
27 company that recycles railroad material, is eligible for an exemption  
28 from the tax under this chapter in the form of a credit as provided  
29 in this section if:

30 (a) The class I railroad transfers to an eligible taxpayer  
31 railroad rail, ties, tie plates, joint bars, fasteners, switches,  
32 ballast, or other equipment or materials that are part of the rail  
33 infrastructure it has removed from use on the main railroad line to  
34 be installed on tracks used by class II and class III railroads; or

35 (b) The owner of a company that recycles railroad materials  
36 transfers to an eligible taxpayer rail, ties, tie plates, joint bars,  
37 fasteners, switches, ballast, or other equipment or materials that  
38 are part of the rail infrastructure to be installed on tracks used by  
39 class II and class III railroads.

1 (2) The credit is equal to the fair market value of the donated  
2 materials used for track maintenance, expansion, or modernization.  
3 Materials must be given to a qualifying recipient without  
4 consideration to receive a credit.

5 (3) An owner or operator of a class I railroad, or owner of a  
6 company that recycles railroad material, may assign distribution of  
7 all or a portion of the allowed credit or an unused portion of the  
8 credit by written agreement to any taxpayer subject to the tax  
9 imposed under this section at any time during the year in which the  
10 credit is earned and five years following the year that the credit is  
11 earned. The taxpayer originally allowed the credit and the subsequent  
12 transferee shall jointly file a copy of the written credit transfer  
13 agreement with the department. The agreement shall include the names,  
14 addresses, and taxpayer identification numbers of the parties to the  
15 transfer, the amount of the credit being transferred, the year the  
16 credit was originally allowed to the transferring taxpayer, and the  
17 tax year or years for which the credit may be claimed.

18 (4) The department shall administer the credit. The department  
19 shall provide a simple credit application form that the department  
20 shall post on its website.

21 (5) No new credits may be issued after June 30, 2034, except  
22 credits that are being carried forward from prior years may be  
23 applied in accordance with subsection (2) of this section.

24 (6) For purposes of this section, the following definitions  
25 apply.

26 (a) "Class I railroad" means a railroad that is classified by the  
27 United States surface transportation board as a class I railroad, as  
28 defined in 49 C.F.R. Sec. 1201.1-1(a) and in effect January 1, 2023.

29 (b) "Eligible taxpayer" means:

30 (i) Any railroad subject to the tax under this chapter that is  
31 classified by the United States surface transportation board as a  
32 class II or class III railroad, as defined in 49 C.F.R. Sec.  
33 1201.1-1(a), as in effect January 1, 2023;

34 (ii) Any railroad owned by a port, city, or county in the state  
35 of Washington; or

36 (iii) Any owner or lessee of rail siding, industrial spur, or  
37 industry track located on or adjacent to a class II or class III  
38 railroad in the state of Washington.

1 (c) "Industrial spur" means a secondary track used by railroads  
2 and customers at a location to load and unload railcars without  
3 interfering with other railroad operations.

4 (d) "Siding" means a short section of track, distinct from a  
5 mainline, branch line, or spur, connected by switches to a main track  
6 and used for storage, passing, or other purposes.

7 (7) Refunds are not allowed for the credits created in this  
8 section.

9 (8) This section does not apply to short line railroads owned by  
10 a class I railroad or any of its subsidiaries.

11 (9) This section expires July 1, 2039.

12 NEW SECTION. **Sec. 8.** (1) This section is the tax preference  
13 performance statement for the tax preferences contained in  
14 chapter . . . , Laws of 2023 (this act). This performance statement is  
15 only intended to be used for subsequent evaluation of the tax  
16 preferences. It is not intended to create a private right of action  
17 by any party or be used to determine eligibility for preferential tax  
18 treatment.

19 (2) The legislature categorizes the tax preferences in this act  
20 as ones intended to accomplish a general purpose, as indicated in RCW  
21 82.32.808(2)(f), which is to promote economic development throughout  
22 Washington.

23 (3) It is the legislature's specific public policy objective to  
24 encourage and expand economic development by incentivizing investment  
25 in Washington's railroad infrastructure.

26 (4) The legislature intends to extend the expiration date of the  
27 tax preferences in this act if a review finds that freight rail  
28 system in the state has been maintained or improved. In conducting  
29 its review under this section, the joint legislative audit and review  
30 committee should consider, among other measures:

31 (a) The total miles capable of transporting 286,000-pound  
32 railcars;

33 (b) The number of miles of track rehabilitated to 90-pound rail  
34 or greater;

35 (c) The number of ties replaced;

36 (d) The amount of ballast replaced;

37 (e) The number of bridges returned from out of service or able to  
38 operate heavier loaded equipment;

39 (f) The number of switches installed;

1 (g) Any related safety benefits of addressing at-grade crossings;

2 (h) The number of rail cars from increased economic activity;

3 (i) Any improvement in federal railroad administration track  
4 classification designation up to and including class II track and the  
5 ability to operate at greater speeds; and

6 (j) The amount of steel or ties made obsolete pursuant to section  
7 2 of this act that are reused by a class II or class III railroad, as  
8 defined in section 5 of this act, within Washington.

9 (5) In order to obtain the data necessary to perform a review in  
10 subsection (4) of this section, the joint legislative audit and  
11 review committee may refer to any data collected by the state.

12 NEW SECTION. **Sec. 9.** This act takes effect July 1, 2024.

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