

Effective 7/1/2021

Part 6
High Cost Infrastructure Development Tax Credit Act

79-6-601 Title.

This part is known as the "High Cost Infrastructure Development Tax Credit Act."

Renumbered and Amended by Chapter 280, 2021 General Session

79-6-602 Definitions.

As used in this part:

- (1) "Applicant" means a person that conducts business in the state and that applies for a tax credit under this part.
- (2) "Energy delivery project" means a project that is designed to:
 - (a) increase the capacity for the delivery of energy to a user of energy inside or outside the state; or
 - (b) increase the capability of an existing energy delivery system or related facility to deliver energy to a user of energy inside or outside the state.
- (3) "Fuel standard compliance project" means a project designed to retrofit a fuel refinery in order to make the refinery capable of producing fuel that complies with the United States Environmental Protection Agency's Tier 3 gasoline sulfur standard described in 40 C.F.R. Sec. 79.54.
- (4) "High cost infrastructure project" means a project, including an energy delivery project or a fuel standard compliance project:
 - (a)
 - (i) that expands or creates new industrial, mining, manufacturing, or agriculture activity in the state, not including a retail business;
 - (ii) that involves new investment of at least \$50,000,000 in an existing industrial, mining, manufacturing, or agriculture entity, by the entity; or
 - (iii) for the construction of a plant or other facility for the storage or production of fuel used for transportation, electricity generation, or industrial use;
 - (b) that requires or is directly facilitated by infrastructure construction; and
 - (c) for which the cost of infrastructure construction to the entity creating the project is greater than:
 - (i) 10% of the total cost of the project; or
 - (ii) \$10,000,000.
- (5) "Infrastructure" means:
 - (a) an energy delivery project;
 - (b) a railroad as defined in Section 54-2-1;
 - (c) a fuel standard compliance project;
 - (d) a road improvement project;
 - (e) a water self-supply project;
 - (f) a water removal system project;
 - (g) a solution-mined subsurface salt cavern;
 - (h) a project that is designed to:
 - (i) increase the capacity for water delivery to a water user in the state; or

- (ii) increase the capability of an existing water delivery system or related facility to deliver water to a water user in the state; or
 - (i) an underground mine infrastructure project.
- (6)
- (a) "Infrastructure cost-burdened entity" means an applicant that enters into an agreement with the office that qualifies the applicant to receive a tax credit as provided in this part.
 - (b) "Infrastructure cost-burdened entity" includes a pass-through entity taxpayer, as defined in Section 59-10-1402, of a person described in Subsection (6)(a).
- (7) "Infrastructure-related revenue" means an amount of tax revenue, for an entity creating a high cost infrastructure project, in a taxable year, that is directly attributable to a high cost infrastructure project, under:
- (a) Title 59, Chapter 5, Part 1, Oil and Gas Severance Tax;
 - (b) Title 59, Chapter 5, Part 2, Mining Severance Tax;
 - (c) Title 59, Chapter 7, Corporate Franchise and Income Taxes;
 - (d) Title 59, Chapter 10, Individual Income Tax Act; and
 - (e) Title 59, Chapter 12, Sales and Use Tax Act.
- (8) "Office" means the Office of Energy Development created in Section 79-6-401.
- (9) "Tax credit" means a tax credit under Section 59-7-619 or 59-10-1034.
- (10) "Tax credit certificate" means a certificate issued by the office to an infrastructure cost-burdened entity that:
- (a) lists the name of the infrastructure cost-burdened entity;
 - (b) lists the infrastructure cost-burdened entity's taxpayer identification number;
 - (c) lists, for a taxable year, the amount of the tax credit authorized for the infrastructure cost-burdened entity under this part; and
 - (d) includes other information as determined by the office.
- (11)
- (a) "Underground mine infrastructure project" means a project that:
 - (i) is designed to create permanent underground infrastructure to facilitate underground mining operations; and
 - (ii) services multiple levels or areas of an underground mine or multiple underground mines.
 - (b) "Underground mine infrastructure project" includes:
 - (i) an underground access or a haulage road, entry, ramp, or decline;
 - (ii) a vertical or incline mine shaft;
 - (iii) a ventilation shaft or an air course; or
 - (iv) a conveyor or a truck haulageway.

Amended by Chapter 473, 2023 General Session

79-6-603 Tax credit -- Amount -- Eligibility -- Reporting.

- (1)
- (a) Before the office enters into an agreement described in Subsection (3) with an applicant regarding a project, the office, in consultation with the Utah Energy Infrastructure Board created in Section 79-6-902, and other state agencies as necessary, shall, in accordance with the procedures described in Section 79-6-604, certify:
 - (i) that the project meets the definition of a high cost infrastructure project under this part;
 - (ii) that the high cost infrastructure project will generate infrastructure-related revenue;
 - (iii) the economic life of the high cost infrastructure project; and

- (iv) that the applicant has received a certificate of existence from the Division of Corporations and Commercial Code.
 - (b) For purposes of determining whether a project meets the definition of a high cost infrastructure project, the office shall consider a project to be a new project if the project began no earlier than the taxable year before the year in which the applicant applies for a tax credit.
- (2)
- (a) Before the office enters into an agreement described in Subsection (3) with an applicant regarding a project, the Utah Energy Infrastructure Board shall evaluate the project's net benefit to the state, including:
 - (i) whether the project is likely to increase the property tax revenue for the municipality or county where the project will be located;
 - (ii) whether the project would contribute to the economy of the state and the municipality, tribe, or county where the project will be located;
 - (iii) whether the project would provide new infrastructure for an area where the type of infrastructure the project would create is underdeveloped;
 - (iv) whether the project is supported by a business case for providing the revenue necessary to finance the construction and operation of the project;
 - (v) whether the project would have a positive environmental impact on the state;
 - (vi) whether the project promotes responsible energy development;
 - (vii) whether the project would upgrade or improve an existing entity in order to ensure the entity's continued operation and economic viability;
 - (viii) whether the project is less likely to be completed without a tax credit issued to the applicant under this part; and
 - (ix) other relevant factors that the board specifies in the board's evaluation.
 - (b) Before the office enters into an agreement described in Subsection (3) with an applicant regarding an energy delivery project, in addition to the criteria described in Subsection (2)(a) the Utah Energy Infrastructure Board shall determine that the project:
 - (i) is strategically situated to maximize connections to an energy source project located in the state that is:
 - (A) existing;
 - (B) under construction;
 - (C) planned; or
 - (D) foreseeable;
 - (ii) is supported by a project plan related to:
 - (A) engineering;
 - (B) environmental issues;
 - (C) energy production;
 - (D) load or other capacity; and
 - (E) any other issue related to the building and operation of energy delivery infrastructure; and
 - (iii) complies with the regulations of the following regarding the building of energy delivery infrastructure:
 - (A) the Federal Energy Regulatory Commission;
 - (B) the North American Electric Reliability Council; and
 - (C) the Public Service Commission of Utah.
 - (c) The Utah Energy Infrastructure Board may recommend that the office deny an applicant a tax credit if, as determined by the Utah Energy Infrastructure Board:

- (i) the project does not sufficiently benefit the state based on the criteria described in Subsection (2)(a); or
 - (ii) for an energy delivery project, the project does not satisfy the conditions described in Subsection (2)(b).
- (3) Subject to the procedures described in Section 79-6-604, if an applicant meets the requirements of Subsection (1) to receive a tax credit, and the applicant's project receives a favorable recommendation from the Utah Energy Infrastructure Board under Subsection (2), the office shall enter into an agreement with the applicant to authorize the tax credit in accordance with this part.
- (4) The office shall grant a tax credit to an infrastructure cost-burdened entity, for a high cost infrastructure project, under an agreement described in Subsection (3):
- (a) for the lesser of:
 - (i) the economic life of the high cost infrastructure project;
 - (ii) 20 years; or
 - (iii) a time period, the first taxable year of which is the taxable year when the construction of the high cost infrastructure project begins and the last taxable year of which is the taxable year in which the infrastructure cost-burdened entity has recovered, through the tax credit, an amount equal to:
 - (A) 50% of the cost of the infrastructure construction associated with the high cost infrastructure project; or
 - (B) if the high cost infrastructure project is a fuel standard compliance project, 30% of the cost of the infrastructure construction associated with the high cost infrastructure project;
 - (b) except as provided in Subsections (4)(a) and (d), in a total amount equal to 30% of the high cost infrastructure project's total infrastructure-related revenue over the time period described in Subsection (4)(a);
 - (c) for a taxable year, in an amount that does not exceed the high cost infrastructure project's infrastructure-related revenue during that taxable year; and
 - (d) if the high cost infrastructure project is a fuel standard compliance project, in a total amount that is:
 - (i) determined by the Utah Energy Infrastructure Board, based on:
 - (A) the applicant's likelihood of completing the high cost infrastructure project without a tax credit; and
 - (B) how soon the applicant plans to complete the high cost infrastructure project; and
 - (ii) equal to or less than 30% of the high cost infrastructure project's total infrastructure-related revenue over the time period described in Subsection (4)(a).
- (5) An infrastructure cost-burdened entity shall, for each taxable year:
- (a) file a report with the office showing the high cost infrastructure project's infrastructure-related revenue during the taxable year;
 - (b) subject to Subsection (7), file a report with the office that is prepared by an independent certified public accountant that verifies the infrastructure-related revenue described in Subsection (5)(a); and
 - (c) provide the office with information required by the office to certify the economic life of the high cost infrastructure project.
- (6) An infrastructure cost-burdened entity shall retain records supporting a claim for a tax credit for the same period of time during which a person is required to keep books and records under Section 59-1-1406.
- (7) An infrastructure cost-burdened entity for which a report is prepared under Subsection (5)(b) shall pay the costs of preparing the report.

- (8) The office shall certify, for each taxable year, the infrastructure-related revenue generated by an infrastructure cost-burdened entity.

Amended by Chapter 473, 2023 General Session

79-6-604 Tax credit -- Application procedure.

- (1) An applicant shall provide the office with:
 - (a) an application for a tax credit certificate;
 - (b) documentation that the applicant meets the requirements described in Subsection 79-6-603(1), to the satisfaction of the office, for the taxable year for which the 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 applicant's returns and other information concerning the applicant that would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code.
- (2)
 - (a) The office shall, for an applicant, submit the documentation described in Subsection (1)(c) to the State Tax Commission.
 - (b) Upon receipt of the documentation described in Subsection (1)(c), the State Tax Commission shall provide the office with the documentation described in Subsection (1)(c).
- (3) If, after the office reviews the documentation from the State Tax Commission under Subsection (2)(b) and the information the applicant submits to the office under Section 79-6-603, the office, in consultation with the Utah Energy Infrastructure Board created in Section 79-6-902, determines that the applicant is not eligible for the tax credit under Section 79-6-603, or that the applicant's documentation is inadequate, the office shall:
 - (a) deny the tax credit; or
 - (b) inform the applicant that the documentation supporting the applicant's claim for a tax credit was inadequate and request that the applicant supplement the applicant's documentation.
- (4) Except as provided in Subsection (5), if, after the office reviews the documentation described in Subsection (2)(b) and the information described in Subsection 79-6-603(6), the office, in consultation with the Utah Energy Infrastructure Board created in Section 79-6-902, determines that the documentation supporting an applicant's claim for a tax credit adequately demonstrates that the applicant is eligible for the tax credit under Section 79-6-603, the office shall, on the basis of the documentation:
 - (a) enter, with the applicant, into the agreement described in Subsection 79-6-603(3);
 - (b) issue a tax credit certificate to the applicant; and
 - (c) provide a duplicate copy of the tax credit certificate described in Subsection (4)(b) to the State Tax Commission.
- (5) The office may deny an applicant a tax credit based on the recommendation of the Utah Energy Infrastructure Board, as provided in Subsection 79-6-603(2).
- (6) An infrastructure cost-burdened entity may not claim a tax credit under Section 59-7-619 or 59-10-1034 unless the infrastructure cost-burdened entity receives a tax credit certificate from the office.
- (7) An infrastructure cost-burdened entity that claims a tax credit shall retain the tax credit certificate in accordance with Subsection 79-6-603(7).
- (8) Except for the information that is necessary for the office to disclose in order to make the report described in Section 79-6-605, the office shall treat a document an applicant or infrastructure cost-burdened entity provides to the office as a protected record under Section 63G-2-305.

Amended by Chapter 44, 2022 General Session

79-6-605 Report to the Legislature.

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

- (1) the office's success in attracting high cost infrastructure projects to the state and the resulting increase in infrastructure-related revenue 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 infrastructure-related revenue to tax credits that have been or will be granted under this part.

Amended by Chapter 68, 2022 General Session

79-6-606 Administrative rules.

The office may establish, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, requirements and procedures for the implementation of this part.

Renumbered and Amended by Chapter 280, 2021 General Session