

1 **HIGH COST INFRASTRUCTURE DEVELOPMENT TAX**

2 **CREDIT AMENDMENTS**

3 2023 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Carl R. Albrecht**

6 Senate Sponsor: Derrin R. Owens

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the high cost infrastructure development tax credit.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ provides that the corporate high cost infrastructure development tax credit does not
14 automatically expire for lack of use before the 2027 tax year;

15 ▶ modifies the definition of "high cost infrastructure project" to include the storage or
16 production of all fuels;

17 ▶ defines an "underground mine infrastructure project";

18 ▶ adds an "underground mine infrastructure project" to the definition of
19 "infrastructure" for purposes of being eligible for a high cost infrastructure
20 development income tax credit;

21 ▶ includes severance tax revenue in the calculation of the taxpayer's high cost
22 infrastructure development tax credit; and

23 ▶ provides that a high cost infrastructure project that begins in the taxable year before
24 an applicant makes a tax credit application is eligible for a tax credit.

25 **Money Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**

28 This bill provides a special effective date.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **59-7-619**, as last amended by Laws of Utah 2021, Chapters 280, 367

32 **79-6-602**, as last amended by Laws of Utah 2022, Chapter 44

33 **79-6-603**, as last amended by Laws of Utah 2022, Chapter 44

34

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

36 Section 1. Section **59-7-619** is amended to read:

37 **59-7-619. Nonrefundable high cost infrastructure development tax credit.**

38 (1) As used in this section:

39 (a) "High cost infrastructure project" means the same as that term is defined in Section
40 **79-6-602**.

41 (b) "Infrastructure cost-burdened entity" means the same as that term is defined in
42 Section **79-6-602**.

43 (c) "Infrastructure-related revenue" means the same as that term is defined in Section
44 **79-6-602**.

45 (d) "Office" means the Office of Energy Development created in Section **79-6-401**.

46 (2) Subject to the other provisions of this section, a corporation that is an infrastructure
47 cost-burdened entity may claim a nonrefundable tax credit for development of a high cost
48 infrastructure project as provided in this section.

49 (3) The tax credit under this section is the amount listed as the tax credit amount on a
50 tax credit certificate that the office issues under Title 79, Chapter 6, Part 6, High Cost
51 Infrastructure Development Tax Credit Act, to the infrastructure cost-burdened entity for the
52 taxable year.

53 (4) An infrastructure cost-burdened entity may carry forward a tax credit under this
54 section for a period that does not exceed the next seven taxable years if:

55 (a) the infrastructure cost-burdened entity is allowed to claim a tax credit under this
56 section for a taxable year; and

57 (b) the amount of the tax credit exceeds the infrastructure cost-burdened entity's tax

58 liability under this chapter for that taxable year.

59 (5) (a) In accordance with Section 59-7-159, the Revenue and Taxation Interim
60 Committee shall study the tax credit allowed by this section and make recommendations
61 concerning whether the tax credit should be continued, modified, or repealed.

62 (b) (i) Except as provided in Subsection (5)(b)(ii), for purposes of the study required by
63 this Subsection (5), the office shall provide the following information, if available to the office,
64 to the Office of the Legislative Fiscal Analyst:

65 (A) the amount of tax credit that the office grants to each infrastructure cost-burdened
66 entity for each taxable year;

67 (B) the infrastructure-related revenue generated by each high cost infrastructure
68 project;

69 (C) the information contained in the office's latest report under Section 79-6-605; and

70 (D) any other information that the Office of the Legislative Fiscal Analyst requests.

71 (ii) (A) In providing the information described in Subsection (5)(b)(i), the office shall
72 redact information that identifies a recipient of a tax credit under this section.

73 (B) If, notwithstanding the redactions made under Subsection (5)(b)(ii)(A), reporting
74 the information described in Subsection (5)(b)(i) might disclose the identity of a recipient of a
75 tax credit, the office may file a request with the Revenue and Taxation Interim Committee to
76 provide the information described in Subsection (5)(b)(i) in the aggregate for all infrastructure
77 cost-burdened entities that receive the tax credit under this section.

78 (c) As part of the study required by this Subsection (5), the Office of the Legislative
79 Fiscal Analyst shall report to the Revenue and Taxation Interim Committee a summary and
80 analysis of the information provided to the Office of the Legislative Fiscal Analyst by the
81 office under Subsection (5)(b).

82 (d) The Revenue and Taxation Interim Committee shall ensure that the
83 recommendations described in Subsection (5)(a) include an evaluation of:

84 (i) the cost of the tax credit to the state;

85 (ii) the purpose and effectiveness of the tax credit; and

86 (iii) the extent to which the state benefits from the tax credit.

87 (6) Notwithstanding Section 59-7-903, the commission may not remove the tax credit
88 described in this section from the tax return for a taxable year beginning before January 1,
89 2027.

90 Section 2. Section 79-6-602 is amended to read:

91 **79-6-602. Definitions.**

92 As used in this part:

93 (1) "Applicant" means a person that conducts business in the state and that applies for a
94 tax credit under this part.

95 (2) "Energy delivery project" means a project that is designed to:

96 (a) increase the capacity for the delivery of energy to a user of energy inside or outside
97 the state; or

98 (b) increase the capability of an existing energy delivery system or related facility to
99 deliver energy to a user of energy inside or outside the state.

100 (3) "Fuel standard compliance project" means a project designed to retrofit a fuel
101 refinery in order to make the refinery capable of producing fuel that complies with the United
102 States Environmental Protection Agency's Tier 3 gasoline sulfur standard described in 40
103 C.F.R. Sec. 79.54.

104 (4) "High cost infrastructure project" means a project, including an energy delivery
105 project or a fuel standard compliance project:

106 (a) (i) that expands or creates new industrial, mining, manufacturing, or agriculture
107 activity in the state, not including a retail business;

108 (ii) that involves new investment of at least \$50,000,000 in an existing industrial,
109 mining, manufacturing, or agriculture entity, by the entity; or

110 (iii) for the construction of a plant or other facility~~[, including a fueling station,]~~ for the
111 storage~~[, production, or distribution of hydrogen]~~ or production of fuel used for transportation,
112 electricity generation, or industrial use;

113 (b) that requires or is directly facilitated by infrastructure construction; and

114 (c) for which the cost of infrastructure construction to the entity creating the project is
115 greater than:

116 (i) 10% of the total cost of the project; or

117 (ii) \$10,000,000.

118 (5) "Infrastructure" means:

119 (a) an energy delivery project;

120 (b) a railroad as defined in Section 54-2-1;

121 (c) a fuel standard compliance project;

122 (d) a road improvement project;

123 (e) a water self-supply project;

124 (f) a water removal system project;

125 (g) a solution-mined subsurface salt cavern; ~~or~~

126 (h) a project that is designed to:

127 (i) increase the capacity for water delivery to a water user in the state; or

128 (ii) increase the capability of an existing water delivery system or related facility to

129 deliver water to a water user in the state~~[-];~~ or

130 (i) an underground mine infrastructure project.

131 (6) (a) "Infrastructure cost-burdened entity" means an applicant that enters into an
132 agreement with the office that qualifies the applicant to receive a tax credit as provided in this
133 part.

134 (b) "Infrastructure cost-burdened entity" includes a pass-through entity taxpayer, as
135 defined in Section 59-10-1402, of a person described in Subsection (6)(a).

136 (7) "Infrastructure-related revenue" means an amount of tax revenue, for an entity
137 creating a high cost infrastructure project, in a taxable year, that is directly attributable to a high
138 cost infrastructure project, under:

139 (a) Title 59, Chapter 5, Part 1, Oil and Gas Severance Tax;

140 (b) Title 59, Chapter 5, Part 2, Mining Severance Tax;

141 (c) Title 59, Chapter 7, Corporate Franchise and Income Taxes;

142 [~~(b)~~] (d) Title 59, Chapter 10, Individual Income Tax Act; and

143 [~~(c)~~] (e) Title 59, Chapter 12, Sales and Use Tax Act.

144 (8) "Office" means the Office of Energy Development created in Section 79-6-401.

145 (9) "Tax credit" means a tax credit under Section 59-7-619 or 59-10-1034.

146 (10) "Tax credit certificate" means a certificate issued by the office to an infrastructure
147 cost-burdened entity that:

148 (a) lists the name of the infrastructure cost-burdened entity;

149 (b) lists the infrastructure cost-burdened entity's taxpayer identification number;

150 (c) lists, for a taxable year, the amount of the tax credit authorized for the infrastructure
151 cost-burdened entity under this part; and

152 (d) includes other information as determined by the office.

153 (11) (a) "Underground mine infrastructure project" means a project that:

154 (i) is designed to create permanent underground infrastructure to facilitate underground
155 mining operations; and

156 (ii) services multiple levels or areas of an underground mine or multiple underground
157 mines.

158 (b) "Underground mine infrastructure project" includes:

159 (i) an underground access or a haulage road, entry, ramp, or decline;

160 (ii) a vertical or incline mine shaft;

161 (iii) a ventilation shaft or an air course; or

162 (iv) a conveyor or a truck haulageway.

163 Section 3. Section 79-6-603 is amended to read:

164 **79-6-603. Tax credit -- Amount -- Eligibility -- Reporting.**

165 (1) (a) Before the office enters into an agreement described in Subsection (3) with an
166 applicant regarding a project, the office, in consultation with the Utah Energy Infrastructure
167 Board created in Section 79-6-902, and other state agencies as necessary, shall, in accordance
168 with the procedures described in Section 79-6-604, certify:

169 [~~(a)~~] (i) that the project meets the definition of a high cost infrastructure project under

170 this part;

171 ~~[(b)]~~ (ii) that the high cost infrastructure project will generate infrastructure-related
172 revenue;

173 ~~[(c)]~~ (iii) the economic life of the high cost infrastructure project; and

174 ~~[(d)]~~ (iv) that the applicant has received a certificate of existence from the Division of
175 Corporations and Commercial Code.

176 (b) For purposes of determining whether a project meets the definition of a high cost
177 infrastructure project, the office shall consider a project to be a new project if the project began
178 no earlier than the taxable year before the year in which the applicant applies for a tax credit.

179 (2) (a) Before the office enters into an agreement described in Subsection (3) with an
180 applicant regarding a project, the Utah Energy Infrastructure Board shall evaluate the project's
181 net benefit to the state, including:

182 (i) whether the project is likely to increase the property tax revenue for the municipality
183 or county where the project will be located;

184 (ii) whether the project would contribute to the economy of the state and the
185 municipality, tribe, or county where the project will be located;

186 (iii) whether the project would provide new infrastructure for an area where the type of
187 infrastructure the project would create is underdeveloped;

188 (iv) whether the project is supported by a business case for providing the revenue
189 necessary to finance the construction and operation of the project;

190 (v) whether the project would have a positive environmental impact on the state;

191 (vi) whether the project promotes responsible energy development;

192 (vii) whether the project would upgrade or improve an existing entity in order to ensure
193 the entity's continued operation and economic viability;

194 (viii) whether the project is less likely to be completed without a tax credit issued to
195 the applicant under this part; and

196 (ix) other relevant factors that the board specifies in the board's evaluation.

197 (b) Before the office enters into an agreement described in Subsection (3) with an

198 applicant regarding an energy delivery project, in addition to the criteria described in
199 Subsection (2)(a) the Utah Energy Infrastructure Board shall determine that the project:
200 (i) is strategically situated to maximize connections to an energy source project located
201 in the state that is:
202 (A) existing;
203 (B) under construction;
204 (C) planned; or
205 (D) foreseeable;
206 (ii) is supported by a project plan related to:
207 (A) engineering;
208 (B) environmental issues;
209 (C) energy production;
210 (D) load or other capacity; and
211 (E) any other issue related to the building and operation of energy delivery
212 infrastructure; and
213 (iii) complies with the regulations of the following regarding the building of energy
214 delivery infrastructure:
215 (A) the Federal Energy Regulatory Commission;
216 (B) the North American Electric Reliability Council; and
217 (C) the Public Service Commission of Utah.
218 (c) The Utah Energy Infrastructure Board may recommend that the office deny an
219 applicant a tax credit if, as determined by the Utah Energy Infrastructure Board:
220 (i) the project does not sufficiently benefit the state based on the criteria described in
221 Subsection (2)(a); or
222 (ii) for an energy delivery project, the project does not satisfy the conditions described
223 in Subsection (2)(b).
224 (3) Subject to the procedures described in Section [79-6-604](#), if an applicant meets the
225 requirements of Subsection (1) to receive a tax credit, and the applicant's project receives a

226 favorable recommendation from the Utah Energy Infrastructure Board under Subsection (2),
227 the office shall enter into an agreement with the applicant to authorize the tax credit in
228 accordance with this part.

229 (4) The office shall grant a tax credit to an infrastructure cost-burdened entity, for a
230 high cost infrastructure project, under an agreement described in Subsection (3):

231 (a) for the lesser of:

232 (i) the economic life of the high cost infrastructure project;

233 (ii) 20 years; or

234 (iii) a time period, the first taxable year of which is the taxable year when the
235 construction of the high cost infrastructure project begins and the last taxable year of which is
236 the taxable year in which the infrastructure cost-burdened entity has recovered, through the tax
237 credit, an amount equal to:

238 (A) 50% of the cost of the infrastructure construction associated with the high cost
239 infrastructure project; or

240 (B) if the high cost infrastructure project is a fuel standard compliance project, 30% of
241 the cost of the infrastructure construction associated with the high cost infrastructure project;

242 (b) except as provided in Subsections (4)(a) and (d), in a total amount equal to 30% of
243 the high cost infrastructure project's total infrastructure-related revenue over the time period
244 described in Subsection (4)(a);

245 (c) for a taxable year, in an amount that does not exceed the high cost infrastructure
246 project's infrastructure-related revenue during that taxable year; and

247 (d) if the high cost infrastructure project is a fuel standard compliance project, in a total
248 amount that is:

249 (i) determined by the Utah Energy Infrastructure Board, based on:

250 (A) the applicant's likelihood of completing the high cost infrastructure project without
251 a tax credit; and

252 (B) how soon the applicant plans to complete the high cost infrastructure project; and

253 (ii) equal to or less than 30% of the high cost infrastructure project's total

254 infrastructure-related revenue over the time period described in Subsection (4)(a).

255 (5) An infrastructure cost-burdened entity shall, for each taxable year:

256 (a) file a report with the office showing the high cost infrastructure project's
257 infrastructure-related revenue during the taxable year;

258 (b) subject to Subsection (7), file a report with the office that is prepared by an
259 independent certified public accountant that verifies the infrastructure-related revenue
260 described in Subsection (5)(a); and

261 (c) provide the office with information required by the office to certify the economic
262 life of the high cost infrastructure project.

263 (6) An infrastructure cost-burdened entity shall retain records supporting a claim for a
264 tax credit for the same period of time during which a person is required to keep books and
265 records under Section [59-1-1406](#).

266 (7) An infrastructure cost-burdened entity for which a report is prepared under
267 Subsection (5)(b) shall pay the costs of preparing the report.

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

270 **Section 4. Effective date.**

271 This bill takes effect on January 1, 2024.