

**A-Engrossed
House Bill 2978**

Ordered by the House June 6
Including House Amendments dated June 6

Sponsored by Representative MCKEOWN, Senator ROBLAN; Representatives FINDLEY, LEWIS, MEEK, NOBLE, RESCHKE

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.

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

Applies to tax years beginning on or after January 1, 2020, and before January 1, 2026.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to short line railroads; creating new provisions; amending ORS 314.752 and 318.031; and
3 prescribing an effective date.

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

5 **SECTION 1. Sections 2 to 9 of this 2019 Act are added to and made a part of ORS chapter**
6 **315.**

7 **SECTION 2. As used in sections 2 to 9 of this 2019 Act:**

8 (1) **"Infrastructure" includes tracks, switches, sidings, roadbeds, railroad bridges and in-**
9 **dustrial leads owned by a short line railroad.**

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

11 (3) **"Short line railroad rehabilitation project" means a project that involves the mainte-**
12 **nance, reconstruction or replacement of infrastructure.**

13 (4) **"Short line railroad rehabilitation project costs" means costs that are directly related**
14 **to the work necessary to maintain, reconstruct or replace infrastructure. "Short line rail-**
15 **road rehabilitation project costs" does not include costs that are funded by or used to qualify**
16 **for any state or federal grants, or costs that are used to claim a federal tax credit.**

17 (5) **"Tier I short line railroad" means a short line railroad owned or leased by a person**
18 **for whom the total length of short line railroad track owned or leased in Oregon is equal to**
19 **or greater than 200 miles. The total amount of short line railroad track in Oregon calculated**
20 **under this subsection includes any short line railroad track owned or leased by the person,**
21 **or if the person is a corporation, by the person's parent corporation or subsidiaries, regard-**
22 **less of whether the track is owned or leased by one or more railroads.**

23 (6) **"Tier II short line railroad" means a short line railroad that is not a tier I short line**
24 **railroad or is a short line railroad owned or leased by the state, a city, a county, a port or**
25 **any other public or municipal corporation.**

26 **SECTION 3. (1) A credit against taxes imposed by ORS chapter 316 (or, if 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 is a corporation, under ORS chapter 317 or 318) is allowed to a taxpayer, based upon short
2 line railroad rehabilitation project costs actually paid or incurred by the taxpayer during the
3 tax year for which the credit is claimed.

4 (2) The credit allowed under this section shall be the least of:

5 (a) In the case of a tier I short line railroad, \$1,000 multiplied by the number of miles
6 of short line railroad track the taxpayer owns or leases in this state on the day the short line
7 railroad rehabilitation project is completed;

8 (b) In the case of a tier II short line railroad, \$3,500 multiplied by the number of miles
9 of short line railroad track the taxpayer owns or leases in this state on the day the short line
10 railroad rehabilitation project is completed; or

11 (c) Fifty percent of the short line railroad rehabilitation project costs paid or incurred
12 by the taxpayer during the tax year in which the credit is claimed.

13 (3) For the credit to be allowed under this section:

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

15 (b) The taxpayer must:

16 (A) Own or lease the infrastructure;

17 (B) Be a short line railroad; and

18 (C) Receive a final written certification from the Department of Transportation before
19 claiming the credit.

20 (4) The amount of the credit claimed under this section for any one tax year may not
21 exceed the tax liability of the taxpayer.

22 (5) Any tax credit otherwise allowable under this section that is not used by the taxpayer
23 in a particular tax year may be carried forward and offset against the taxpayer's tax liability
24 for the next succeeding tax year. Any credit remaining unused in that next succeeding tax
25 year may be carried forward and used in the second succeeding tax year, and likewise, any
26 credit not used in that second succeeding tax year may be carried forward and used in the
27 third succeeding tax year, and likewise, any credit not used in that third succeeding tax year
28 may be carried forward and used in the fourth succeeding tax year, and likewise, any credit
29 not used in that fourth succeeding tax year may be carried forward and used in the fifth
30 succeeding tax year but may not be carried forward for any tax year thereafter.

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

34 (7) The taxpayer's adjusted basis for determining gain or loss may not be decreased by
35 any tax credit allowed under this section.

36 (8)(a) The Department of Revenue may by rule require that the Department of Trans-
37 portation provide information about a certification issued under section 5 of this 2019 Act,
38 including the name and taxpayer identification number of the taxpayer or other person re-
39 ceiving certification, the date the certification was issued in its final form, the approved
40 amount of credit and the first tax year for which the credit may be claimed.

41 (b) A taxpayer that is a pass-through entity that has received certification under section
42 5 of this 2019 Act shall provide to the Department of Revenue, within two months after the
43 close of the tax year in which the certification was issued, the name, taxpayer identification
44 number and any other information required by the department of each owner receiving a
45 distributive share of the credit, in a manner prescribed by the department.

1 (9) The Department of Revenue shall prescribe by rule the manner and the timing of
2 submission of the information described in subsection (8) of this section to the department.

3 (10) The credit shall be claimed on a form prescribed by the Department of Revenue that
4 contains the information required by the department.

5 (11) In the case of a credit allowed under this section:

6 (a) A nonresident shall be allowed the credit under this section in the proportion provided
7 in ORS 316.117.

8 (b) If a change in the status of a taxpayer from resident to nonresident or from nonres-
9 ident to resident occurs, the credit allowed by this section shall be determined in a manner
10 consistent with ORS 316.117.

11 (c) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or
12 if the Department of Revenue terminates a taxpayer's taxable year under ORS 314.440, the
13 credit allowed under this section shall be prorated or computed in a manner consistent with
14 ORS 314.085.

15 **SECTION 4.** (1) Prior to construction of a short line railroad rehabilitation project, a
16 taxpayer may apply to the Department of Transportation for preliminary certification of the
17 project in the manner prescribed by rules adopted under this section, which must include:

18 (a) Timelines and deadlines for submission of application materials;

19 (b) A description of the information required by the department to determine that the
20 taxpayer qualifies for the credit allowed under section 3 of this 2019 Act;

21 (c) Criteria for determining the amount of the tax credit allowed under section 3 of this
22 2019 Act, including standards for what constitutes completion of a short line railroad reha-
23 bilitation project;

24 (d) The process by which an applicant will be notified of an incomplete application and
25 the time allowed for the applicant to provide the missing information; and

26 (e) The month and date by which the department must notify an applicant of the pre-
27 liminary certification decision and the potential amount of the tax credit for which the ap-
28 plicant has received preliminary certification.

29 (2) If the total amount of potential tax credits allowed under section 3 of this 2019 Act
30 for all taxpayers that have applied for preliminary certification exceeds the limit in section
31 8 of this 2019 Act, the department shall allocate the tax credits allowed under section 3 of
32 this 2019 Act as follows:

33 (a) By giving first priority to all tier II short line railroads that own or lease less than
34 75 miles of short line railroad track in this state; and

35 (b) By giving second priority to all tier II short line railroads not described in paragraph
36 (a) of this subsection.

37 (3) If the department must allocate tax credits to a group of taxpayers in an amount that
38 is less than the amount the taxpayers would otherwise receive under section 3 of this 2019
39 Act, the department shall divide the available tax credits among the group proportionally,
40 based on the amount each taxpayer would have otherwise received under section 3 of this
41 2019 Act.

42 **SECTION 5.** (1) A taxpayer may apply to the Department of Transportation for final
43 certification of a short line railroad rehabilitation project if:

44 (a) The taxpayer received preliminary certification for the project under section 4 of this
45 2019 Act; and

1 (b) The project is completed.

2 (2) After approving the application, the department shall certify the project, including the
3 amount of the tax credit for which the taxpayer has received final certification. The depart-
4 ment may not certify an amount that is more than the amount approved in the preliminary
5 certification for the project.

6 (3) The department may establish by rule a process for accepting applications and issuing
7 final certifications under this section.

8 **SECTION 6.** (1) The Department of Transportation may charge and collect a fee from
9 taxpayers for preliminary or final certification of short line rehabilitation projects under
10 sections 4 and 5 of this 2019 Act. The fee may not exceed the cost to the department of is-
11 suing certifications.

12 (2) All fees collected under this section shall be deposited in the State Treasury to the
13 credit of the Railroad Fund established under ORS 824.014. Moneys deposited under this
14 section are continuously appropriated to the Department of Transportation for the purpose
15 of administering and enforcing the provisions of sections 2 to 9 of this 2019 Act.

16 **SECTION 7.** (1) A person that has obtained a tax credit under section 3 of this 2019 Act
17 may transfer the credit to a taxpayer under ORS chapter 316, 317 or 318. A transfer that
18 occurs on or after January 1, 2020, is conditioned upon compliance with this section and ORS
19 315.052 and 315.053.

20 (2) The Department of Revenue may require that the person that has earned the credit
21 and the taxpayer that intends to claim the credit jointly file a notice of tax credit transfer
22 with the department on or before the earliest of the following dates:

- 23 (a) A date 30 days after the transfer of the credit;
- 24 (b) The date on which the transferee files a return; or
- 25 (c) The due date, including extensions, of the transferee's return.

26 (3) The notice shall be given on a form prescribed by the department that contains:

- 27 (a) The name and address of the transferor and of the transferee;
- 28 (b) The taxpayer identification number of the transferor and of the transferee;
- 29 (c) The dates on which the person earning the credit received certifications for the
30 credit;

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

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

34 (4)(a) A transferor may separately transfer the entirety of that portion corresponding to
35 the tax year to one or more transferees, subject to subsection (5) of this section.

36 (b) Any amount of credit that would be allowed due only to a carryforward provision may
37 not be transferred.

38 (5) Any transfer of a tax credit or a portion of a tax credit must be completed no later
39 than the earliest of the following dates in relation to the tax return on which the credit is
40 claimed:

- 41 (a) The original due date, including extensions, of the transferor's return;
- 42 (b) The date on which the transferor's return is actually filed;
- 43 (c) The original due date, including extensions, of the transferee's return; or
- 44 (d) The date on which the transferee's return is actually filed.
- 45 (6) Notwithstanding subsection (5) of this section, if the transferor is a tax-exempt entity,

1 the transfer must be completed on or before a date one year after the close of the tax year
2 for which the credit was certified. As used in this subsection, “tax-exempt entity” means a
3 government agency or an organization that is recognized as exempt under section 501(c)(3)
4 of the Internal Revenue Code.

5 (7) The transferee shall claim the credit in accordance with the credit provisions for the
6 tax years in which the credit is allowed.

7 (8) The department by rule may establish policies and procedures for the implementation
8 of this section.

9 **SECTION 8.** The total amount of potential tax credits allowed under section 3 of this 2019
10 Act at the time of preliminary certification under section 4 of this 2019 Act may not exceed
11 \$4 million for any biennium.

12 **SECTION 9.** (1) Under the procedures for a contested case under ORS chapter 183, the
13 Director of Transportation may order the suspension, revocation or forfeiture of a tax credit
14 certification under section 4 or 5 of this 2019 Act, or of a portion thereof, if the director finds
15 that:

16 (a) The certification was obtained by fraud or misrepresentation;

17 (b) The certification was obtained by mistake or miscalculation; or

18 (c) The taxpayer otherwise violates or has violated a condition or requirement for eligi-
19 bility for the tax credit.

20 (2) As soon as an order of revocation under this section becomes final, the director shall
21 notify the Department of Revenue and the person that received the tax credit certification
22 of the order of revocation. Upon notification, the Department of Revenue immediately shall
23 proceed to collect:

24 (a) If no portion of a credit has been transferred, those taxes not paid by the holder of
25 the certification as a result of the tax credits provided to the holder under the revoked ap-
26 proval, from the holder or a successor in interest to the business interests of the holder.
27 All tax credits provided to the holder and attributable to the fraudulently or mistakenly ob-
28 tained certification or portion of the certification shall be forfeited.

29 (b) If all of a credit has been transferred, an amount equal to the amount of the tax
30 credits allowable to the transferee under the revoked certification, from the transferor.

31 (c) If a portion of a tax credit has been transferred, those taxes not paid by the
32 transferor as a result of the tax credits provided to the transferor pursuant to the revoked
33 certification, from the transferor or a successor in interest to the business interests of the
34 transferor, and an amount equal to the amount of the tax credits allowable to the transferee
35 pursuant to the revoked certification, from the transferor.

36 (3)(a) The Department of Revenue shall have the benefit of all laws of the state pertain-
37 ing to the collection of income and excise taxes and may proceed to collect the amounts de-
38 scribed in subsection (2) of this section from the person that obtained certification or a
39 successor in interest to the business interests of that person. An assessment of tax is not
40 necessary and the collection of taxes described in this subsection is not precluded by any
41 statute of limitations.

42 (b) For purposes of this subsection, a lender, bankruptcy trustee or other person that
43 acquires an interest through bankruptcy or through foreclosure of a security interest is not
44 considered to be a successor in interest to the business interests of the person that obtained
45 certification.

1 **(4) If the certification is ordered revoked pursuant to this section, the holder of the**
2 **certification shall be denied any further relief in connection with the credit from and after**
3 **the date that the order of revocation becomes final.**

4 **(5) Notwithstanding subsections (1) to (4) of this section, a certification or portion of a**
5 **certification held by a transferee may not be considered revoked for purposes of the**
6 **transferee, the tax credit allowable to the transferee may not be reduced and a transferee**
7 **is not liable under this section.**

8 **(6) Interest under this section shall accrue at the rate established in ORS 305.220 begin-**
9 **ning the day after the due date of the return on which the credit may first be claimed.**

10 **(7) The Department of Revenue may collect amounts owed under this section by a part-**
11 **nership from the partnership.**

12 **SECTION 10.** ORS 314.752, as amended by section 7, chapter 108, Oregon Laws 2018, is
13 amended to read:

14 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a
15 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
16 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
17 allowable to the shareholders of the S corporation.

18 (2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.734, on
19 income of the shareholder of an S corporation, there shall be taken into account the shareholder's
20 pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but
21 for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), re-
22 capture or recovery shall be passed through to shareholders in pro rata shares as determined in the
23 manner prescribed under section 1377(a) of the Internal Revenue Code.

24 (3) The character of any item included in a shareholder's pro rata share under subsection (2)
25 of this section shall be determined as if such item were realized directly from the source from which
26 realized by the corporation, or incurred in the same manner as incurred by the corporation.

27 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
28 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
29 316.117, then that provision shall apply to the nonresident shareholder.

30 (5) As used in this section, "business tax credit" means the following credits: ORS 315.104
31 (forestation and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.141
32 (biomass production for biofuel), ORS 315.156 (crop gleanings), ORS 315.164 and 315.169 (agriculture
33 workforce housing), ORS 315.176 (bovine manure), ORS 315.204 (dependent care assistance), ORS
34 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.237 (employee
35 and dependent scholarships), ORS 315.271 (individual development accounts), ORS 315.304 (pollution
36 control facility), ORS 315.326 (renewable energy development contributions), ORS 315.331 (energy
37 conservation projects), ORS 315.336 (transportation projects), ORS 315.341 (renewable energy re-
38 source equipment manufacturing facilities), ORS 315.354 and 469B.151 (energy conservation facili-
39 ties), ORS 315.506 (tribal taxes on reservation enterprise zones and reservation partnership zones),
40 ORS 315.507 (electronic commerce), ORS 315.514 (film production development contributions), ORS
41 315.521 (university venture development funds), ORS 315.523 (employee training programs), ORS
42 315.533 (low income community jobs initiative), ORS 315.675 (Trust for Cultural Development Ac-
43 count contributions), ORS 317.097 (loans for affordable housing), ORS 317.124 (long term enterprise
44 zone facilities), ORS 317.147 (loans for agriculture workforce housing), ORS 317.152 (qualified re-
45 search expenses) and ORS 317.154 (alternative qualified research expenses) and section 9, chapter

1 774, Oregon Laws 2013 (alternative fuel vehicle contributions), and section 2, chapter 108, Oregon
2 Laws 2018 (Opportunity Grant Fund contributions), **and section 3 of this 2019 Act (short line**
3 **railroads).**

4 **SECTION 11.** ORS 318.031, as amended by section 8, chapter 108, Oregon Laws 2018, is
5 amended to read:

6 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter
7 317 shall be administered as uniformly as possible (allowance being made for the difference in im-
8 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-
9 corporated into and made a part of this chapter: ORS 315.104, 315.141, 315.156, 315.176, 315.204,
10 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.506, 315.507, 315.523 and 315.533 and section
11 2, chapter 108, Oregon Laws 2018, **and section 3 of this 2019 Act** (all only to the extent applicable
12 to a corporation) and ORS chapter 317.

13 **SECTION 12.** (1) **Sections 2 to 9 of this 2019 Act apply to tax years beginning on or after**
14 **January 1, 2020, and before January 1, 2026.**

15 (2) **Except as provided in section 3 (5) of this 2019 Act, a credit may not be claimed under**
16 **section 3 of this 2019 Act for tax years beginning on or after January 1, 2026.**

17 **SECTION 13.** **This 2019 Act takes effect on the 91st day after the date on which the 2019**
18 **regular session of the Eightieth Legislative Assembly adjourns sine die.**

19