

Effective 7/1/2021

Part 5
Alternative Energy Development Tax Credit Act

79-6-501 Title.

This part is known as the "Alternative Energy Development Tax Credit Act."

Renumbered and Amended by Chapter 280, 2021 General Session

79-6-502 Definitions.

As used in this part:

- (1) "Alternative energy" means the same as that term is defined in Section 59-12-102.
- (2)
 - (a) "Alternative energy entity" means a person that:
 - (i) conducts business within the state; and
 - (ii) enters into an agreement with the office that qualifies the person to receive a tax credit.
 - (b) "Alternative energy entity" includes a pass-through entity taxpayer, as defined in Section 59-10-1402, of a person described in Subsection (2)(a).
- (3) "Alternative energy project" means a project produced by an alternative energy entity if that project involves:
 - (a) a new or expanding operation in the state; and
 - (b)
 - (i) utility-scale alternative energy generation; or
 - (ii) the extraction of alternative fuels.
- (4) "New incremental job within the state" means, with respect to an alternative energy entity, an employment position that:
 - (a) did not exist within the state before:
 - (i) the alternative energy entity entered into an agreement with the office in accordance with Section 79-6-503; and
 - (ii) the alternative energy project began;
 - (b) is not shifted from one location in the state to another location in the state; and
 - (c) is established to the satisfaction of the office, including by amounts paid or withheld by the alternative energy entity under Title 59, Chapter 10, Individual Income Tax Act.
- (5) "New state revenues" means an increased amount of tax revenues generated as a result of an alternative energy project by an alternative energy entity or a new incremental job within the state under the following:
 - (a) Title 59, Chapter 7, Corporate Franchise and Income Taxes;
 - (b) Title 59, Chapter 10, Individual Income Tax Act; and
 - (c) Title 59, Chapter 12, Sales and Use Tax Act.
- (6) "Office" means the Office of Energy Development created in Section 79-6-401.
- (7) "Tax credit" means a tax credit under Section 59-7-614.7 or 59-10-1029.
- (8) "Tax credit applicant" means an alternative energy entity that applies to the office to receive a tax credit certificate under this part.
- (9) "Tax credit certificate" means a certificate issued by the office that:
 - (a) lists the name of the tax credit certificate recipient;
 - (b) lists the tax credit certificate recipient's taxpayer identification number;

- (c) lists the amount of the tax credit certificate recipient's tax credits authorized under this part for a taxable year; and
 - (d) includes other information as determined by the office.
- (10) "Tax credit certificate recipient" means an alternative energy entity that receives a tax credit certificate for a tax credit in accordance with this part.

Renumbered and Amended by Chapter 280, 2021 General Session

79-6-503 Tax credits.

- (1)
- (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules establishing standards an alternative energy entity shall meet to qualify for a tax credit.
 - (b) Before the office enters into an agreement described in Subsection (2) with an alternative energy entity, the office, in consultation with other state agencies as necessary, shall certify:
 - (i) that the alternative energy entity plans to produce in the state at least:
 - (A) two megawatts of electricity;
 - (B) 1,000 barrels per day if the alternative energy project is a crude oil equivalent production;or
 - (C) 250 barrels per day if the alternative energy project is a biomass energy fuel production;
 - (ii) that the alternative energy project will generate new state revenues;
 - (iii) the economic life of the alternative energy project produced by the alternative energy entity;
 - (iv) that the alternative energy entity meets the requirements of Section 79-6-504; and
 - (v) that the alternative energy entity has received a certificate of existence from the Division of Corporations and Commercial Code.
- (2) If an alternative energy entity meets the requirements of this part to receive a tax credit, the office shall enter into an agreement with the alternative energy entity to authorize the tax credit in accordance with Subsection (3).
- (3)
- (a) Subject to Subsection (3)(b), if the office expects that the time from the commencement of construction until the end of the economic life of the alternative energy project is 20 years or more:
 - (i) the office shall grant a tax credit for the lesser of:
 - (A) the economic life of the alternative energy project; or
 - (B) 20 years; and
 - (ii) the tax credit is equal to 75% of new state revenues generated by the alternative energy project.
 - (b) For a taxable year, a tax credit under this section may not exceed the new state revenues generated by an alternative energy project during that taxable year.
- (4) An alternative energy entity that seeks to receive a tax credit or has entered into an agreement described in Subsection (2) with the office shall:
- (a) annually file a report with the office showing the new state revenues generated by the alternative energy project during the taxable year for which the alternative energy entity seeks to receive a tax credit under Section 59-7-614.7 or 59-10-1029;
 - (b) subject to Subsection (5), annually file a report with the office prepared by an independent certified public accountant verifying the new state revenues described in Subsection (4)(a);
 - (c) subject to Subsection (5), file a report with the office at least every four years prepared by an independent auditor auditing the new state revenues described in Subsection (4)(a);

- (d) provide the office with information required by the office to certify the economic life of the alternative energy project produced by the alternative energy entity, which may include a power purchase agreement, a lease, or a permit; and
 - (e) retain records supporting a claim for a tax credit for at least four years after the alternative energy entity claims a tax credit under Section 59-7-614.7 or 59-10-1029.
- (5) An alternative energy entity for which a report is prepared under Subsection (4)(b) or (c) shall pay the costs of preparing the report.
- (6) The office shall annually certify the new state revenues generated by an alternative energy project for a taxable year for which an alternative energy entity seeks to receive a tax credit under Section 59-7-614.7 or 59-10-1029.

Amended by Chapter 64, 2021 General Session

Renumbered and Amended by Chapter 280, 2021 General Session

79-6-504 Qualifications for tax credit -- Procedure.

- (1) The office shall certify an alternative energy entity's eligibility for a tax credit as provided in this section.
- (2) A tax credit applicant shall provide the office with:
- (a) an application for a tax credit certificate;
 - (b) documentation that the tax credit applicant meets the standards and requirements described in Section 79-6-503 to the satisfaction of the office for the taxable year for which the tax credit applicant seeks to claim a tax credit; and
 - (c) documentation that expressly directs and authorizes the State Tax Commission to disclose to the office the tax credit applicant's returns and other information concerning the tax credit applicant that would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code.
- (3)
- (a) The office shall submit the documentation described in Subsection (2)(c) to the State Tax Commission.
 - (b) Upon receipt of the documentation described in Subsection (2)(c), the State Tax Commission shall provide the office with the documentation described in Subsection (2)(c) requested by the office that the tax credit applicant directed and authorized the State Tax Commission to provide to the office.
- (4) If, after the office reviews the documentation described in Subsections (2) and (3), the office determines that the documentation supporting the tax credit applicant's claim for a tax credit is not substantially accurate, the office shall:
- (a) deny the tax credit; or
 - (b) inform the tax credit applicant that the documentation supporting the tax credit applicant's claim for a tax credit was inadequate and ask the tax credit applicant to submit new documentation.
- (5) If, after the office reviews the documentation described in Subsections (2) and (3), the office determines that the documentation supporting the tax credit applicant's claim for a tax credit is substantially accurate, the office shall, on the basis of that documentation:
- (a) enter into the agreement described in Section 79-6-503;
 - (b) issue a tax credit certificate to the tax credit applicant; and
 - (c) provide a duplicate copy of the tax credit certificate described in Subsection (5)(b) to the State Tax Commission.

- (6) An alternative energy entity may not claim a tax credit under this part unless the alternative energy entity is a tax credit certificate recipient.
- (7) A tax credit certificate recipient that claims a tax credit shall retain the tax credit certificate in accordance with Subsection 79-6-503(4).

Renumbered and Amended by Chapter 280, 2021 General Session

79-6-505 Report to the Legislature.

The office shall annually provide an electronic report to the Public Utilities, Energy, and Technology Interim Committee describing:

- (1) the office's success in attracting alternative energy projects to the state and the resulting increase in new state revenues under this part;
- (2) the amount of tax credits the office has granted or will grant and the time period during which the tax credits have been or will be granted; and
- (3) the economic impact on the state by comparing new state revenues to tax credits that have been or will be granted under this part.

Amended by Chapter 68, 2022 General Session