

**Senator David P. Hinkins** proposes the following substitute bill:

**MINERAL EXPLORATION TAX CREDIT**

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: David P. Hinkins**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill enacts a tax credit related to mineral exploration activities.

**Highlighted Provisions:**

This bill:

- ▶ allows a person engaged in the business of mining to claim a tax credit against the person's severance tax liability for the cost of certain mineral exploration activities;
- ▶ provides a process by which a person may apply for and claim the tax credit; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides retrospective operation.

**Utah Code Sections Affected:**

AMENDS:

**40-6-16**, as last amended by Laws of Utah 2019, Chapters 246 and 247

ENACTS:

**40-6-24**, Utah Code Annotated 1953

**59-5-216**, Utah Code Annotated 1953



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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **40-6-16** is amended to read:

**40-6-16. Duties of division.**

In addition to the duties assigned by the board, the division shall:

(1) develop and implement an inspection program that will include but not be limited to production data, pre-drilling checks, and site security reviews;

(2) publish a monthly production report;

(3) publish a monthly gas processing plant report;

(4) review and evaluate, prior to a hearing, evidence submitted with the petition to be presented to the board;

(5) require adequate assurance of approved water rights in accordance with rules and orders enacted under Section [40-6-5](#);

(6) notify the county executive of the county in which the drilling will take place in writing of the issuance of a drilling permit; ~~and~~

(7) complete the verification of natural gas to hydrogen conversion plants required by Section [59-5-102](#)~~[-]~~; and

(8) issue tax credit certificates in accordance with Section [40-6-24](#).

Section 2. Section **40-6-24** is enacted to read:

**40-6-24. Tax credit for mining exploration -- Division to issue certificates.**

(1) As used in this section:

(a) (i) "Certified expenditure" means a cost incurred for an activity in direct support of an exploration activity conducted at a specific site.

(ii) "Certified expenditure" includes:

(A) the cost of obtaining an approval, a permit, a license, or a certificate for an exploration activity;

(B) a direct labor cost and the cost of benefits for employees directly associated with work described in Subsection (1)(a)(i);

(C) the cost of leasing equipment from a third party;

(D) the cost of owning, maintaining, or operating equipment;

(E) insurance and bond premiums associated with the activities described in

57 Subsections (1)(a)(ii)(A) through (D);

58 (F) the cost of a consultant or an independent contractor; and

59 (G) any general expense related to operating the business engaged in the exploration

60 activity to the extent the expense is directly attributable to the work described in Subsection

61 (1)(a)(i).

62 (iii) "Certified expenditure" does not include:

63 (A) return on investment; or

64 (B) insurance or bond premiums not described in Subsection (1)(a)(ii)(E).

65 (b) "Closed mine" means a mine that:

66 (i) previously operated;

67 (ii) does not currently operate; and

68 (iii) for which each mining approval, permit, license, or certificate that allowed the

69 mine to operate is no longer in effect.

70 (c) "Construction commencement date of a new mine" means the earliest date on

71 which each of the following is true:

72 (i) the owner or owner's agent obtains for the mine each of the following that a  
73 reasonable and prudent person would consider adequate to commence construction of a mine:

74 (A) each federal, state, or local government approval, permit, license, and certificate;

75 and

76 (B) each right in land, including each permit, lease, and title;

77 (ii) each approval, permit, license, and certificate described in Subsection (1)(c)(i)(A)

78 is in effect without any modification that might jeopardize the completion or continued

79 construction of the mine; and

80 (iii) the construction, including the continuation of construction, is not temporarily or  
81 permanently enjoined by an order or other decision of a court or administrative body.

82 (d) "Eligible claimant" means a person who:

83 (i) is engaged in the business of mining or extracting minerals;

84 (ii) is subject to a severance tax under Title 59, Chapter 5, Part 2, Mining Severance

85 Tax; and

86 (iii) makes a certified expenditure during the taxable year.

87 (e) (i) "Exploration activity" means an activity performed in the state for the purpose of

88 determining the existence, location, extent, or quality of a mineral deposit.

89 (ii) "Exploration activity" includes:

90 (A) surveying by a geophysical method or by a geochemical method;

91 (B) drilling one or more exploration holes;

92 (C) conducting underground exploration;

93 (D) surface trenching or bulk sampling;

94 (E) taking aerial photographs;

95 (F) geological and geophysical logging;

96 (G) sample analysis; and

97 (H) metallurgical testing.

98 (iii) "Exploration activity" does not include an activity that occurs:

99 (A) after the construction commencement date of a new mine; or

100 (B) if the mine is or was a closed mine, after the mine reopening date.

101 (f) "Geochemical method" means a method of gathering geochemical data, including  
102 collecting soil, rock, water, air, vegetation, or any other similar item and performing a chemical  
103 analysis on the item.

104 (g) "Geophysical method" means a method of gathering geophysical data that is used in  
105 mineral exploration, including seismic, gravity, magnetic, radiometric, radar, electromagnetic,  
106 and other remote sensing measurements.

107 (h) "Mine" means the same as that term is defined in Section [59-5-201](#).

108 (i) "Mine reopening date" means with respect to a closed mine, the earliest date on  
109 which each of the following is true:

110 (i) the owner or owner's agent obtains for the closed mine each of the following that a  
111 reasonable and prudent person would consider adequate to begin operation of a closed mine:

112 (A) each federal, state, or local government approval, permit, license, and certificates;  
113 and

114 (B) each right in land, including each permit, lease, and title;

115 (ii) each approval, permit, license, and certificate described in Subsection (1)(i)(i)(A) is  
116 in effect without any modification that might jeopardize resuming operation of the closed mine;  
117 and

118 (iii) resuming operation of the closed mine is not temporarily or permanently enjoined

119 by an order or other decision of a court or administrative body.

120 (j) "Mineral" means a metalliferous mineral as defined in Section 59-5-201.

121 (k) "Tax credit certificate" means a certificate issued by the division that:

122 (i) lists the eligible claimant's name and taxpayer identification number;

123 (ii) lists the amount of the eligible claimant's tax credit authorized under this section  
124 for a taxable year; and

125 (iii) includes other information as determined by the division.

126 (2) An eligible claimant that seeks to claim a tax credit under Section 59-5-216 for a  
127 taxable year shall apply to the division for a tax credit certificate.

128 (3) The eligible claimant shall apply for a tax credit certificate on a form provided by  
129 the division and approved by the State Tax Commission.

130 (4) The eligible claimant shall include in the application for a tax credit certificate the  
131 following information for the taxable year in which the person seeks a tax credit certificate:

132 (a) proof that the eligible claimant satisfies the requirements of Subsection (1)(d);

133 (b) a description of the mine where the exploration activity occurred;

134 (c) proof of each certified expenditure, including the amount; and

135 (d) any other information the division requests.

136 (5) (a) After the division receives an application for a tax credit certificate, for each  
137 expenditure in the application, the division shall approve the expenditure as a certified  
138 expenditure or deny the expenditure as an expenditure that is not a certified expenditure.

139 (b) If the division denies an expenditure, the division shall provide the person a written  
140 explanation that states each reason the division denied the expenditure and give the person an  
141 opportunity to correct any deficiency or provide additional information.

142 (6) (a) The tax credit certificate shall state the amount of the tax credit, which is equal  
143 to the amount of the eligible claimant's certified expenditures as approved by the division in  
144 accordance with Subsection (5).

145 (b) The division may not issue a tax credit certificate for certified expenditures related  
146 to exploration activities at a mine if the aggregate value of tax credit certificates issued for  
147 certified expenditures related to exploration activities at the same mine exceeds \$20,000,000.

148 (7) (a) An eligible claimant may assign a tax credit certificate to another person if the  
149 eligible claimant provides written notice to the division in a form prescribed by the division,

150 that includes:

151 (i) the eligible claimant's written certification or other proof that the eligible claimant  
152 irrevocably elects not to claim the tax credit authorized by the tax credit certificate; and

153 (ii) contact information for the person to whom the eligible claimant is assigning the  
154 tax credit certificate.

155 (b) If the eligible claimant meets the requirements of Subsection (7)(a), the division  
156 shall issue an assigned tax credit certificate to the person identified by the eligible claimant in  
157 an amount equal to the eligible claimant's tax credit certificate.

158 (c) A person to whom an eligible claimant assigns a tax credit certificate may claim the  
159 tax credit under Section 59-5-216 as if the person met the requirements of Section 59-5-216, if  
160 the person files a return under Title 59, Chapter 5, Part 2, Mining Severance Tax.

161 (8) An eligible claimant that receives a tax credit certificate in accordance with this  
162 section shall retain the tax credit certificate for the same time period that a person is required to  
163 keep books and records under Section 59-1-1406.

164 (9) The division shall annually submit to the State Tax Commission an electronic list  
165 that includes:

166 (a) the name and identifying information for:

167 (i) each eligible claimant to whom the division issues a tax credit certificate; and

168 (ii) each person to whom an eligible claimant assigns a tax credit certificate in  
169 accordance with Subsection (7);

170 (b) for each person described in Subsection (9)(a), the amount of the tax credit stated  
171 on the tax credit certificate; and

172 (c) for each person described in Subsection (9)(a)(ii), information necessary to identify  
173 the tax credit certificate that the eligible claimant assigned to the person.

174 (10) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
175 the division may make rules governing the administration of the tax credit certificate process  
176 described in this section.

177 Section 3. Section 59-5-216 is enacted to read:

178 **59-5-216. Tax credit for mining exploration.**

179 (1) As used in this section:

180 (a) "Eligible claimant" means a person:

181 (i) who is an eligible claimant as defined in Section 40-6-24 and obtains a tax credit  
182 certificate; or

183 (ii) to whom a person described in Subsection (1)(a)(i) assigns a tax credit certificate  
184 and obtains an assigned tax credit certificate in accordance with Section 40-6-24.

185 (b) "Tax credit certificate" means the same as that term is defined in Section 40-6-24.

186 (2) Subject to Subsection (3), an eligible claimant may claim a nonrefundable tax credit  
187 against severance tax otherwise due under this chapter in an amount equal to the amount stated  
188 on the tax credit certificate for the taxable year.

189 (3) An eligible claimant may not claim in any taxable year a credit under this section  
190 that exceeds 30% of the eligible claimant's severance tax liability for the taxable year.

191 (4) An eligible claimant may carry forward to the next 15 taxable years the amount of  
192 the eligible claimant's tax credit that exceeds the amount described in Subsection (3).

193 **Section 4. Retrospective operation.**

194 This bill has retrospective operation for a taxable year beginning on or after January 1,  
195 2022.