

Representative Carl R. Albrecht proposes the following substitute bill:

ENERGY INFRASTRUCTURE AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carl R. Albrecht

Senate Sponsor: Derrin R. Owens

LONG TITLE

General Description:

This bill modifies provisions related to energy infrastructure.

Highlighted Provisions:

This bill:

- ▶ modifies definitions and qualifications applicable to the high cost infrastructure development tax credit;
- ▶ modifies the membership of the Utah Energy Infrastructure Board; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:

AMENDS:

79-6-602, as last amended by Laws of Utah 2023, Chapter 473

79-6-603, as last amended by Laws of Utah 2023, Chapter 473

79-6-902, as renumbered and amended by Laws of Utah 2022, Chapter 44

1st Sub. H.B. 124



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

27 Section 1. Section **79-6-602** is amended to read:

28 **79-6-602. Definitions.**

29 As used in this part:

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

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

33 ~~[(a)]~~ (i) increase the capacity for the delivery of energy to a user of energy inside or
34 outside the state; ~~[or]~~

35 ~~[(b)]~~ (ii) increase the capability of an existing energy delivery system or related facility
36 to deliver energy to a user of energy inside or outside the state~~[-];~~ or

37 (iii) increase the production and delivery of geothermal energy through horizontal
38 drilling to create injection and production wells.

39 (b) "Energy delivery project" includes:

40 (i) a hydroelectric energy storage system; or

41 (ii) a nuclear power generation system.

42 (3) "Emissions reduction project" means a project that is designed to reduce the
43 emissions of an existing electrical generation facility, refinery, smelter, kiln, mineral processing
44 facility, manufacturing facility, oil or gas production facility, or other industrial facility, by
45 utilizing selective catalytic reduction technology, carbon capture utilization and sequestration
46 technology, or any other emissions reduction technology or equipment.

47 ~~[(3)]~~ (4) "Fuel standard compliance project" means a project designed to retrofit a fuel
48 refinery in order to make the refinery capable of producing fuel that complies with the United
49 States Environmental Protection Agency's Tier 3 gasoline sulfur standard described in 40
50 C.F.R. Sec. 79.54.

51 ~~[(4)]~~ (5) "High cost infrastructure project" means:

52 (a) ~~[a project, including]~~ for an energy delivery project ~~[or a]~~, fuel standard compliance
53 project, mineral processing project, or underground mine infrastructure project, a project:

54 ~~[(a)]~~ (i) ~~[(+)]~~ (A) that expands or creates new industrial, mining, manufacturing, or
55 agriculture activity in the state, not including a retail business;

56 ~~[(+)]~~ (B) that involves new investment of at least \$50,000,000 ~~[in]~~ made by an existing

57 industrial, mining, manufacturing, or agriculture entity~~[-, by the entity]~~ located within a county
58 of the first or second class; [or]

59 (C) that involves new investment of at least \$25,000,000 made by an existing
60 industrial, mining, manufacturing, or agriculture entity located within a county of the third,
61 fourth, fifth, or sixth class, or a municipality with a population of 10,000 or less located within
62 a county of the second class; or

63 ~~[(iii)]~~ (D) for the construction of a plant or other facility for the storage or production
64 of fuel used for transportation, electricity generation, or industrial use;

65 ~~[(b)]~~ (ii) that requires or is directly facilitated by infrastructure construction; and

66 ~~[(c)]~~ (iii) for which the cost of infrastructure construction to the entity creating the
67 project is greater than:

68 ~~[(+)]~~ (A) 10% of the total cost of the project; or

69 ~~[(+)]~~ (B) \$10,000,000~~[-]~~; and

70 (b) for an emissions reduction project, water purification project, or water resource
71 forecasting project, a project that involves:

72 (i) new investment of at least \$50,000,000 made by an existing industrial, mining,
73 manufacturing, or agriculture entity located within a county of the first or second class; or

74 (ii) new investment of at least \$25,000,000 made by an existing industrial, mining,
75 manufacturing, or agriculture entity located within a county of the third, fourth, fifth, or sixth
76 class, or a municipality with a population of 10,000 or less located within a county of the
77 second class.

78 ~~[(5)]~~ (6) "Infrastructure" means:

79 (a) an energy delivery project;

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

81 (c) a fuel standard compliance project;

82 (d) a road improvement project;

83 (e) a water self-supply project;

84 (f) a water removal system project;

85 (g) a solution-mined subsurface salt cavern;

86 (h) a project that is designed to:

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

88 (ii) increase the capability of an existing water delivery system or related facility to
89 deliver water to a water user in the state; ~~[or]~~

90 (i) an underground mine infrastructure project~~[-];~~

91 (j) an emissions reduction project;

92 (k) a mineral processing project;

93 (l) a water purification project; or

94 (m) a water resource forecasting project.

95 ~~[(6)]~~ (7) (a) "Infrastructure cost-burdened entity" means an applicant that enters into an
96 agreement with the office that qualifies the applicant to receive a tax credit as provided in this
97 part.

98 (b) "Infrastructure cost-burdened entity" includes a pass-through entity taxpayer, as
99 defined in Section [59-10-1402](#), of a person described in Subsection ~~[(6)(a)]~~ (7)(a).

100 ~~[(7)]~~ (8) "Infrastructure-related revenue" means an amount of tax revenue, for an entity
101 creating a high cost infrastructure project, in a taxable year, that is directly attributable to a high
102 cost infrastructure project, under:

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

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

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

106 (d) Title 59, Chapter 10, Individual Income Tax Act; and

107 (e) Title 59, Chapter 12, Sales and Use Tax Act.

108 (9) "Mineral processing project" means a project that is designed to:

109 (a) process, smelt, refine, convert, separate, or otherwise beneficiate metalliferous
110 minerals as defined in Section [59-5-201](#) or a metalliferous compound as defined in Section
111 [59-5-202](#);

112 (b) calcine limestone or manufacture cement;

113 (c) process, refine, or otherwise beneficiate chloride compounds, salts, potash, gypsum,
114 sulfur or sulfuric acid, ammonium nitrate, phosphate, or untaite; or

115 (d) convert or gasify coal to recover chemical compounds, gases, or minerals.

116 ~~[(8)]~~ (10) "Office" means the Office of Energy Development created in Section
117 [79-6-401](#).

118 ~~[(9)]~~ (11) "Tax credit" means a tax credit under Section [59-7-619](#) or [59-10-1034](#).

119 ~~[(H)]~~ (12) "Tax credit certificate" means a certificate issued by the office to an
120 infrastructure cost-burdened entity that:

- 121 (a) lists the name of the infrastructure cost-burdened entity;
122 (b) lists the infrastructure cost-burdened entity's taxpayer identification number;
123 (c) lists, for a taxable year, the amount of the tax credit authorized for the infrastructure
124 cost-burdened entity under this part; and
125 (d) includes other information as determined by the office.

126 ~~[(H)]~~ (13) (a) "Underground mine infrastructure project" means a project that:

- 127 (i) is designed to create permanent underground infrastructure to facilitate underground
128 mining operations; and
129 (ii) services multiple levels or areas of an underground mine or multiple underground
130 mines.

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

- 132 (i) an underground access or a haulage road, entry, ramp, or decline;
133 (ii) a vertical or incline mine shaft;
134 (iii) a ventilation shaft or an air course; or
135 (iv) a conveyor or a truck haulageway.

136 (14) "Water purification project" means a project that, in order to meet applicable
137 quality standards established under Title 19, Chapter 5, Water Quality Act, is designed to
138 reduce the existing total dissolved solids or other naturally existing impurities contained in
139 water sources:

- 140 (a) located at a distance of not less than 2,000 feet below the surface;
141 (b) associated with existing mineral operations; or
142 (c) associated with deep water mining operations designed primarily for the
143 revitalization of the Great Salt Lake.

144 (15) "Water resource forecasting project" means a project that includes a network of
145 permanent, physical data collection systems designed to improve forecasting for the availability
146 of seasonal water flows within the state, including flash flooding and other event-driven water
147 flows resulting from localized severe weather events.

148 Section 2. Section **79-6-603** is amended to read:

149 **79-6-603. Tax credit -- Amount -- Eligibility -- Reporting.**

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

154 (i) that the project meets the definition of a high cost infrastructure project under this
155 part;

156 (ii) that the high cost infrastructure project will generate infrastructure-related revenue;

157 (iii) the economic life of the high cost infrastructure project; and

158 (iv) that the applicant has received a certificate of existence from the Division of
159 Corporations and Commercial Code.

160 (b) For purposes of determining whether a project meets the definition of a high cost
161 infrastructure project, the office shall consider a project to be a new project if the project began
162 no earlier than the taxable year before the year in which the applicant [~~applies~~] submits an
163 application or a preliminary application for a tax credit.

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

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

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

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

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

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

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

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

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

181 (ix) other relevant factors that the board specifies in the board's evaluation.
182 (b) Before the office enters into an agreement described in Subsection (3) with an
183 applicant regarding an energy delivery project, in addition to the criteria described in
184 Subsection (2)(a) the Utah Energy Infrastructure Board shall determine that the project:
185 (i) is strategically situated to maximize connections to an energy source project located
186 in the state that is:
187 (A) existing;
188 (B) under construction;
189 (C) planned; or
190 (D) foreseeable;
191 (ii) is supported by a project plan related to:
192 (A) engineering;
193 (B) environmental issues;
194 (C) energy production;
195 (D) load or other capacity; and
196 (E) any other issue related to the building and operation of energy delivery
197 infrastructure; and
198 (iii) complies with the regulations of the following regarding the building of energy
199 delivery infrastructure:
200 (A) the Federal Energy Regulatory Commission;
201 (B) the North American Electric Reliability Council; and
202 (C) the Public Service Commission of Utah.
203 (c) The Utah Energy Infrastructure Board may recommend that the office deny an
204 applicant a tax credit if, as determined by the Utah Energy Infrastructure Board:
205 (i) the project does not sufficiently benefit the state based on the criteria described in
206 Subsection (2)(a); or
207 (ii) for an energy delivery project, the project does not satisfy the conditions described
208 in Subsection (2)(b).
209 (3) Subject to the procedures described in Section [79-6-604](#), if an applicant meets the
210 requirements of Subsection (1) to receive a tax credit, and the applicant's project receives a
211 favorable recommendation from the Utah Energy Infrastructure Board under Subsection (2),

212 the office shall enter into an agreement with the applicant to authorize the tax credit in
213 accordance with this part.

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

216 (a) for the lesser of:

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

218 (ii) 20 years; or

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

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

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

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

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

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

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

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

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

238 (ii) equal to or less than 30% of the high cost infrastructure project's total
239 infrastructure-related revenue over the time period described in Subsection (4)(a).

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

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

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

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

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

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

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

255 Section 3. Section 79-6-902 is amended to read:

256 **79-6-902. Utah Energy Infrastructure Board.**

257 (1) There is created within the office the Utah Energy Infrastructure Board that consists
 258 of nine members as follows:

259 (a) members appointed by the governor:

260 (i) the energy advisor or the director of the Office of Energy Development, who shall
 261 serve as chair of the board;

262 (ii) one member from the Governor's Office of Economic Opportunity; and

263 (iii) one member from a public utility or electric interlocal entity that operates electric
 264 transmission facilities within the state;

265 ~~[(iv) two members representing the economic development interests of rural
 266 communities as follows:]~~

267 ~~[(A) one member currently serving as county commissioner of a county of the third,
 268 fourth, fifth, or sixth class, as described in Section 17-50-501; and]~~

269 ~~[(B) one member of a rural community with work experience in the energy industry;]~~

270 ~~[(v) two members of the general public with relevant industry or community
 271 experience; and]~~

272 ~~[(vi) one member of the general public who has experience with public finance and
 273 bonding; and]~~

- 274 (b) members appointed by the president of the Senate:
275 (i) one member currently serving as county commissioner of a county of the third,
276 fourth, fifth, or sixth class, as described in Section [17-50-501](#); and
277 (ii) one member of the general public with relevant industry experience;
278 (c) members appointed by the speaker of the House of Representatives:
279 (i) one member who resides within a county of the third, fourth, fifth, or sixth class, as
280 described in Section [17-50-501](#), with relevant experience in an energy or extraction industry;
281 and
282 (ii) one member of the general public with relevant industry experience;
283 (d) one member appointed jointly by the Utah Farm Bureau Federation, the Utah
284 Manufacturer's Association, the Utah Mining Association, and the Utah Petroleum
285 Association; and
286 ~~[(b)]~~ (e) the director of the School and Institutional Trust Lands Administration created
287 in Section [53C-1-201](#).
288 (2) (a) The term of an appointed board member is four years.
289 (b) Notwithstanding Subsection (2)(a), the governor shall, at the time of appointment
290 or reappointment, adjust the length of terms to ensure that the terms of board members are
291 staggered so that approximately half of the board is appointed every two years.
292 (c) The governor may remove a member of the board for cause.
293 (d) The governor shall fill a vacancy in the board in the same manner under this section
294 as the appointment of the member whose vacancy is being filled.
295 (e) An individual appointed to fill a vacancy shall serve the remaining unexpired term
296 of the member whose vacancy the individual is filling.
297 (f) A board member shall serve until a successor is appointed and qualified.
298 (3) (a) Five members of the board constitute a quorum for conducting board business.
299 (b) A majority vote of the quorum present is required for an action to be taken by the
300 board.
301 (4) The board shall meet as needed to review an application.
302 (5) A member may not receive compensation or benefits for the member's service, but
303 may receive per diem and travel expenses in accordance with:
304 (a) Section [63A-3-106](#);

305 (b) Section [63A-3-107](#); and

306 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and

307 [63A-3-107](#).

308 Section 4. **Effective date.**

309 This bill takes effect on May 1, 2024.

310 Section 5. **Retrospective operation.**

311 The following sections have retrospective operation for a taxable year beginning on or

312 after January 1, 2024:

313 (1) Section [79-6-602](#); and

314 (2) Section [79-6-603](#).