

HIGH COST INFRASTRUCTURE TAX CREDITS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ralph Okerlund

House Sponsor: _____

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



- 28 [63M-4-602](#), Utah Code Annotated 1953
 - 29 [63M-4-603](#), Utah Code Annotated 1953
 - 30 [63M-4-604](#), Utah Code Annotated 1953
 - 31 [63M-4-605](#), Utah Code Annotated 1953
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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 that applies for a tax
153 credit under this part.

154 (2) "High cost infrastructure project" means a project:

155 (a) (i) that involves new or expanded industrial, mining, manufacturing, distribution, or
156 business services in the state, not including a retail business; or

157 (ii) that involves new investment of at least \$50,000,000 in an existing industrial,
158 mining, manufacturing, distribution, or business service entity;

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

160 (c) for which the infrastructure construction cost is greater than:

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

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

163 (3) "Infrastructure" means:

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

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

166 (c) a project that is designed to:

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

168 (ii) increase the capability of an existing water delivery system or related facility to
169 deliver water to a water user in the state.

170 (4) (a) "Infrastructure cost-burdened entity" means an applicant that enters into an
171 agreement with the office that qualifies the applicant to receive a tax credit as provided in this
172 part.

173 (b) "Infrastructure cost-burdened entity" includes a pass-through entity taxpayer, as
174 defined in Section [59-10-1402](#), of a person described in Subsection (4)(a).

175 (5) "Infrastructure-related revenue" means an amount of tax revenue in a taxable year
176 that is attributable to a high cost infrastructure project, under:

177 (a) Title 59, Chapter 7, Corporate Franchise and Income Taxes;

178 (b) Title 59, Chapter 10, Individual Income Tax Act; and

179 (c) Title 59, Chapter 12, Sales and Use Tax Act.

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

181 (7) "Tax credit" means a tax credit under Section [59-7-618](#) or [59-10-1033](#).

182 (8) "Tax credit certificate" means a certificate issued by the office to an infrastructure

183 cost-burdened entity that:

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

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

186 (c) lists, for a taxable year, the amount of the tax credit authorized for the infrastructure

187 cost-burdened entity under this part; and

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

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

190 **63M-4-603. Tax credit -- Amount -- Eligibility -- Reporting.**

191 (1) Before the office enters into an agreement described in Subsection (2) with an
192 applicant regarding a project, the office, in consultation with other state agencies as necessary,
193 shall, in accordance with the procedures described in Section [63M-4-604](#), certify:

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

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

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

198 (d) that the applicant has received a certificate of good standing from the Division of

199 Corporations and Commercial Code.

200 (2) Subject to the procedures described in Section [63M-4-604](#), if an applicant meets the
201 requirements of Subsection (1) to receive a tax credit, the office shall enter into an agreement
202 with the applicant to authorize the tax credit in accordance with this part.

203 (3) The office shall grant a tax credit to an infrastructure cost-burdened entity, for a
204 high cost infrastructure project, under an agreement described in Subsection (2):

205 (a) for the lesser of:

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

207 (ii) 20 years; or

208 (iii) a time period, the first taxable year of which is the taxable year when the

209 construction of the high cost infrastructure project begins and the last taxable year of which is

210 the taxable year in which the infrastructure cost-burdened entity has recovered, through the tax

211 credit, an amount equal to 50% of the cost of the infrastructure construction associated with the

212 high cost infrastructure project;

213 (b) in a total amount equal to 30% of the high cost infrastructure project's total

214 infrastructure-related revenue over the time period described in Subsection (3)(a); and
215 (c) for a taxable year, in an amount that does not exceed the high cost infrastructure
216 project's infrastructure-related revenue during that taxable year.

217 (4) An infrastructure cost-burdened entity office shall, for each taxable year:

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

220 (b) subject to Subsection (6), file a report with the office that is prepared by an
221 independent certified public accountant that verifies the infrastructure-related revenue
222 described in Subsection (4)(a); and

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

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

228 (6) An infrastructure cost-burdened entity for which a report is prepared under
229 Subsection (4)(b) shall pay the costs of preparing the report.

230 (7) The office shall certify, for each taxable year, the infrastructure-related revenue
231 generated by an infrastructure cost-burdened entity.

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

233 **63M-4-604. Tax credit -- Application procedure.**

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

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

236 (b) documentation that the applicant meets the requirements described in Subsection
237 [63M-4-603\(1\)](#), to the satisfaction of the office, for the taxable year for which the applicant
238 seeks to claim a tax credit; and

239 (c) documentation that expressly directs and authorizes the State Tax Commission to
240 disclose to the office the applicant's returns and other information concerning the applicant that
241 would otherwise be subject to confidentiality under Section [59-1-403](#) or Section 6103, Internal
242 Revenue Code.

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

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

247 (3) If, after the office reviews the documentation from the State Tax Commission
248 under Subsection (2)(b), and the information the applicant submits to the office under Section
249 63M-4-603, the office determines that the applicant is not eligible for the tax credit under
250 Section 63M-4-603, or that the applicant's documentation is inadequate, the office shall:

251 (a) deny the tax credit; or

252 (b) inform the applicant that the documentation supporting the applicant's claim for a
253 tax credit was inadequate and request that the applicant supplement the applicant's
254 documentation.

255 (4) If, after the office reviews the documentation described in Subsection (2)(b), and
256 the information described in Subsection 63M-4-603(4), the office determines that the
257 documentation supporting an applicant's claim for a tax credit adequately demonstrates that the
258 applicant is eligible for the tax credit under Section 63M-4-603, the office shall, on the basis of
259 the documentation:

260 (a) enter, with the applicant, into the agreement described in Subsection 63M-4-603(2);

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

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

264 (5) An infrastructure cost-burdened entity may not claim a tax credit under Section
265 59-7-516 or 59-10-1033 unless the infrastructure cost-burdened entity receives a tax credit
266 certificate from the office.

267 (6) An infrastructure cost-burdened entity that claims a tax credit shall retain the tax
268 credit certificate in accordance with Subsection 63M-4-603(5).

269 (7) Except for the information that is necessary for the office to disclose in order to
270 make the report described in Section 63M-4-605, the office shall treat a document an applicant
271 or infrastructure cost-burdened entity provides to the office as a protected record under Section
272 63G-2-305.

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

274 **63M-4-605. Report to the Legislature.**

275 The office shall report annually to the Public Utilities and Technology Interim

276 Committee and the Revenue and Taxation Interim Committee describing:

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

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

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

283 Section 9. **Effective date.**

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

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

287 (a) Section [59-7-618](#); and

288 (b) Section [59-10-1033](#).

Legislative Review Note
as of 2-17-15 9:00 AM

Office of Legislative Research and General Counsel