

# House Bill 4083

Sponsored by Representatives WITT, OLSON, MEEK; Representatives EVANS, LIVELY, NOBLE, WILSON, Senator GIROD (Presession filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Creates tax credit for short line railroad rehabilitation projects. Provides for certification and administration of tax credits by Department of Transportation. Limits total amount of potential tax credits available for short line railroad rehabilitation projects in biennium.

## A BILL FOR AN ACT

1  
2 Relating to short line railroads.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. Section 2 of this 2018 Act is added to and made a part of ORS chapter 315.**

5 **SECTION 2. (1) As used in this section:**

6 (a) **"Infrastructure" includes tracks, switches, sidings, roadbeds, railroad bridges and**  
7 **industrial leads owned by a short line railroad.**

8 (b) **"Short line railroad" means a class II or class III railroad as defined in 49 C.F.R. 1201.**

9 (c) **"Short line railroad rehabilitation project" means a project that involves the recon-**  
10 **struction or replacement of infrastructure.**

11 (2) **A credit against taxes imposed by ORS chapter 316 (or, if the taxpayer is a corpo-**  
12 **ration, under ORS chapter 317 or 318) is allowed to a taxpayer, based upon short line railroad**  
13 **rehabilitation project costs actually paid or incurred by the taxpayer.**

14 (3) **The credit allowed under this section shall be the lesser of:**

15 (a) **\$3,500 multiplied by the number of miles of short line railroad track the taxpayer**  
16 **owns or leases in this state on the last day of the tax year for which the credit is claimed;**  
17 **or**

18 (b) **Fifty percent of the short line railroad rehabilitation project costs.**

19 (4) **For the credit to be allowed under this section:**

20 (a) **The infrastructure must be located in Oregon; and**

21 (b) **The taxpayer must:**

22 (A) **Own or lease the infrastructure;**

23 (B) **Be a short line railroad;**

24 (C) **Complete construction of the short line railroad rehabilitation project before or dur-**  
25 **ing the tax year for which the credit is claimed; and**

26 (D) **Receive a final certification under section 7 of this 2018 Act before claiming the**  
27 **credit.**

28 (5) **The credit allowed under this section for any one tax year may not exceed the tax**  
29 **liability of the taxpayer.**

30 (6) **Any tax credit otherwise allowable under this section that is not used by the taxpayer**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 in a particular year may be carried forward and offset against the taxpayer's tax liability for  
 2 the next succeeding tax year. Any credit remaining unused in that next succeeding tax year  
 3 may be carried forward and used in the second succeeding tax year, and likewise, any credit  
 4 not used in that second succeeding tax year may be carried forward and used in the third  
 5 succeeding tax year, and likewise, any credit not used in that third succeeding tax year may  
 6 be carried forward and used in the fourth succeeding tax year, and likewise, any credit not  
 7 used in that fourth succeeding tax year may be carried forward and used in the fifth suc-  
 8 ceeding tax year but may not be carried forward for any tax year thereafter.

9 (7) The credit allowed under this section is not in lieu of any depreciation or amortization  
 10 deduction for the short line railroad rehabilitation project to which the taxpayer otherwise  
 11 may be entitled for purposes of ORS chapter 316, 317 or 318 for such year.

12 (8) The taxpayer's adjusted basis for determining gain or loss may not be decreased by  
 13 any tax credits allowed under this section.

14 **SECTION 3.** As used in sections 3 to 11 of this 2018 Act, the terms "infrastructure,"  
 15 "short line railroad" and "short line railroad rehabilitation project" have the meanings given  
 16 those terms in section 2 of this 2018 Act.

17 **SECTION 4.** (1) As used in this section:

18 (a) "Tax credit" means a tax credit allowed under section 2 of this 2018 Act.

19 (b) "Transferee" means a person to whom a taxpayer transfers a tax credit.

20 (c) "Transferor" means a taxpayer that earned a tax credit.

21 (2) A transferor may transfer a tax credit to a transferee if:

22 (a) The transferee is subject to tax under ORS chapter 316, 317 or 318; and

23 (b) The date of the transfer occurs on or before the last day of the fifth tax year fol-  
 24 lowing the tax year in which the tax credit could have first been claimed.

25 (3) To transfer the tax credit, the transferor and the transferee shall jointly file a notice  
 26 of tax credit transfer with the Department of Revenue within 30 days of the transfer of the  
 27 tax credit. The notice must be given on a form prescribed by the department and must con-  
 28 tain:

29 (a) The name and address of the transferor and of the transferee;

30 (b) The taxpayer identification number of the transferor and of the transferee;

31 (c) The dates on which the transferor received certifications for the tax credit;

32 (d) The amount of the tax credit that is certified, the amount that is being transferred  
 33 and the amount that is being retained by the transferor; and

34 (e) Any other information required by the department.

35 (4) The Department of Revenue, in consultation with the Department of Transportation,  
 36 may by rule establish procedures for the transfer of tax credits provided by this section.

37 **SECTION 5.** (1) Prior to construction of a short line railroad rehabilitation project, a  
 38 person may apply to the Department of Transportation for a preliminary certification of the  
 39 project under section 6 of this 2018 Act if:

40 (a) The project complies with the standards adopted by the department; and

41 (b) The applicant will be the owner, contract purchaser or lessee of the project at the  
 42 time of acquisition or performance of the project.

43 (2) An application for preliminary certification must be made in writing on a form pre-  
 44 pared by the department and must contain:

45 (a) A statement that the applicant plans to undertake a project that rehabilitates

1 infrastructure.

2 (b) A detailed description of the project.

3 (c) A description of the anticipated effect of the project on annual ground transportation  
4 of goods by motor carrier as defined in ORS 825.005.

5 (d) The anticipated start date and completion date of the project.

6 (e) The anticipated total project cost.

7 (f) Information on the number and types of jobs that the project will create during the  
8 duration of the project and after the completion of the project.

9 (g) Information demonstrating that the project will comply with applicable state and local  
10 laws and regulations and obtain required licenses and permits.

11 (h) Any other information the department considers necessary to determine whether the  
12 project is in accordance with the provisions of sections 3 to 11 of this 2018 Act and any ap-  
13 plicable rules or standards adopted by the department.

14 (3) An application for preliminary certification must be accompanied by any fee adopted  
15 under section 8 of this 2018 Act. The department may refund all or a portion of the fee if  
16 the application for certification is rejected.

17 (4) The department may allow an applicant to file an application for preliminary certi-  
18 fication after the start of the construction of the project if the department finds that:

19 (a) Special circumstances make filing before the start of construction unreasonable or  
20 impracticable; and

21 (b) The project would otherwise qualify for certification under sections 3 to 11 of this 2018  
22 Act.

23 (5) A preliminary certification remains valid for three calendar years after the date on  
24 which the preliminary certification is issued by the department.

25 **SECTION 6.** (1) The Department of Transportation may require an applicant for certi-  
26 fication of a short line railroad rehabilitation project to submit plans, specifications and  
27 contract terms and, after examination of the plans, specifications and terms, may request  
28 corrections and revisions.

29 (2) If the department determines that the project is technically feasible, is likely to pro-  
30 ceed in accordance with the statements made by the applicant and complies with the pro-  
31 visions of sections 3 to 11 of this 2018 Act and any applicable rules or standards adopted by  
32 the department, the department may issue a preliminary certificate approving the con-  
33 struction of the project. The certificate must indicate the potential amount of a tax credit  
34 allowable under section 2 of this 2018 Act and must list any conditions for claiming the  
35 credit.

36 (3) In accordance with ORS chapter 183, the department may issue an order altering,  
37 conditioning, suspending or denying preliminary certification if the department determines  
38 that:

39 (a) The project does not comply with the provisions of sections 3 to 11 of this 2018 Act  
40 and applicable rules and standards; or

41 (b) The applicant has previously received preliminary or final certification for the project.

42 **SECTION 7.** (1) The Department of Transportation may not issue a final certification for  
43 a short line railroad rehabilitation project under this section unless:

44 (a) The project was constructed under a preliminary certificate of approval issued under  
45 section 6 of this 2018 Act;

1 (b) The applicant has provided the information required by section 5 (2) of this 2018 Act  
 2 and demonstrates the ability to meet any condition that may be imposed under subsection  
 3 (4) of this section; and

4 (c) The project was constructed in accordance with the applicable provisions of sections  
 5 3 to 11 of this 2018 Act and any applicable rules or standards adopted by the department.

6 (2) A person may apply to the department for final certification of a project:

7 (a) If the person received preliminary certification for the project under section 5 of this  
 8 2018 Act; and

9 (b) After completion of the project.

10 (3) An application for final certification must be made in writing on a form prepared by  
 11 the department and must contain:

12 (a) A statement that the conditions of the preliminary certification have been met;

13 (b) The actual cost of the project attested to by a certified public accountant who is not  
 14 an employee of the applicant or, if the actual cost of the project is less than \$50,000, copies  
 15 of receipts for acquisition and performance of the project;

16 (c) The amount of the tax credit allowed under section 2 of this 2018 Act that is to be  
 17 claimed;

18 (d) The number and types of jobs that the project created, from the date of issuance of  
 19 the preliminary certification under section 5 of this 2018 Act through the date of completion  
 20 of the project;

21 (e) Documentation of compliance with applicable state and local laws and regulations and  
 22 with licensing and permitting requirements as defined by the department by rule; and

23 (f) Any other information determined by the department to be necessary prior to issuing  
 24 a final certificate, including inspection of the project by the department.

25 (4) After approving the application under this section, the department may issue the  
 26 certificate together with any conditions that the department determines are appropriate to  
 27 promote the purposes of sections 2 and 3 to 11 of this 2018 Act. The final certification must  
 28 indicate the amount of projected highway maintenance and preservation expense savings at-  
 29 tributable to the project and the certified actual cost of the project. However, the depart-  
 30 ment may not certify an amount for tax credit purposes that is more than the amount of  
 31 credit approved in the preliminary certificate issued for the project.

32 (5) If the department rejects an application for final certification, or certifies a lesser  
 33 amount of credit than was claimed in the application, the department shall send to the ap-  
 34 plicant written notice of the action, together with a statement of the findings and reasons  
 35 for the action, by certified mail before the 60th day after the filing of the application. Failure  
 36 of the department to act on an application constitutes rejection of the application.

37 (6) The department may establish by rule timelines and intermediate deadlines for sub-  
 38 mission of application materials.

39 **SECTION 8.** By rule and after hearing, the Department of Transportation may adopt a  
 40 schedule of reasonable fees that the department may require of applicants for preliminary  
 41 or final certification of a short line railroad rehabilitation project under sections 3 to 11 of  
 42 this 2018 Act. Before the adoption or revision of the fees, the department shall estimate the  
 43 total cost of the short line railroad rehabilitation certification program to the department.  
 44 The fees paid to the department must be used to recover the estimated cost of administering  
 45 and enforcing the provisions of sections 3 to 11 of this 2018 Act, including receiving, filing,

1 **investigating, granting and rejecting applications for certification and ensuring compliance**  
 2 **with sections 3 to 11 of this 2018 Act and must be calculated so as not to exceed collectively**  
 3 **the total cost estimated by the department. Any excess fees collected must be held by the**  
 4 **department and must be used by the department to reduce any future fee increases. Fees**  
 5 **may vary according to the size and complexity of a project and are not considered part of**  
 6 **the cost of a project seeking certification.**

7 **SECTION 9. A certificate issued under section 7 of this 2018 Act is required for purposes**  
 8 **of obtaining tax credits under section 2 of this 2018 Act. Such certification shall be granted**  
 9 **for a period not to exceed five years. The five-year period shall begin with the tax year of**  
 10 **the applicant during which the completed application for final certification of the short line**  
 11 **railroad rehabilitation project under section 7 of this 2018 Act is received by the Department**  
 12 **of Transportation.**

13 **SECTION 10. The total amount of potential tax credits for all short line railroad reha-**  
 14 **ilitation projects in this state may not, at the time of preliminary certification under sec-**  
 15 **tion 6 of this 2018 Act, exceed \$\_\_ for any biennium.**

16 **SECTION 11. The Department of Transportation shall by rule establish policies and pro-**  
 17 **cedures for the administration and enforcement of the provisions of sections 2 and 3 to 11**  
 18 **of this 2018 Act, including standards for what constitutes a short line railroad rehabilitation**  
 19 **project.**

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