

**NMDOT BILL ANALYSIS  
2023 REGULAR SESSION**

*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Check all that apply:

Original      X   Amendment    \_\_\_\_\_  
Correction    \_\_\_\_\_ Substitute    \_\_\_\_\_

Date February 1, 2024

Bill No. SB 28

Sponsor Crystal R. Diamond, Rod Montoya  
and Siah Correa Hemphill

Agency Name and  
Code Number: NMDOT - 805 – Transit and Rail

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Short Title Rail Infrastructure Tax Credits

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**SECTION II: FISCAL IMPACT****REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY24	FY25	FY26		
\$0 to NMDOT	\$0 to NMDOT	\$0 to NMDOT		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to: None identified.

**SECTION III: NARRATIVE****BILL SUMMARY**

Senate Bill 28 (SB 28) grants to owners of Class 2 or Class 3 railroads both personal and corporate income tax credits equal to fifty percent (50%) of the eligible railroad's qualified expenditures up to a maximum credit of \$5,000 per mile of track owned or leased by the railroad in New Mexico, or \$1,000,000 for each new rail served customer project of the railroad. A railroad's cumulative tax credit for serving new rail customers is capped at \$5,000,000 per year. These tax credits must be earned in taxable years prior to January 1, 2035.

SB 28 requires taxpayers seeking a tax credit pursuant to the bill to apply for a certificate of eligibility from the New Mexico Department of Transportation (NMDOT) after the completion of the short line railroad track project in New Mexico. After NMDOT determines a taxpayer meets the requirements for claiming the tax credit, NMDOT may issue to that taxpayer a certificate of eligibility that includes the amount of tax credit allowed pursuant to this bill. NMDOT will also publish to its website the number of certificates of eligibility issued each calendar year and transmit the certificate information to New Mexico Taxation and Revenue Department (TRD) in a secure and regular manner as agreed to by NMDOT and TRD.

The certificate of eligibility may be submitted with the taxpayer's return or sold, exchanged, or otherwise transferred to another taxpayer. TRD must be notified within 10 days of any sale, exchange, or other transfer of the certificate of eligibility. Applications for a tax credit must be submitted to Taxation and Revenue Department (TRD), along with the certificate of eligibility, within twelve months following the calendar year in which the qualified expenditures are incurred. SB 28 mandates TRD to compile an annual report of these credits for presentation to the Revenue Stabilization & Tax Policy Committee (RSTP) and Legislative Finance Committee (LFC) with an analysis of the cost of the credits and whether the tax credits are fulfilling the intended purpose.

Finally, SB 28 amends section 7-1-8.8 NMSA 1978 to allow TRD to share tax return information concerning the rail infrastructure income tax credits and rail infrastructure corporate income tax with the NMDOT for the purpose of the NMDOT determining eligibility for a certificate.

## **FISCAL IMPLICATIONS**

None identified.

## **SIGNIFICANT ISSUES**

SB 28 would require NMDOT to establish procedures for and subsequently administer a program to both certify eligibility of specific projects for the tax credit and determine the amount of tax credit allowed for each project. Neither of these responsibilities is something that NMDOT currently undertakes, nor are they within the expertise of the NMDOT.

Additionally, SB 28 excludes expenditures used to qualify for a federal tax credit as being eligible for a New Mexico tax credit. 26 U.S. § 45G provides for a railroad track maintenance tax credit, which allows Class 2 and Class 3 railroads to claim a tax credit for "qualified railroad track maintenance expenditures" that has essentially the same definition as that used for "qualified reconstruction or replacement expenditures" in SB 28. It is not clear whether the intention is for NMDOT to determine whether the railroad has requested a federal tax credit as part of its process to issue a certificate of eligibility, or whether TRD would make this determination after the railroad submits its application for a tax credit. If this is a NMDOT responsibility, it would require NMDOT to have access to each railroad's documents requesting the federal tax credit, which may require receiving and reviewing the railroad's federal tax return. If this is a TRD responsibility, undertaken only after the tax credit is applied for, TRD would need access to the railroad's documents requesting a federal tax credit, and there is the potential that TRD's review may determine a certificate of eligibility that has been sold, exchanged, or otherwise transferred to another taxpayer may not be eligible for a tax credit to the taxpayer that submits it.

## **PERFORMANCE IMPLICATIONS**

SB 28 would require NMDOT to either hire new staff or train existing staff to administer a program that both determines the eligibility of projects for receiving a tax credit and the amount of credit allowed for the project.

## **ADMINISTRATIVE IMPLICATIONS**

SB 28 would require NMDOT to either hire new staff or train existing staff to administer a program that both determines the eligibility of projects for receiving a tax credit and the amount of credit allowed for the project.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Additionally, SB 28 creates a state tax credit that essentially replicates the federal tax credit found in 26 U.S. § 45G.

## **TECHNICAL ISSUES**

None identified.

## **OTHER SUBSTANTIVE ISSUES**

None identified.

## **ALTERNATIVES**

None identified.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Class 2 and Class 3 railroads in New Mexico would not be able to claim state tax credits for reconstruction or replacement expenditures, or for new infrastructure expenditures.

## **AMENDMENTS**

None proposed.