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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)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) "Eligible taxpayer" means:

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

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

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

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

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

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

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

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

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

(9) This section expires July 1, 2039.

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

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

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

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

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

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

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

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

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

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

(b) "Eligible taxpayer" means:

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

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

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

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

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

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

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

(9) This section expires July 1, 2039.

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) This section expires July 1, 2034.

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) This section expires July 1, 2034.

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

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

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

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

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

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

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

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

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

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

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

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

(b) "Eligible taxpayer" means:

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

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

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

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

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

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

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

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

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

(9) This section expires July 1, 2039.

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

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

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

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

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

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

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

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

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

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

(b) "Eligible taxpayer" means:

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

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

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

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

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

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

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

(9) This section expires July 1, 2039.

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

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

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

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

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

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

(c) The number of ties replaced;

(d) The amount of ballast replaced;

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

(f) The number of switches installed;

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

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

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

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

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

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

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