

**Senator Derrin R. Owens** proposes the following substitute bill:

**ENERGY INFRASTRUCTURE AMENDMENTS**

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Carl R. Albrecht**

Senate Sponsor: Derrin R. Owens

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**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, and water resource forecasting 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



26 79-6-603, as last amended by Laws of Utah 2023, Chapter 473

27 79-6-902, as renumbered and amended by Laws of Utah 2022, Chapter 44



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

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

31 **79-6-602. Definitions.**

32 As used in this part:

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

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

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

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

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

42 (b) "Energy delivery project" includes:

43 (i) a hydroelectric energy storage system;

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

45 (iii) a nuclear power generation system.

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

51 ~~[(3)]~~ (4) "Fuel standard compliance project" means a project designed to retrofit a fuel  
52 refinery in order to make the refinery capable of producing fuel that complies with the United  
53 States Environmental Protection Agency's Tier 3 gasoline sulfur standard described in 40  
54 C.F.R. Sec. 79.54.

55 ~~[(4)]~~ (5) "High cost infrastructure project" means:

56 (a) ~~[a project, including]~~ for an energy delivery project ~~[or a]~~, fuel standard compliance

57 project, mineral processing project, or underground mine infrastructure project, a project:

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

60 ~~[(†)]~~ (B) that involves new investment of at least \$50,000,000 ~~[(m)]~~ made by an existing  
61 industrial, mining, manufacturing, or agriculture entity~~[, by the entity; or]~~ located within a  
62 county of the first or second class;

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

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

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

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

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

73 ~~[(†)]~~ (B) \$10,000,000~~[-];~~ and

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

76 (i) that involves:

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

79 (B) new investment of at least \$25,000,000 made by an existing industrial, mining,  
80 manufacturing, or agriculture entity located within a county of the third, fourth, fifth, or sixth  
81 class, or a municipality with a population of 10,000 or less located within a county of the  
82 second class; and

83 (ii) that requires or is directly facilitated by infrastructure construction.

84 ~~[(5)]~~ (6) "Infrastructure" means:

85 (a) an energy delivery project;

86 (b) a railroad as defined in Section [54-2-1](#);

87 (c) a fuel standard compliance project;

- 88 (d) a road improvement project;  
 89 (e) a water self-supply project;  
 90 (f) a water removal system project;  
 91 (g) a solution-mined subsurface salt cavern;  
 92 (h) a project that is designed to:  
 93 (i) increase the capacity for water delivery to a water user in the state; or  
 94 (ii) increase the capability of an existing water delivery system or related facility to  
 95 deliver water to a water user in the state; ~~or~~

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

97 (j) an emissions reduction project;

98 (k) a mineral processing project;

99 (l) a water purification project; or

100 (m) a water resource forecasting project.

101 ~~[(6)]~~ (7) (a) "Infrastructure cost-burdened entity" means an applicant that enters into an  
 102 agreement with the office that qualifies the applicant to receive a tax credit as provided in this  
 103 part.

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

106 ~~[(7)]~~ (8) "Infrastructure-related revenue" means an amount of tax revenue, for an entity  
 107 creating a high cost infrastructure project, in a taxable year, that is directly attributable to a high  
 108 cost infrastructure project, under:

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

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

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

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

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

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

115 (a) process, smelt, refine, convert, separate, or otherwise beneficiate metalliferous  
 116 minerals as defined in Section [59-5-201](#) or a metalliferous compound as defined in Section  
 117 [59-5-202](#);

118 (b) calcine limestone or manufacture cement;

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

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

122 [~~8~~] (10) "Office" means the Office of Energy Development created in Section  
123 79-6-401.

124 [~~9~~] (11) "Tax credit" means a tax credit under Section 59-7-619 or 59-10-1034.

125 [~~10~~] (12) "Tax credit certificate" means a certificate issued by the office to an  
126 infrastructure cost-burdened entity that:

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

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

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

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

132 [~~11~~] (13) (a) "Underground mine infrastructure project" means a project that:

133 (i) is designed to create permanent underground infrastructure to facilitate underground  
134 mining operations; and

135 (ii) services multiple levels or areas of an underground mine or multiple underground  
136 mines.

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

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

139 (ii) a vertical or incline mine shaft;

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

141 (iv) a conveyor or a truck haulageway.

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

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

147 (b) associated with existing mineral operations; or

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

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

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

155           **79-6-603. Tax credit -- Amount -- Eligibility -- Reporting.**

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

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

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

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

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

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

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

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

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

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

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

- 181 (v) whether the project would have a positive environmental impact on the state;
- 182 (vi) whether the project promotes responsible energy development;
- 183 (vii) whether the project would upgrade or improve an existing entity in order to ensure
- 184 the entity's continued operation and economic viability;
- 185 (viii) whether the project is less likely to be completed without a tax credit issued to
- 186 the applicant under this part; and
- 187 (ix) other relevant factors that the board specifies in the board's evaluation.
- 188 (b) Before the office enters into an agreement described in Subsection (3) with an
- 189 applicant regarding an energy delivery project, in addition to the criteria described in
- 190 Subsection (2)(a) the Utah Energy Infrastructure Board shall determine that the project:
- 191 (i) is strategically situated to maximize connections to an energy source project located
- 192 in the state that is:
  - 193 (A) existing;
  - 194 (B) under construction;
  - 195 (C) planned; or
  - 196 (D) foreseeable;
- 197 (ii) is supported by a project plan related to:
  - 198 (A) engineering;
  - 199 (B) environmental issues;
  - 200 (C) energy production;
  - 201 (D) load or other capacity; and
  - 202 (E) any other issue related to the building and operation of energy delivery
  - 203 infrastructure; and
- 204 (iii) complies with the regulations of the following regarding the building of energy
- 205 delivery infrastructure:
  - 206 (A) the Federal Energy Regulatory Commission;
  - 207 (B) the North American Electric Reliability Council; and
  - 208 (C) the Public Service Commission of Utah.
- 209 (c) The Utah Energy Infrastructure Board may recommend that the office deny an
- 210 applicant a tax credit if, as determined by the Utah Energy Infrastructure Board:
- 211 (i) the project does not sufficiently benefit the state based on the criteria described in

212 Subsection (2)(a); or

213 (ii) for an energy delivery project, the project does not satisfy the conditions described  
214 in Subsection (2)(b).

215 (3) Subject to the procedures described in Section 79-6-604, if an applicant meets the  
216 requirements of Subsection (1) to receive a tax credit, and the applicant's project receives a  
217 favorable recommendation from the Utah Energy Infrastructure Board under Subsection (2),  
218 the office shall enter into an agreement with the applicant to authorize the tax credit in  
219 accordance with this part.

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

222 (a) for the lesser of:

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

224 (ii) 20 years; or

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

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

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

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

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

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

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

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



243 (B) how soon the applicant plans to complete the high cost infrastructure project; and  
244 (ii) equal to or less than 30% of the high cost infrastructure project's total  
245 infrastructure-related revenue over the time period described in Subsection (4)(a).

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

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

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

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

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

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

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

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

262 **79-6-902. Utah Energy Infrastructure Board.**

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

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

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

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

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

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

273 ~~[(iv) two members representing the economic development interests of rural~~

274 communities as follows:]

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

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

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

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

282 (b) one member appointed jointly by the Utah Farm Bureau Federation, the Utah  
283 Manufacturer's Association, the Utah Mining Association, and the Utah Petroleum  
284 Association; and

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

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

290 [~~(2)~~] (3) (a) The term of an appointed board member is four years.

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

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

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

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

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

300 [~~(3)~~] (4) (a) Five members of the board constitute a quorum for conducting board  
301 business.

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

304 [~~(4)~~] (5) The board shall meet as needed to review an application.

305            [~~5~~] (6) A member may not receive compensation or benefits for the member's service,  
306 but may receive per diem and travel expenses in accordance with:

307            (a) Section [63A-3-106](#);

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

309            (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and  
310 [63A-3-107](#).

311            Section 4. **Effective date.**

312            This bill takes effect on May 1, 2024.

313            Section 5. **Retrospective operation.**

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

316            (a) Section [79-6-602](#); and

317            (b) Section [79-6-603](#).