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**SENATE BILL 5494**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senators J. Wilson, Kuderer, King, Lovick, Dozier, L. Wilson, Liias, Schoesler, Warnick, and Holy

Read first time 01/20/23. Referred to Committee on Business, Financial Services, Gaming & Trade.

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) This chapter does not apply to the value of products or the  
4 gross receipts of sales derived by class I railroads for materials  
5 required for track maintenance.

6        (2) For the purposes of this section, the following definitions  
7 apply.

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

11        (b) "Materials required for track maintenance" has the same  
12 meaning as in section 5 of this act.

13        (3) This section expires June 30, 2034.

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

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

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

21        (a) For qualified short line railroad maintenance expenditures, a  
22 credit is allowed against the taxes due under this chapter in an  
23 amount equal to 50 percent of the qualified short line railroad  
24 maintenance expenditures. The amount of the credit may not exceed an  
25 amount equal to \$5,000 multiplied by the number of miles of railroad  
26 track owned or leased in the state by the eligible taxpayer as of the  
27 close of the taxable year.

28        (b) For qualified new rail development expenditures, a credit is  
29 allowed against the taxes due under this chapter in an amount equal  
30 to 100 percent of the new rail development expenditures of an  
31 eligible taxpayer. The amount of the credit for new rail development  
32 expenditures may not exceed \$2,000,000 for each new rail development  
33 project of an eligible taxpayer.

34        (c) For qualified railroad modernization and rehabilitation  
35 expenditures, a credit is allowed against the taxes due under this  
36 chapter in an amount equal to 100 percent of the qualified railroad  
37 modernization and rehabilitation expenditures by an eligible  
38 taxpayer.

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

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

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

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

25 (7) For the purposes of this section, the following definitions  
26 apply:

27 (a) "Eligible taxpayer" means:

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

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

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

37 (b) "Qualified new rail development expenditures" means  
38 expenditures for new rail development by an eligible taxpayer, which  
39 includes the construction of new track, industrial leads, switches,  
40 spurs, sidings, rail loading docks, and transloading structures

1 involved with providing rail services to new customer locations or  
2 existing customer expansions in the state by an eligible taxpayer.

3 (c) "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 (d) "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 (8) This section expires June 30, 2039.

18 NEW SECTION. **Sec. 4.** 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 (3) An owner or operator of a class I railroad, or owner of a  
37 company that recycles railroad material, may assign distribution of  
38 all or a portion of the allowed credit or an unused portion of the  
39 credit by written agreement to any taxpayer subject to the tax

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

11 (4) 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 (5) 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 (2) of this section.

17 (6) For purposes of this section, "eligible taxpayer" means:

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

24 (c) 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 (7) This section expires June 30, 2039.

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

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

32 (a) Owners and operators of class II or class III railroad  
33 operators;

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

36 (c) Any owner or lessee of a 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 (2) For the purposes of this section, the following definitions  
2 apply.

3 (a) "Class II or class III railroad" means railroads that are  
4 classified by the United States surface transportation board as a  
5 class II or class III railroad, as defined in 49 C.F.R. Sec.  
6 1201.1-1(a), as in effect January 1, 2023.

7 (b) "Materials required for track maintenance" means rail, ties,  
8 tie plates, joint bars, fasteners, switches, ballast, subgrade,  
9 roadbed, bridges, industrial leads, sidings, signs, safety barriers,  
10 crossing signals and gates, and track.

11 (3) This section expires June 30, 2034.

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

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

16 (a) Owners and operators of class II or class III railroad  
17 operators;

18 (b) Any railroad owned by a port, city, or county in the state of  
19 Washington; or

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

23 (2) For purposes of this section, the following definitions  
24 apply.

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

29 (b) "Materials required for track maintenance" has the same  
30 meaning as in section 5 of this act.

31 (3) This section expires June 30, 2034.

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

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

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

1 (a) For qualified short line railroad maintenance expenditures, a  
2 credit is allowed against the taxes due under this chapter in an  
3 amount equal to 50 percent of the qualified short line railroad  
4 maintenance expenditures. The amount of the credit may not exceed an  
5 amount equal to \$5,000 multiplied by the number of miles of railroad  
6 track owned or leased in the state by the eligible taxpayer as of the  
7 close of the taxable year.

8 (b) For qualified new rail development expenditures, a credit is  
9 allowed against the taxes due under this chapter in an amount equal  
10 to 100 percent of the new rail development expenditures of an  
11 eligible taxpayer. The amount of the credit for new rail development  
12 expenditures may not exceed \$2,000,000 for each new rail development  
13 project of an eligible taxpayer.

14 (c) For qualified railroad modernization and rehabilitation  
15 expenditures, a credit is allowed against the taxes due under this  
16 chapter in an amount equal to 100 percent of the qualified railroad  
17 modernization and rehabilitation expenditures by an eligible  
18 taxpayer.

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

24 (4) An eligible taxpayer may assign distribution of all or a  
25 portion of the allowed credit or an unused portion of the credit by  
26 written agreement to any taxpayer subject to the tax imposed under  
27 this section at any time during the year in which the credit is  
28 earned and the years following the year of the qualified  
29 expenditures. The taxpayer originally allowed the credit and the  
30 subsequent transferee shall jointly file a copy of the written credit  
31 transfer agreement with the department. The agreement shall include  
32 the names, addresses, and taxpayer identification numbers of the  
33 parties to the transfer, the amount of the credit being transferred,  
34 the year the credit was originally allowed to the transferring  
35 taxpayer, and the tax year or years for which the credit may be  
36 claimed.

37 (5) The department shall administer the credit. The department  
38 shall provide a simple credit application form that the department  
39 shall post on its website.

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

4 (7) For the purposes of this section, the following definitions  
5 apply:

6 (a) "Eligible taxpayer" means:

7 (i) Any railroad subject to the tax under this chapter that is  
8 classified by the United States surface transportation board as a  
9 class II or class III railroad, as defined in 49 C.F.R. Sec.  
10 1201.1-1(a), as in effect January 1, 2023;

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

13 (iii) Any owner or lessee of 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 (b) "Qualified new rail development expenditures" means  
17 expenditures for new rail development by an eligible taxpayer, which  
18 includes the construction of new track, industrial leads, switches,  
19 spurs, sidings, rail loading docks, and transloading structures  
20 involved with providing rail services to new customer locations or  
21 existing customer expansions in the state by an eligible taxpayer.

22 (c) "Qualified railroad modernization and rehabilitation  
23 expenditures" means expenditures by an eligible taxpayer to upgrade  
24 less than 90 pound rail and switches, 286,000 capacity rail upgrades  
25 to the mainline track, major rail and tie replacement projects, track  
26 capacity enhancements, bridge rehabilitation or bridge replacement  
27 projects, or other track-related projects determined to enhance or  
28 modernize the existing track infrastructure in the state by an  
29 eligible taxpayer.

30 (d) "Qualified short line railroad maintenance expenditures"  
31 means expenditures for railroad infrastructure including, but not  
32 limited to, rail, ties, tie plates, joint bars, fasteners, switches,  
33 ballast, subgrade, roadbed, bridges, industrial leads, sidings,  
34 signs, safety barriers, crossing signals and gates, and related track  
35 structures owned or leased by a class II or class III railroad.

36 (8) This section expires June 30, 2039.

37 NEW SECTION. **Sec. 8.** A new section is added to chapter 82.16  
38 RCW to read as follows:



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

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

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

15 (2) The credit is equal to the fair market value of the donated  
16 materials used for track maintenance, expansion, or modernization.

17 (3) An owner or operator of a class I railroad, or owner of a  
18 company that recycles railroad material, may assign distribution of  
19 all or a portion of the allowed credit or an unused portion of the  
20 credit by written agreement to any taxpayer subject to the tax  
21 imposed under this section at any time during the year in which the  
22 credit is earned and the years following the year of the qualified  
23 expenditures. The taxpayer originally allowed the credit and the  
24 subsequent transferee shall jointly file a copy of the written credit  
25 transfer agreement with the department. The agreement shall include  
26 the names, addresses, and taxpayer identification numbers of the  
27 parties to the transfer, the amount of the credit being transferred,  
28 the year the credit was originally allowed to the transferring  
29 taxpayer, and the tax year or years for which the credit may be  
30 claimed.

31 (4) The department shall administer the credit. The department  
32 shall provide a simple credit application form that the department  
33 shall post on its website.

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

37 (6) For purposes of this section, "eligible taxpayer" means:

38 (a) Any railroad subject to the tax under this chapter that is  
39 classified by the United States surface transportation board as a

1 class II or class III railroad, as defined in 49 C.F.R. Sec.  
2 1201.1-1(a), as in effect January 1, 2023;

3 (b) Any railroad owned by a port, city, or county in the state of  
4 Washington; or

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

8 (7) This section expires June 30, 2039.

9 NEW SECTION. **Sec. 9.** (1) This section is the tax preference  
10 performance statement for the tax preferences contained in  
11 chapter . . ., Laws of 2023 (this act). This performance statement is  
12 only intended to be used for subsequent evaluation of the tax  
13 preferences. It is not intended to create a private right of action  
14 by any party or be used to determine eligibility for preferential tax  
15 treatment.

16 (2) The legislature categorizes the tax preferences in this act  
17 as ones intended to accomplish a general purpose, as indicated in RCW  
18 82.32.808(2)(f), which is to promote economic development throughout  
19 Washington.

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

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

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

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

32 (c) The number of ties replaced;

33 (d) The amount of ballast replaced;

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

36 (f) The number of switches installed;

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

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

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

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

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

11 NEW SECTION. **Sec. 10.** This act takes effect January 1, 2024.

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