RÉSUMÉ DIGEST

HB 289 **2021 Regular Session** **McFarland**

Beginning Jan. 1, 2022, proposed law would have authorized an income tax and corporate franchise tax credit for eligible taxpayers.

Proposed law would have defined an eligible taxpayer as any railroad that owns, operates, or leases railroad track in La. and is classified by the United States Surface Transportation Board as a Class II or Class III railroad.

Proposed law would have provided that the total amount of credits granted in a calendar year could not exceed $2 million. Further would have provided that the total amount of credits available for each taxpayer each year would have been the lesser of 50% of the taxpayer's qualified expenditures or the total number of miles of track owned, operated, or leased within La. multiplied by $4,500.

Proposed law would have provided that if the amount of the tax credit exceeded the taxpayer's liability in the year the credit was earned, the excess credit would be permitted to be carried forward for a period not to exceed seven years from when the credit was earned.

Proposed law would have required a taxpayer claiming the credit to submit an application for the credit to the Department of Revenue (Dept.) identifying the amount the taxpayer expected to claim as a credit in a taxable year. Further would have provided that the application would provide for the taxpayer's amount of eligible expenditures and the number of miles of track owned, operated, or leased by the taxpayer.

Proposed law would have required the credit application to be submitted to the Dept. no later than 30 days prior to the end of the applicable taxable year.

Proposed law would have provided that the tax credit awarded to the taxpayer could not exceed the amount set forth in the credit application.

Proposed law would have provided that any tax credit not claimed would have been permitted to be transferred or sold within five years to an eligible transferee, beginning the year in which the credit was earned. Would have further provided that the transfer or sale would only take place if the credit was recorded in the tax registry pursuant to present law (R.S. 47:1524).

Proposed law would have required transferors and transferees to submit a written transfer notification to the Dept. within 10 business days after the transfer of the credits. Would have required the transfer notification to include the transferor's tax credit balance prior to transfer, the remaining balance after transfer, all federal and La. tax identification numbers for both transferor and transferee, the date of transfer, the amount of credit transferred, and any other information required by the Dept.

Proposed law would have required the transfer notification to be accompanied by a tax credit transfer processing fee of $200 payable to the Dept.

Proposed law would have provided for the disallowance of the tax credit until the parties were in full compliance with the provisions of proposed law.

Proposed law would have defined "eligible transferee" as any taxpayer subject to La. income tax or corporate franchise tax.

Proposed law would have defined "qualified railroad track maintenance expenditures" as the gross expenditures made on or after Jan. 1, 2022, by an eligible taxpayer for repairs, maintenance, reconstruction, or replacement of railroad track or for new construction of industrial leads, switches, spurs, sidings or for the extension of existing sidings if the expenditures were made on track located in La. and the track was owned, operated, or leased by the eligible taxpayer.

Proposed law would have provided that no credits would be granted pursuant to proposed law on or after Jan. 1, 2032.

Would have been applicable to taxable years occurring on or after Jan. 1, 2022.

(Proposed to add R.S. 47:6042)

VETO MESSAGE:

"Please be advised that I have vetoed House Bill 289 of the 2021 Regular Session. House Bill 289 creates a new state income and franchise tax credit for qualified railroad track repairs, maintenance, reconstruction, or replacement by Class II and Class III railroads, or short line railroads. According to the information provided by the proponents of the bill, the existing backlog for privately-owned short line rail infrastructure funding is estimated to be $260 million. In contrast, the existing backlog for public transportation infrastructure is $14.8 billion. With legislators seeking additional general fund revenues to dedicate to transportation infrastructure, the reluctance to move legislation increasing the gas tax, and the looming sunset of the additional 0.45% of state sales tax in June 2025, the creation of a new tax credit to fund privately owned infrastructure only serves to exacerbate the state's transportation funding dilemma.

Further, there is an existing federal tax credit for short line rail infrastructure investments. The Section 45G federal credit, effective since 2005, is currently a 50% credit for the same investment in track repairs, maintenance, reconstruction or replacement by short line railroads addressed in House Bill 289. In 2023, the Section 45G federal credit will decrease to a 40% credit. The provisions of House Bill 289 include no corresponding reduction in the proposed 50% state tax credit to 40% in 2023. A short line railroad would be eligible for a federal tax credit equal to 50% of the investment on repairs made to privately owned railroad track in Louisiana and a separate 50% state tax credit on that same investment. Even with a cap on the amount of tax credits allowed each year, the state can ill afford to spend limited general fund revenue on privately owned infrastructure when the outstanding public infrastructure needs exceed the amount of annual general fund revenue collections.

For these reasons, House Bill 289 is vetoed."