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F I S C A L   I M P A C T   R E P O R T

BILL NUMBER: Senate Bill 93

SHORT TITLE: Rail Infrastructure Tax Credit

SPONSOR: Brantley/Hamblen/Ramos

LAST UPDATE: 2/6/2026 **ORIGINAL DATE:** 2/5/2026 **ANALYST:** Francis

REVENUE*
(dollars in thousands)

Type	FY26	FY27	FY28	FY29	FY30	Recurring or Nonrecurring	Fund Affected
CIT only		($2,400.0)	($2,400.0)	($2,400.0)	($2,400.0)	Recurring	General Fund

Parentheses indicate revenue decreases.
*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
TRD		$62.2		**$62.2**	Nonrecurring	General fund
Total		$62.2		**$62.2**	Nonrecurring	General fund

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Duplicates House Bill 298

Sources of Information

LFC Files

Agency or Agencies That Provided Analysis
Taxation and Revenue Department

Agency or Agencies That Were Asked for Analysis but did not Respond
Department of Transportation
Department of Finance and Administration

This analysis uses input from Department of Transportation for Senate Bill 129 of the 2025 regular session and will be updated if new analysis is received.

SUMMARY

Synopsis of Senate Bill 93

Senate Bill 93 (SB 93) proposes a rail infrastructure corporate income tax credit for class 2 and 3 railroads[1] or the owner/lessee of rail siding, yard track, industrial spur/track located in NM that construct or reconstruct railroad systems. The credit is 50 percent of a taxpayer's qualified reconstruction or replacement costs or qualified new rail infrastructure costs, up to a maximum credit of $1 million for each qualified rail infrastructure project. For reconstruction or replacement expenditures, the amount of credit shall not exceed $5,000 multiplied by the number of miles of railroad track owned or leased in the state at the end of the taxable year.

Qualified new rail infrastructure is defined as gross expenditures for new rail infrastructure, including new construction of industrial leads, switches, sidings, rail loading docks, and transloading structures, and excludes expenditures necessary to generate a federal credit or those funded by state or federal grants.

The certification for these credits is done by the Department of Transportation (NMDOT), which may certify a maximum aggregate of $6 million per calendar year. The credit is not refundable but the amount that exceeds the tax liability in the taxable year may be carried forward for five consecutive years, and the credit may be sold, exchanged, or transferred to another taxpayer.

SB93 states the purpose of the credit is to incentivize incremental investments and improvements to rail infrastructure that would not otherwise occur that will "increase freight capacity, reduce highway externalities, and enhance the competitiveness of NM business." SB93 includes a requirement for NMDOT to report on the effectiveness of the credit.

The bill also amends Section 7-1-8.8 NMSA 1978 to allow for information sharing between the Taxation and Revenue Department (TRD) and NMDOT for the purpose of this credit.

The credits are applicable to tax years beginning January 1, 2026, and prior to January 1, 2036.

FISCAL IMPLICATIONS

There are five Class 3 railroads and no Class 2. These railroads, according to NMDOT *Draft 2025 State Rail Plan*, own 167.3 miles of rail in New Mexico (compared to 1,700 owned by the two Class 1 railroads). In addition to expenditures by Class 3 railroads, the credit would be available to owners and lessees of track that might connect to a main rail line. As such, it is difficult to assess these owners and lessees and they may be more likely to take advantage of the credit than the existing Class 3 railroads. The uncertainty and the high cost of investing in new or replacement rail infrastructure could reasonably exhaust the $6 million allocation.

TRD estimates SB93 will reduce corporate tax revenue by between $1.4 million and $2.4 million, assuming only one or two of the projects currently planned will claim the credit annually. Legislative Finance Committee (LFC) staff adopts the higher estimate, warning that the credit may be available to more projects than the large ones highlighted in the NMDOT state rail plan.

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[1] Railroads are placed in three classes based on revenue. Class 1 railroads are the highest earners and include BNSF and UP with revenue greater than $1.05 billion. Class 2 is for railroads with revenue between $47.3 million and $1.05 billion, and Class 3 railroads have annual revenue less than $47.3 million (2024). (Source: Railroad Definitions - ASLRRA).

SIGNIFICANT ISSUES

This bill creates or expands a tax expenditure. LFC has serious concerns about the substantial risk to state revenues from tax expenditures and the increase in revenue volatility from erosion of the revenue base. The committee recommends the bill adhere to the LFC tax expenditure policy principles for vetting, targeting, and reporting or action be postponed until the implications can be more fully studied.

TRD suggests the tax credit might not be large enough to act as an incentive because railroad construction is very expensive:

> While tax incentives can provide support for industries and encourage specific social and economic behaviors, the high cost of railroad projects may not be large enough for this tax credit to serve as a significant source of incentive. … Rail companies have historically been responsible for maintaining their own business interests. These companies are actively expanding their operations to generate more profit, and it is likely that they would continue to do so even without the presence of this tax credit. The credit may create an unnecessary distortion to economic activity in New Mexico by incentivizing economic activity that would occur even in the absence of the incentive and by providing economic support to a mature and profitable business sector.

TRD noted the following about rail companies:

> Rail companies have historically been responsible for maintaining their own business interests. These companies are actively expanding their operations to generate more profit, and it is likely that they will continue to do so even without this tax credit. The credit may create an unnecessary distortion to economic activity in New Mexico by incentivizing economic activity that would occur even in the absence of the incentive and by providing economic support to a mature and profitable business sector.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is met because NMDOT is required in the bill to report to the Legislature the effectiveness and cost of the credit and whether it is performing its purpose including the number of jobs retained or created and any other information useful for evaluation.

TRD raises concerns about tax incentives:

> The increasing number of such incentives adds complexity to the tax code, creating special treatment and exceptions that result in increased tax expenditures and a narrower tax base. This can have a negative impact on the general fund. The introduction of more tax incentives increases the compliance burden on both taxpayers and on TRD. Adding complexity and exceptions to the tax code creates tension with the principles of sound tax policy.

ADMINISTRATIVE IMPLICATIONS

TRD likely would have moderate impact on its operations from the provisions of this bill, with costs associated with updating information systems, forms, and publications; staff training; systems testing; and monitoring and tracking the credit through transfers. TRD estimates costs to be $62.2 thousand in nonrecurring costs for staff and programming.

NMDOT in analysis of similar legislation indicated possible administrative impacts:

> [The bill] 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.
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> Additionally, [the bill] 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 93. 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.
>
> [The bill] 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.

TRD pointed out a number of potential confusions and technical issues:

> [Section 1] Page 2, Lines 16-21. This subsection limits the tax credit for qualified construction and replacement expenditures to $5,000 times "the number of miles of railroad track owned or leased in the state by the taxpayer as of the close of the taxable year." It is not clear which taxable year, though it might be inferred that it is the taxable year in which the expenditures are made. However, taxpayers may apply for this credit before the end of the taxable year. On lines 20 and 21, TRD suggests stating "at the time of the application for the credit" rather than "as of the close of the taxable year."
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> [Section 1] Subsection G, page 4, Lines 12-23. TRD recommends replacing the transfer language in the bill under subsection G with language used in other credits so that it reads: "A certificate of eligibility provided by this section may be sold, exchanged or otherwise transferred to another taxpayer for the full value of the credit. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer."
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> On pages 5 and 6, Subsection M under both subsections (1) and (2) the terms "gross" and "expenditures" should be defined to prevent ambiguity and disputes

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicates House Bill 298.

OTHER SUBSTANTIVE ISSUES

In assessing all tax legislation, LFC staff considers whether the proposal is aligned with committee-adopted tax policy principles. Those five principles:

- **Adequacy**: Revenue should be adequate to fund needed government services.
- **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
- **Equity**: Different taxpayers should be treated fairly.
- **Simplicity**: Collection should be simple and easily understood.
- **Accountability**: Preferences should be easy to monitor and evaluate.

In addition, staff reviews whether the bill meets principles specific to tax expenditures. Those policies and how this bill addresses those issues:

Tax Expenditure Policy Principle	Met?	Comments
Vetted: The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee, to review fiscal, legal, and general policy parameters.	✓	**This bill has been introduced in prior years**
Targeted: The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals. Clearly stated purpose Long-term goals Measurable targets	 ✓ ✗ ✗	The purpose is stated in the bill: to incentivize incremental expansions/improvements in rail infrastructure.
Transparent: The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies	✓	Tax Expenditure Report
Accountable: The required reporting allows for analysis by members of the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date. Public analysis Expiration date	 ✓	
Effective: The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions "but for" the existence of the tax expenditure. Fulfills stated purpose Passes "but for" test	 ✓ ✗	DOT must report on the effectiveness of the credit. TRD asserts that this tax credit may not pass the "but for" test
Efficient: The tax expenditure is the most cost-effective way to achieve the desired results.	?	Not clear that the industry needs additional support to be profitable
Key: ✓ Met ✗ Not Met ? Unclear		

NF/cf