

HIGH COST INFRASTRUCTURE DEVELOPMENT TAX

CREDIT AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carl R. Albrecht

Senate Sponsor: Derrin R. Owens

LONG TITLE

General Description:

This bill modifies the high cost infrastructure development tax credit.

Highlighted Provisions:

This bill:

- ▶ provides that the corporate high cost infrastructure development tax credit does not automatically expire for lack of use before the 2027 tax year;
- ▶ defines an "underground mine infrastructure project";
- ▶ adds an "underground mine infrastructure project" to the definition of "infrastructure" for purposes of being eligible for a high cost infrastructure development income tax credit; and
- ▶ includes severance tax revenue in the calculation of the taxpayer's high cost infrastructure development tax credit.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

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



28 [79-6-602](#), as last amended by Laws of Utah 2022, Chapter 44



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

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

32 **59-7-619. Nonrefundable high cost infrastructure development tax credit.**

33 (1) As used in this section:

34 (a) "High cost infrastructure project" means the same as that term is defined in Section
35 [79-6-602](#).

36 (b) "Infrastructure cost-burdened entity" means the same as that term is defined in
37 Section [79-6-602](#).

38 (c) "Infrastructure-related revenue" means the same as that term is defined in Section
39 [79-6-602](#).

40 (d) "Office" means the Office of Energy Development created in Section [79-6-401](#).

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

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

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

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

52 (b) the amount of the tax credit exceeds the infrastructure cost-burdened entity's tax
53 liability under this chapter for that taxable year.

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

57 (b) (i) Except as provided in Subsection (5)(b)(ii), for purposes of the study required by
58 this Subsection (5), the office shall provide the following information, if available to the office,

59 to the Office of the Legislative Fiscal Analyst:

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

62 (B) the infrastructure-related revenue generated by each high cost infrastructure
63 project;

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

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

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

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

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

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

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

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

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

82 (6) Notwithstanding Section [59-7-903](#), the commission may not remove the tax credit
83 described in this section from the tax return for a taxable year beginning before January 1,
84 2027.

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

86 **79-6-602. Definitions.**

87 As used in this part:

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

- 90 (2) "Energy delivery project" means a project that is designed to:
- 91 (a) increase the capacity for the delivery of energy to a user of energy inside or outside
- 92 the state; or
- 93 (b) increase the capability of an existing energy delivery system or related facility to
- 94 deliver energy to a user of energy inside or outside the state.
- 95 (3) "Fuel standard compliance project" means a project designed to retrofit a fuel
- 96 refinery in order to make the refinery capable of producing fuel that complies with the United
- 97 States Environmental Protection Agency's Tier 3 gasoline sulfur standard described in 40
- 98 C.F.R. Sec. 79.54.
- 99 (4) "High cost infrastructure project" means a project, including an energy delivery
- 100 project or a fuel standard compliance project:
- 101 (a) (i) that expands or creates new industrial, mining, manufacturing, or agriculture
- 102 activity in the state, not including a retail business;
- 103 (ii) that involves new investment of at least \$50,000,000 in an existing industrial,
- 104 mining, manufacturing, or agriculture entity, by the entity; or
- 105 (iii) for the construction of a plant or other facility, including a fueling station, for the
- 106 storage, production, or distribution of hydrogen fuel used for transportation, electricity
- 107 generation, or industrial use;
- 108 (b) that requires or is directly facilitated by infrastructure construction; and
- 109 (c) for which the cost of infrastructure construction to the entity creating the project is
- 110 greater than:
- 111 (i) 10% of the total cost of the project; or
- 112 (ii) \$10,000,000.
- 113 (5) "Infrastructure" means:
- 114 (a) an energy delivery project;
- 115 (b) a railroad as defined in Section [54-2-1](#);
- 116 (c) a fuel standard compliance project;
- 117 (d) a road improvement project;
- 118 (e) a water self-supply project;
- 119 (f) a water removal system project;
- 120 (g) a solution-mined subsurface salt cavern; [~~or~~]

- 121 (h) a project that is designed to:
- 122 (i) increase the capacity for water delivery to a water user in the state; or
- 123 (ii) increase the capability of an existing water delivery system or related facility to
- 124 deliver water to a water user in the state[-]; or
- 125 (i) an underground mine infrastructure project.
- 126 (6) (a) "Infrastructure cost-burdened entity" means an applicant that enters into an
- 127 agreement with the office that qualifies the applicant to receive a tax credit as provided in this
- 128 part.
- 129 (b) "Infrastructure cost-burdened entity" includes a pass-through entity taxpayer, as
- 130 defined in Section [59-10-1402](#), of a person described in Subsection (6)(a).
- 131 (7) "Infrastructure-related revenue" means an amount of tax revenue, for an entity
- 132 creating a high cost infrastructure project, in a taxable year, that is directly attributable to a high
- 133 cost infrastructure project, under:
- 134 (a) Title 59, Chapter 5, Part 1, Oil and Gas Severance Tax;
- 135 (b) Title 59, Chapter 5, Part 2, Mining Severance Tax;
- 136 (c) Title 59, Chapter 7, Corporate Franchise and Income Taxes;
- 137 [~~b~~] (d) Title 59, Chapter 10, Individual Income Tax Act; and
- 138 [~~c~~] (e) Title 59, Chapter 12, Sales and Use Tax Act.
- 139 (8) "Office" means the Office of Energy Development created in Section [79-6-401](#).
- 140 (9) "Tax credit" means a tax credit under Section [59-7-619](#) or [59-10-1034](#).
- 141 (10) "Tax credit certificate" means a certificate issued by the office to an infrastructure
- 142 cost-burdened entity that:
- 143 (a) lists the name of the infrastructure cost-burdened entity;
- 144 (b) lists the infrastructure cost-burdened entity's taxpayer identification number;
- 145 (c) lists, for a taxable year, the amount of the tax credit authorized for the infrastructure
- 146 cost-burdened entity under this part; and
- 147 (d) includes other information as determined by the office.
- 148 (11) (a) "Underground mine infrastructure project" means a project that:
- 149 (i) is designed to create permanent underground infrastructure to facilitate underground
- 150 mining operations; and
- 151 (ii) services multiple levels or areas of an underground mine or multiple underground

152 mines.

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

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

155 (ii) a vertical or incline mine shaft;

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

157 (iv) a conveyor or a truck haulage way.

158 Section 3. **Effective date.**

159 This bill takes effect on January 1, 2024.