HB0124S02 compared with HB0124S01

~~{deleted text}~~ shows text that was in HB0124S01 but was deleted in HB0124S02.

inserted text shows text that was not in HB0124S01 but was inserted into HB0124S02.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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 (tax credit);
- provides for the issuance of a tax credit for certain emissions reduction projects, mineral processing projects, water purification projects, water resource forecasting projects, and locomotive engine conversion projects;
- 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

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

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

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

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

[~~(b)~~] (ii) 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[~~.~~]; or

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

(b) "Energy delivery project" includes:

(i) a hydroelectric energy storage system;

(ii) a utility-scale battery storage system; or

(~~(ii)~~iii) a nuclear power generation system.

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

[~~(3)~~] (4) "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)~~] (5) "High cost infrastructure project" means:

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

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

[~~(ii)~~] (B) that involves new investment of at least $50,000,000 [~~in~~] made by an existing industrial, mining, manufacturing, or agriculture entity[~~, by the entity; or~~] located within a county of the first or second class;~~{; [or]}~~

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

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

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

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

[~~(ii)~~] (B) $10,000,000[~~.~~];~~{ and}~~

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

(i) that involves:

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

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

second class~~{.}~~; and

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

(c) for a locomotive engine conversion project, a project that requires or is directly facilitated by infrastructure construction for which the cost to the entity creating the project is at least $5,000,000.

[~~(5)~~] (6) "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[~~.~~];

(j) an emissions reduction project;

(k) a mineral processing project;

(l) a water purification project;~~{ or}~~

(m) a water resource forecasting project~~{.}~~; or

(n) a locomotive engine conversion project.

[~~(6)~~] (7) (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)(a).

[~~(7)~~] (8) "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.

(9) "Locomotive engine conversion project" means a project designed to convert, retrofit, or replace one or more locomotive engines in order to meet the United States Environmental Protection Agency's Tier 4 emission standards for switch locomotives as described in 40 C.F.R. Part 1033, for a class I railroad or a class III railroad, as defined in 49 U.S.C. Sec. 20102, operating in a county of the first, second, or third class.

(~~(9)~~10) "Mineral processing project" means a project that is designed to:

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

(b) calcine limestone or manufacture cement;

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

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

[~~(8)~~] (~~(10)~~11) "Office" means the Office of Energy Development created in Section 79-6-401.

[~~(9)~~] (~~(11)~~12) "Tax credit" means a tax credit under Section 59-7-619 or 59-10-1034.

[~~(10)~~] (~~(12)~~13) "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)~~] (~~(13)~~14) (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.

(~~(14)~~15) "Water purification project" means a project that, in order to meet applicable quality standards established under Title 19, Chapter 5, Water Quality Act, is designed to reduce the existing total dissolved solids or other naturally existing impurities contained in water sources:

(a) located at a distance of not less than 2,000 feet below the surface;

(b) associated with existing mineral operations; or

(c) associated with deep water mining operations designed primarily for the revitalization of the Great Salt Lake.

(~~(15)~~16) "Water resource forecasting project" means a project that includes a network of permanent, physical data collection systems designed to improve forecasting for the availability of seasonal water flows within the state, including flash flooding and other event-driven water flows resulting from localized severe weather events.

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

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~~] submits an application or a preliminary application 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), and (~~(d)~~ e), 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)[~~.~~]; and

(e) if the high cost infrastructure project is a locomotive engine conversion project, in a total amount equal to 25% of the cost of the infrastructure construction associated with the high cost infrastructure project.

(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.

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

79-6-902. Utah Energy Infrastructure Board.

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

(a) subject to Subsection (2), members appointed by the governor:

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

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

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

(iv) one member who resides within a county of the third, fourth, fifth, or sixth class, as described in Section 17-50-501, with relevant experience in an energy or extraction industry;

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

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

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

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

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

~~{ (b) members appointed by the president of the Senate:~~

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

~~(ii) one member of the general public with relevant industry experience;~~

~~(c) members appointed by the speaker of the House of Representatives:~~

~~(i) one member who resides within a county of the third, fourth, fifth, or sixth class, as described in Section 17-50-501, with relevant experience in an energy or extraction industry; and~~

~~(ii) one member of the general public with relevant industry experience;~~

~~)~~ (~~{d)~~b) one member appointed jointly by the Utah Farm Bureau Federation, the Utah Manufacturer's Association, the Utah Mining Association, and the Utah Petroleum Association; and

[~~(b)~~] (~~{e)~~c) the director of the School and Institutional Trust Lands Administration created in Section 53C-1-201.

(2) The governor shall consult with the president of the Senate and the speaker of the House of Representatives in appointing the members described in Subsections (1)(a)(iii) through (vi).

[~~(2)~~] (3) (a) The term of an appointed board member is four years.

(b) Notwithstanding Subsection [~~(2)(a)~~] (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(c) The governor may remove a member of the board for cause.

(d) The governor shall fill a vacancy in the board in the same manner under this section as the appointment of the member whose vacancy is being filled.

(e) An individual appointed to fill a vacancy shall serve the remaining unexpired term of the member whose vacancy the individual is filling.

(f) A board member shall serve until a successor is appointed and qualified.

[~~(3)~~] (4) (a) Five members of the board constitute a quorum for conducting board business.

(b) A majority vote of the quorum present is required for an action to be taken by the board.

[~~(4)~~] (5) The board shall meet as needed to review an application.

[~~(5)~~] (6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 4. **Effective date.**

This bill takes effect on May 1, 2024.

Section 5. **Retrospective operation.**

(1) The following sections have retrospective operation for a taxable year beginning on or after January 1, 2024:

(~~(1)~~a) Section 79-6-602; and

(~~(2)~~b) Section 79-6-603.