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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, 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
- 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:

- 28 (1) "Applicant" means a person that conducts business in the state and that applies for a tax
 29 credit under this part.
- 30 (2) (a) "Energy delivery project" means a project that is designed to:
 31 ~~[(a)]~~ (i) increase the capacity for the delivery of energy to a user of energy inside or
 32 outside the state; ~~[or]~~
 33 ~~[(b)]~~ (ii) increase the capability of an existing energy delivery system or related
 34 facility to deliver energy to a user of energy inside or outside the state~~[-]~~ ; or
 35 (iii) increase the production and delivery of geothermal energy through horizontal
 36 drilling to create injection and production wells.
- 37 (b) "Energy delivery project" includes:
 38 (i) a hydroelectric energy storage system;
 39 (ii) a utility-scale battery storage system; or
 40 (iii) a nuclear power generation system.
- 41 (3) "Emissions reduction project" means a project that is designed to reduce the emissions
 42 of an existing electrical generation facility, refinery, smelter, kiln, mineral processing
 43 facility, manufacturing facility, oil or gas production facility, or other industrial facility,
 44 by utilizing selective catalytic reduction technology, carbon capture utilization and
 45 sequestration technology, or any other emissions reduction technology or equipment.
- 46 ~~[(3)]~~ (4) "Fuel standard compliance project" means a project designed to retrofit a fuel
 47 refinery in order to make the refinery capable of producing fuel that complies with the
 48 United States Environmental Protection Agency's Tier 3 gasoline sulfur standard
 49 described in 40 C.F.R. Sec. 79.54.
- 50 ~~[(4)]~~ (5) "High cost infrastructure project" means:
 51 (a) ~~[a project, including]~~ for an energy delivery project~~[or a]~~ , fuel standard compliance
 52 project, mineral processing project, or underground mine infrastructure project, a
 53 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 ~~[(+)]~~ made by an
 57 existing industrial, mining, manufacturing, or agriculture entity~~[-, by the entity;~~
 58 or] located within a county of the first or second class;
 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
 61 of the third, fourth, fifth, or sixth class, or a municipality with a population of

- 62 10,000 or less located within a county of the second class; or
- 63 ~~[(iii)]~~ (D) for the construction of a plant or other facility for the storage or
- 64 production of fuel used for transportation, electricity generation, or industrial
- 65 use;
- 66 ~~[(b)]~~ (ii) that requires or is directly facilitated by infrastructure construction; and
- 67 ~~[(e)]~~ (iii) for which the cost of infrastructure construction to the entity creating the
- 68 project is greater than:
- 69 ~~[(f)]~~ (A) 10% of the total cost of the project; or
- 70 ~~[(g)]~~ (B) \$10,000,000~~[-]~~ ; and
- 71 (b) for an emissions reduction project, water purification project, or water resource
- 72 forecasting project, a project:
- 73 (i) that involves:
- 74 (A) new investment of at least \$50,000,000 made by an existing industrial,
- 75 mining, manufacturing, or agriculture entity located within a county of the first
- 76 or second class; or
- 77 (B) new investment of at least \$25,000,000 made by an existing industrial,
- 78 mining, manufacturing, or agriculture entity located within a county of the
- 79 third, fourth, fifth, or sixth class, or a municipality with a population of 10,000
- 80 or less located within a county of the second class; and
- 81 (ii) that requires or is directly facilitated by infrastructure construction.
- 82 ~~[(5)]~~ (6) "Infrastructure" means:
- 83 (a) an energy delivery project;
- 84 (b) a railroad as defined in Section 54-2-1;
- 85 (c) a fuel standard compliance project;
- 86 (d) a road improvement project;
- 87 (e) a water self-supply project;
- 88 (f) a water removal system project;
- 89 (g) a solution-mined subsurface salt cavern;
- 90 (h) a project that is designed to:
- 91 (i) increase the capacity for water delivery to a water user in the state; or
- 92 (ii) increase the capability of an existing water delivery system or related facility to
- 93 deliver water to a water user in the state; ~~[(or)]~~
- 94 (i) an underground mine infrastructure project~~[-]~~ ;
- 95 (j) an emissions reduction project;

96 (k) a mineral processing project;

97 (l) a water purification project; or

98 (m) a water resource forecasting project.

99 ~~[(6)]~~ (7) (a) "Infrastructure cost-burdened entity" means an applicant that enters into an
100 agreement with the office that qualifies the applicant to receive a tax credit as
101 provided in this part.

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

104 ~~[(7)]~~ (8) "Infrastructure-related revenue" means an amount of tax revenue, for an entity
105 creating a high cost infrastructure project, in a taxable year, that is directly attributable to
106 a high cost infrastructure project, under:

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

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

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

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

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

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

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

116 (b) calcine limestone or manufacture cement;

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

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

120 ~~[(8)]~~ (10) "Office" means the Office of Energy Development created in Section 79-6-401.

121 ~~[(9)]~~ (11) "Tax credit" means a tax credit under Section 59-7-619 or 59-10-1034.

122 ~~[(10)]~~ (12) "Tax credit certificate" means a certificate issued by the office to an
123 infrastructure cost-burdened entity that:

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

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

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

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

129 ~~[(11)]~~ (13) (a) "Underground mine infrastructure project" means a project that:

- 130 (i) is designed to create permanent underground infrastructure to facilitate
131 underground mining operations; and
132 (ii) services multiple levels or areas of an underground mine or multiple underground
133 mines.
- 134 (b) "Underground mine infrastructure project" includes:
135 (i) an underground access or a haulage road, entry, ramp, or decline;
136 (ii) a vertical or incline mine shaft;
137 (iii) a ventilation shaft or an air course; or
138 (iv) a conveyor or a truck haulageway.

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

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

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

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

152 **79-6-603 . Tax credit -- Amount -- Eligibility -- Reporting.**

- 153 (1) (a) Before the office enters into an agreement described in Subsection (3) with an
154 applicant regarding a project, the office, in consultation with the Utah Energy
155 Infrastructure Board created in Section 79-6-902, and other state agencies as
156 necessary, shall, in accordance with the procedures described in Section 79-6-604,
157 certify:
- 158 (i) that the project meets the definition of a high cost infrastructure project under this
159 part;
160 (ii) that the high cost infrastructure project will generate infrastructure-related
161 revenue;
162 (iii) the economic life of the high cost infrastructure project; and
163 (iv) that the applicant has received a certificate of existence from the Division of

- 164 Corporations and Commercial Code.
- 165 (b) For purposes of determining whether a project meets the definition of a high cost
166 infrastructure project, the office shall consider a project to be a new project if the
167 project began no earlier than the taxable year before the year in which the applicant [
168 ~~applies~~] submits an application or a preliminary application for a tax credit.
- 169 (2) (a) Before the office enters into an agreement described in Subsection (3) with an
170 applicant regarding a project, the Utah Energy Infrastructure Board shall evaluate the
171 project's net benefit to the state, including:
- 172 (i) whether the project is likely to increase the property tax revenue for the
173 municipality or county where the project will be located;
 - 174 (ii) whether the project would contribute to the economy of the state and the
175 municipality, tribe, or county where the project will be located;
 - 176 (iii) whether the project would provide new infrastructure for an area where the type
177 of infrastructure the project would create is underdeveloped;
 - 178 (iv) whether the project is supported by a business case for providing the revenue
179 necessary to finance the construction and operation of the project;
 - 180 (v) whether the project would have a positive environmental impact on the state;
 - 181 (vi) whether the project promotes responsible energy development;
 - 182 (vii) whether the project would upgrade or improve an existing entity in order to
183 ensure the entity's continued operation and economic viability;
 - 184 (viii) whether the project is less likely to be completed without a tax credit issued to
185 the applicant under this part; and
 - 186 (ix) other relevant factors that the board specifies in the board's evaluation.
- 187 (b) Before the office enters into an agreement described in Subsection (3) with an
188 applicant regarding an energy delivery project, in addition to the criteria described in
189 Subsection (2)(a) the Utah Energy Infrastructure Board shall determine that the
190 project:
- 191 (i) is strategically situated to maximize connections to an energy source project
192 located 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
- 214 described 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
- 217 receives a favorable recommendation from the Utah Energy Infrastructure Board under
- 218 Subsection (2), the office shall enter into an agreement with the applicant to authorize
- 219 the tax credit in accordance with this part.
- 220 (4) The office shall grant a tax credit to an infrastructure cost-burdened entity, for a high
- 221 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
- 227 of which is the taxable year in which the infrastructure cost-burdened entity has
- 228 recovered, through the tax 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,

- 232 30% of the cost of the infrastructure construction associated with the high cost
233 infrastructure project;
- 234 (b) except as provided in Subsections (4)(a) and (d), in a total amount equal to 30% of
235 the high cost infrastructure project's total infrastructure-related revenue over the time
236 period described in Subsection (4)(a);
- 237 (c) for a taxable year, in an amount that does not exceed the high cost infrastructure
238 project's infrastructure-related revenue during that taxable year; and
- 239 (d) if the high cost infrastructure project is a fuel standard compliance project, in a total
240 amount that is:
- 241 (i) determined by the Utah Energy Infrastructure Board, based on:
- 242 (A) the applicant's likelihood of completing the high cost infrastructure project
243 without a tax credit; and
- 244 (B) how soon the applicant plans to complete the high cost infrastructure project;
245 and
- 246 (ii) equal to or less than 30% of the high cost infrastructure project's total
247 infrastructure-related revenue over the time period described in Subsection (4)(a).
- 248 (5) An infrastructure cost-burdened entity shall, for each taxable year:
- 249 (a) file a report with the office showing the high cost infrastructure project's
250 infrastructure-related revenue during the taxable year;
- 251 (b) subject to Subsection (7), file a report with the office that is prepared by an
252 independent certified public accountant that verifies the infrastructure-related revenue
253 described in Subsection (5)(a); and
- 254 (c) provide the office with information required by the office to certify the economic life
255 of the high cost infrastructure project.
- 256 (6) An infrastructure cost-burdened entity shall retain records supporting a claim for a tax
257 credit for the same period of time during which a person is required to keep books and
258 records under Section 59-1-1406.
- 259 (7) An infrastructure cost-burdened entity for which a report is prepared under Subsection
260 (5)(b) shall pay the costs of preparing the report.
- 261 (8) The office shall certify, for each taxable year, the infrastructure-related revenue
262 generated by an infrastructure cost-burdened entity.
- 263 Section 3. Section **79-6-902** is amended to read:
- 264 **79-6-902 . Utah Energy Infrastructure Board.**
- 265 (1) There is created within the office the Utah Energy Infrastructure Board that consists of

266 nine members as follows:

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

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

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

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

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

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

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

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

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

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

285 (b) one member appointed jointly by the Utah Farm Bureau Federation, the Utah
286 Manufacturer's Association, the Utah Mining Association, and the Utah Petroleum
287 Association; and

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

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

293 [~~(2)~~] (3) (a) The term of an appointed board member is four years.

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

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

299 (d) The governor shall fill a vacancy in the board in the same manner under this section

- 300 as the appointment of the member whose vacancy is being filled.
- 301 (e) An individual appointed to fill a vacancy shall serve the remaining unexpired term of
- 302 the member whose vacancy the individual is filling.
- 303 (f) A board member shall serve until a successor is appointed and qualified.
- 304 [~~(3)~~] (4) (a) Five members of the board constitute a quorum for conducting board
- 305 business.
- 306 (b) A majority vote of the quorum present is required for an action to be taken by the
- 307 board.
- 308 [~~(4)~~] (5) The board shall meet as needed to review an application.
- 309 [~~(5)~~] (6) A member may not receive compensation or benefits for the member's service, but
- 310 may receive per diem and travel expenses in accordance with:
- 311 (a) Section 63A-3-106;
- 312 (b) Section 63A-3-107; and
- 313 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
- 314 63A-3-107.
- 315 Section 4. **Effective date.**
- 316 This bill takes effect on May 1, 2024.
- 317 Section 5. **Retrospective operation.**
- 318 (1) The following sections have retrospective operation for a taxable year beginning on or
- 319 after January 1, 2024:
- 320 (a) Section 79-6-602; and
- 321 (b) Section 79-6-603.