

HIGH COST INFRASTRUCTURE TAX CREDITS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ralph Okerlund

House Sponsor: Jon Cox

LONG TITLE

General Description:

This bill modifies provisions related to tax credits for infrastructure development projects.

Highlighted Provisions:

This bill:

- ▶ directs the Office of Energy Development to issue a tax credit certificate to an entity developing a high cost infrastructure project under certain circumstances; and
- ▶ provides tax credit eligibility criteria for an entity developing a high cost infrastructure project.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

63M-4-401, as last amended by Laws of Utah 2012, Chapters 37 and 410

ENACTS:

59-7-618, Utah Code Annotated 1953

59-10-1033, Utah Code Annotated 1953

63M-4-601, Utah Code Annotated 1953

63M-4-602, Utah Code Annotated 1953

63M-4-603, Utah Code Annotated 1953

30 [63M-4-604](#), Utah Code Annotated 1953

31 [63M-4-605](#), Utah Code Annotated 1953

32

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

34 Section 1. Section **59-7-618** is enacted to read:

35 **59-7-618. Nonrefundable high cost infrastructure development tax credit.**

36 (1) As used in this section:

37 (a) "High cost infrastructure project" means the same as that term is defined in Section
38 [63M-4-602](#).

39 (b) "Infrastructure cost-burdened entity" means the same as that term is defined in
40 Section [63M-4-602](#).

41 (c) "Infrastructure-related revenue" means the same as that term is defined in Section
42 [63M-4-602](#).

43 (d) "Office" means the Office of Energy Development created in Section [63M-4-401](#).

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

47 (3) The tax credit under this section is the amount listed as the tax credit amount on a
48 tax credit certificate that the office issues under Title 63M, Chapter 4, Part 6, High Cost
49 Infrastructure Development Tax Credit Act, to the infrastructure cost-burdened entity for the
50 taxable year.

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

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

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

57 (5) (a) On or before October 1, 2020, and every five years after October 1, 2020, the

58 Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and
59 make recommendations to the Legislative Management Committee concerning whether the tax
60 credit should be continued, modified, or repealed.

61 (b) For purposes of the study required by this Subsection (5), the office shall provide
62 the following information to the Revenue and Taxation Interim Committee:

63 (i) the amount of tax credit that the office grants to each infrastructure cost-burdened
64 entity for each taxable year;

65 (ii) the infrastructure-related revenue generated by each high cost infrastructure project;

66 (iii) the information contained in the office's latest report to the Legislature under
67 Section [63M-4-505](#); and

68 (iv) any other information that the Revenue and Taxation Interim Committee requests.

69 (c) The Revenue and Taxation Interim Committee shall ensure that the Revenue and
70 Taxation Interim Committee's recommendations under Subsection (5)(a) include an evaluation
71 of:

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

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

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

75 Section 2. Section **59-10-1033** is enacted to read:

76 **59-10-1033. Nonrefundable high cost infrastructure development tax credit.**

77 (1) As used in this section:

78 (a) "High cost infrastructure project" means the same as that term is defined in Section
79 [63M-4-602](#).

80 (b) "Infrastructure cost-burdened entity" means the same as that term is defined in
81 Section [63M-4-602](#).

82 (c) "Infrastructure-related revenue" means the same as that term is defined in Section
83 [63M-4-602](#).

84 (d) "Office" means the Office of Energy Development created in Section [63M-4-401](#).

85 (2) Subject to the other provisions of this section, a claimant, estate, or trust that is an

86 infrastructure cost-burdened entity may claim a nonrefundable tax credit for development of a
87 high cost infrastructure project as provided in this section.

88 (3) The tax credit under this section is the amount listed as the tax credit amount on a
89 tax credit certificate that the office issues under Title 63M, Chapter 4, Part 6, High Cost
90 Infrastructure Development Tax Credit Act, to the infrastructure cost-burdened entity for the
91 taxable year.

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

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

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

98 (5) (a) On or before October 1, 2020, and every five years after October 1, 2020, the
99 Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and
100 make recommendations to the Legislative Management Committee concerning whether the tax
101 credit should be continued, modified, or repealed.

102 (b) For purposes of the study required by this Subsection (5), the office shall provide
103 the following information to the Revenue and Taxation Interim Committee:

104 (i) the amount of tax credit that the office grants to each infrastructure cost-burdened
105 entity for each taxable year;

106 (ii) the infrastructure-related revenue generated by each high cost infrastructure project;

107 (iii) the information contained in the office's latest report to the Legislature under
108 Section [63M-4-505](#); and

109 (iv) any other information that the Revenue and Taxation Interim Committee requests.

110 (c) The Revenue and Taxation Interim Committee shall ensure that the Revenue and
111 Taxation Interim Committee's recommendations under Subsection (5)(a) include an evaluation
112 of:

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

- 114 (ii) the purpose and effectiveness of the tax credit; and
- 115 (iii) the extent to which the state benefits from the tax credit.

116 Section 3. Section **63M-4-401** is amended to read:

117 **63M-4-401. Creation of Office of Energy Development -- Director -- Purpose --**
118 **Rulemaking regarding confidential information.**

- 119 (1) There is created an Office of Energy Development.
- 120 (2) (a) The governor's energy advisor shall appoint a director of the office.
- 121 (b) The director shall report to the governor's energy advisor and may appoint staff as
122 funding within existing budgets allows.
- 123 (c) The office may consolidate energy staff and functions existing in the State Energy
124 Program.
- 125 (3) The purposes of the office are to:
 - 126 (a) serve as the primary resource for advancing energy development in the state; and
 - 127 (b) implement:
 - 128 (i) the state energy policy under Section **63M-4-301**; and
 - 129 (ii) the governor's energy goals and objectives.
- 130 (4) By following the procedures and requirements of Title 63J, Chapter 5, Federal
131 Funds Procedures Act, the office may:
 - 132 (a) seek federal grants or loans;
 - 133 (b) seek to participate in federal programs; and
 - 134 (c) in accordance with applicable federal program guidelines, administer federally
135 funded state energy programs.
- 136 (5) The office shall perform the duties required by Sections **59-7-614.7** [~~and~~],
137 **59-10-1029** [~~and~~], Part 5, Alternative Energy Development Tax Credit Act, and Part 6, High
138 Cost Infrastructure Development Tax Credit Act.
- 139 (6) (a) For purposes of administering this section, the office may make rules, by
140 following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative
141 Rulemaking Act, to maintain as confidential, and not as a public record, information that the

142 office receives from any source.

143 (b) The office shall maintain information the office receives from any source at the
144 level of confidentiality assigned by the source.

145 Section 4. Section **63M-4-601** is enacted to read:

146 **Part 6. High Cost Infrastructure Development Tax Credit Act**

147 **63M-4-601. Title.**

148 This part is known as the "High Cost Infrastructure Development Tax Credit Act."

149 Section 5. Section **63M-4-602** is enacted to read:

150 **63M-4-602. Definitions.**

151 As used in this part:

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

154 (2) "Fuel standard compliance project" means a project designed to retrofit a fuel
155 refinery in order to make the refinery capable of producing fuel that complies with the United
156 States Environmental Protection Agency's Tier 3 gasoline sulfur standard described in 40
157 C.F.R. Sec. 79.54.

158 (3) "High cost infrastructure project" means:

159 (a) (i) a project that expands or creates new industrial, mining, manufacturing, or
160 agriculture activity in the state, not including a retail business; or

161 (ii) new investment of at least \$50,000,000 in an existing industrial, mining,
162 manufacturing, or agriculture entity, by the entity;

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

164 (c) for which the cost of infrastructure construction to the entity creating the project is
165 greater than:

166 (i) 10% of the total cost of the project; or

167 (ii) \$10,000,000.

168 (4) "Infrastructure" means:

169 (a) an energy delivery project as defined in Section [63H-2-102](#);

- 170 (b) a railroad as defined in Section [54-2-1](#);
- 171 (c) a fuel standard compliance project;
- 172 (d) a road improvement project;
- 173 (e) a water self-supply project;
- 174 (f) a water removal system project; or
- 175 (g) a project that is designed to:
- 176 (i) increase the capacity for water delivery to a water user in the state; or
- 177 (ii) increase the capability of an existing water delivery system or related facility to
178 deliver water to a water user in the state.
- 179 (5) (a) "Infrastructure cost-burdened entity" means an applicant that enters into an
180 agreement with the office that qualifies the applicant to receive a tax credit as provided in this
181 part.
- 182 (b) "Infrastructure cost-burdened entity" includes a pass-through entity taxpayer, as
183 defined in Section [59-10-1402](#), of a person described in Subsection (5)(a).
- 184 (6) "Infrastructure-related revenue" means an amount of tax revenue, for an entity
185 creating a high cost infrastructure project, in a taxable year, that is directly attributable to a high
186 cost infrastructure project, under:
- 187 (a) Title 59, Chapter 7, Corporate Franchise and Income Taxes;
- 188 (b) Title 59, Chapter 10, Individual Income Tax Act; and
- 189 (c) Title 59, Chapter 12, Sales and Use Tax Act.
- 190 (7) "Office" means the Office of Energy Development created in Section [63M-4-401](#).
- 191 (8) "Tax credit" means a tax credit under Section [59-7-618](#) or [59-10-1033](#).
- 192 (9) "Tax credit certificate" means a certificate issued by the office to an infrastructure
193 cost-burdened entity that:
- 194 (a) lists the name of the infrastructure cost-burdened entity;
- 195 (b) lists the infrastructure cost-burdened entity's taxpayer identification number;
- 196 (c) lists, for a taxable year, the amount of the tax credit authorized for the infrastructure
197 cost-burdened entity under this part; and

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

199 Section 6. Section **63M-4-603** is enacted to read:

200 **63M-4-603. Tax credit -- Amount -- Eligibility -- Reporting.**

201 (1) Before the office enters into an agreement described in Subsection (3) with an
202 applicant regarding a project, the office, in consultation with the Utah Energy Infrastructure
203 Authority Board created in Section 63H-2-202, and other state agencies as necessary, shall, in
204 accordance with the procedures described in Section 63M-4-604, certify:

205 (a) that the project meets the definition of a high cost infrastructure project under this
206 part;

207 (b) that the high cost infrastructure project will generate infrastructure-related revenue;

208 (c) the economic life of the high cost infrastructure project; and

209 (d) that the applicant has received a certificate of good standing from the Division of
210 Corporations and Commercial Code.

211 (2) (a) Before the office enters into an agreement described in Subsection (3) with an
212 applicant regarding a project, the Utah Energy Infrastructure Authority Board shall evaluate the
213 project's benefit to the state, based on whether the project:

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

216 (ii) would provide new infrastructure for an area where the type of infrastructure the
217 project would create is underdeveloped;

218 (iii) would have a positive environmental impact on the state;

219 (iv) would upgrade or improve an existing entity in order to ensure the entity's
220 continued operation and economic viability; and

221 (v) is less likely to be completed without a tax credit issued to the applicant under this
222 part.

223 (b) The Utah Energy Infrastructure Authority Board may recommend that the office
224 deny an applicant a tax credit if the applicant's project does not, as determined by the Utah
225 Energy Infrastructure Authority Board, sufficiently benefit the state based on the criteria

226 described in Subsection (2)(a).

227 (3) Subject to the procedures described in Section 63M-4-604, if an applicant meets the
228 requirements of Subsection (1) to receive a tax credit, and the applicant's project receives a
229 favorable recommendation from the Utah Energy Infrastructure Authority Board under
230 Subsection (2), the office shall enter into an agreement with the applicant to authorize the tax
231 credit in accordance with this part.

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

234 (a) for the lesser of:

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

236 (ii) 20 years; or

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

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

243 (B) if the high cost infrastructure project is a fuel standard compliance project, 30% of
244 the cost of the infrastructure construction associated with the high cost infrastructure project.

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

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

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

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

253 (A) the applicant's likelihood of completing the high cost infrastructure project without

254 a tax credit; and

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

256 (ii) equal to or less than 30% of the high cost infrastructure project's total

257 infrastructure-related revenue over the time period described in Subsection (4)(a).

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

259 (a) file a report with the office showing the high cost infrastructure project's

260 infrastructure-related revenue during the taxable year;

261 (b) subject to Subsection (7), file a report with the office that is prepared by an

262 independent certified public accountant that verifies the infrastructure-related revenue

263 described in Subsection (5)(a); and

264 (c) provide the office with information required by the office to certify the economic

265 life of the high cost infrastructure project.

266 (6) An infrastructure cost-burdened entity shall retain records supporting a claim for a

267 tax credit for the same period of time during which a person is required to keep books and

268 records under Section [59-1-1406](#).

269 (7) An infrastructure cost-burdened entity for which a report is prepared under

270 Subsection (5)(b) shall pay the costs of preparing the report.

271 (8) The office shall certify, for each taxable year, the infrastructure-related revenue

272 generated by an infrastructure cost-burdened entity.

273 Section 7. Section **63M-4-604** is enacted to read:

274 **63M-4-604. Tax credit -- Application procedure.**

275 (1) An applicant shall provide the office with:

276 (a) an application for a tax credit certificate;

277 (b) documentation that the applicant meets the requirements described in Subsection

278 [63M-4-603](#)(1), to the satisfaction of the office, for the taxable year for which the applicant

279 seeks to claim a tax credit; and

280 (c) documentation that expressly directs and authorizes the State Tax Commission to

281 disclose to the office the applicant's returns and other information concerning the applicant that

282 would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal
283 Revenue Code.

284 (2) (a) The office shall, for an applicant, submit the documentation described in
285 Subsection (1)(c) to the State Tax Commission.

286 (b) Upon receipt of the documentation described in Subsection (1)(c), the State Tax
287 Commission shall provide the office with the documentation described in Subsection (1)(c).

288 (3) If, after the office reviews the documentation from the State Tax Commission
289 under Subsection (2)(b) and the information the applicant submits to the office under Section
290 63M-4-603, the office, in consultation with the Utah Energy Infrastructure Authority Board
291 created in Section 63H-2-202, determines that the applicant is not eligible for the tax credit
292 under Section 63M-4-603, or that the applicant's documentation is inadequate, the office shall:

293 (a) deny the tax credit; or

294 (b) inform the applicant that the documentation supporting the applicant's claim for a
295 tax credit was inadequate and request that the applicant supplement the applicant's
296 documentation.

297 (4) Except as provided in Subsection (5), if, after the office reviews the documentation
298 described in Subsection (2)(b) and the information described in Subsection 63M-4-603(6), the
299 office, in consultation with the Utah Energy Infrastructure Authority Board created in Section
300 63H-2-202, determines that the documentation supporting an applicant's claim for a tax credit
301 adequately demonstrates that the applicant is eligible for the tax credit under Section
302 63M-4-603, the office shall, on the basis of the documentation:

303 (a) enter, with the applicant, into the agreement described in Subsection 63M-4-603(3);

304 (b) issue a tax credit certificate to the applicant; and

305 (c) provide a duplicate copy of the tax credit certificate described in Subsection (4)(b)
306 to the State Tax Commission.

307 (5) The office may deny an applicant a tax credit based on the recommendation of the
308 Utah Energy Infrastructure Authority Board, as provided in Subsection 63M-4-603(2).

309 (6) An infrastructure cost-burdened entity may not claim a tax credit under Section

310 59-7-618 or 59-10-1033 unless the infrastructure cost-burdened entity receives a tax credit
311 certificate from the office.

312 (7) An infrastructure cost-burdened entity that claims a tax credit shall retain the tax
313 credit certificate in accordance with Subsection 63M-4-603(7).

314 (8) Except for the information that is necessary for the office to disclose in order to
315 make the report described in Section 63M-4-605, the office shall treat a document an applicant
316 or infrastructure cost-burdened entity provides to the office as a protected record under Section
317 63G-2-305.

318 Section 8. Section **63M-4-605** is enacted to read:

319 **63M-4-605. Report to the Legislature.**

320 The office shall report annually to the Public Utilities and Technology Interim
321 Committee and the Revenue and Taxation Interim Committee describing:

322 (1) the office's success in attracting high cost infrastructure projects to the state and the
323 resulting increase in infrastructure-related revenue under this part;

324 (2) the amount of tax credits the office has granted or will grant and the time period
325 during which the tax credits have been or will be granted; and

326 (3) the economic impact on the state by comparing infrastructure-related revenue to tax
327 credits that have been or will be granted under this part.

328 Section 9. **Effective date.**

329 (1) Except as provided in Subsection (2), this bill takes effect on May 12, 2015.

330 (2) The actions affecting the following sections take effect for a taxable year beginning
331 on or after January 1, 2016:

332 (a) Section 59-7-618; and

333 (b) Section 59-10-1033.