Chapter 4
Utah Energy Act

Part 1
General Provisions

63M-4-101 Title.
This chapter is known as the "Utah Energy Act."

Renumbered and Amended by Chapter 382, 2008 General Session

63M-4-102 Definitions.
As used in this chapter:
(1) "Energy advisor" means the governor's energy advisor appointed under Section 63M-4-401.
(2) "Office" means the Office of Energy Development created in Section 63M-4-401.
(3) "State agency" means an executive branch:
   (a) department;
   (b) agency;
   (c) board;
   (d) commission;
   (e) division; or
   (f) state educational institution.

Amended by Chapter 37, 2012 General Session

Part 2
Governor's Energy Advisor

63M-4-201 Governor's energy advisor -- Duties.
(1)
(a) The governor shall appoint an energy advisor.
(b) The governor's energy advisor serves at the pleasure of the governor.
(2) The governor's energy advisor shall:
   (a) advise the governor on energy-related matters;
   (b) annually review and propose updates to the state's energy policy, as contained in Section 63M-4-301;
   (c) promote as the governor's energy advisor considers necessary:
      (i) the development of cost-effective energy resources both renewable and nonrenewable; and
      (ii) educational programs, including programs supporting conservation and energy efficiency measures;
   (d) coordinate across state agencies to assure consistency with state energy policy, including:
      (i) working with the State Energy Program to promote access to federal assistance for energy-related projects for state agencies and members of the public;
      (ii) working with the Division of Emergency Management to assist the governor in carrying out the governor's energy emergency powers under Title 53, Chapter 2a, Part 10, Energy Emergency Powers of the Governor Act;
(iii) participating in the annual review of the energy emergency plan and the maintenance of the energy emergency plan and a current list of contact persons required by Section 53-2a-902; and
(iv) identifying and proposing measures necessary to facilitate low-income consumers' access to energy services;
(e) coordinate with the Division of Emergency Management ongoing activities designed to test an energy emergency plan to ensure coordination and information sharing among state agencies and political subdivisions in the state, public utilities and other energy suppliers, and other relevant public sector persons as required by Sections 53-2a-902, 53-2a-1004, 53-2a-1008, and 53-2a-1010;
(f) coordinate with requisite state agencies to study:
   (i) the creation of a centralized state repository for energy-related information;
   (ii) methods for streamlining state review and approval processes for energy-related projects; and
   (iii) the development of multistate energy transmission and transportation infrastructure;
(g) coordinate energy-related regulatory processes within the state;
(h) compile, and make available to the public, information about federal, state, and local approval requirements for energy-related projects;
(i) act as the state's advocate before federal and local authorities for energy-related infrastructure projects or coordinate with the appropriate state agency; and
(j) help promote the Division of Facilities Construction and Management's measures to improve energy efficiency in state buildings.
(3) The governor's energy advisor has standing to testify on behalf of the governor at the Public Service Commission created in Section 54-1-1.

Amended by Chapter 295, 2013 General Session

63M-4-202 Agency cooperation.
A state agency shall provide the state energy officer with any energy-related information requested by the governor's energy advisor if the governor's energy advisor's request is consistent with other law.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-4-203 Reports.
(1) The governor's energy advisor shall report annually to:
   (a) the governor; and
   (b) the Natural Resources, Agriculture, and Environment Interim Committee.
(2) The report required in Subsection (1) shall:
   (a) summarize the status and development of the state's energy resources;
   (b) summarize the activities and accomplishments of the Office of Energy Development;
   (c) address the governor's energy advisor's activities under this part; and
   (d) recommend any energy-related executive or legislative action the governor's energy advisor considers beneficial to the state, including updates to the state energy policy under Section 63M-4-301.

Amended by Chapter 378, 2015 General Session
Part 3  
State Energy Policy  

63M-4-301 State energy policy.  
(1) It is the policy of the state that:  
(a) Utah shall have adequate, reliable, affordable, sustainable, and clean energy resources;  
(b) Utah will promote the development of:  
(i) nonrenewable energy resources, including natural gas, coal, oil, oil shale, and oil sands;  
(ii) renewable energy resources, including geothermal, solar, wind, biomass, biofuel, and hydroelectric;  
(iii) nuclear power generation technologies certified for use by the United States Nuclear Regulatory Commission including molten salt reactors producing medical isotopes;  
(iv) alternative transportation fuels and technologies;  
(v) infrastructure to facilitate energy development, diversified modes of transportation, greater access to domestic and international markets for Utah's resources, and advanced transmission systems;  
(vi) energy storage and other advanced energy systems; and  
(vii) increased refinery capacity;  
(c) Utah will promote the development of resources and infrastructure sufficient to meet the state's growing demand, while contributing to the regional and national energy supply, thus reducing dependence on international energy sources;  
(d) Utah will allow market forces to drive prudent use of energy resources, although incentives and other methods may be used to ensure the state's optimal development and use of energy resources in the short- and long-term;  
(e) Utah will pursue energy conservation, energy efficiency, and environmental quality;  
(f)  
(i) state regulatory processes should be streamlined to balance economic costs with the level of review necessary to ensure protection of the state's various interests; and  
(ii) where federal action is required, Utah will encourage expedited federal action and will collaborate with federal agencies to expedite review;  
(g) Utah will maintain an environment that provides for stable consumer prices that are as low as possible while providing producers and suppliers a fair return on investment, recognizing that:  
(i) economic prosperity is linked to the availability, reliability, and affordability of consumer energy supplies; and  
(ii) investment will occur only when adequate financial returns can be realized; and  
(h) Utah will promote training and education programs focused on developing a comprehensive understanding of energy, including:  
(i) programs addressing:  
(A) energy conservation;  
(B) energy efficiency;  
(C) supply and demand; and  
(D) energy related workforce development; and  
(ii) energy education programs in grades K-12.  
(2) State agencies are encouraged to conduct agency activities consistent with Subsection (1).  
(3) A person may not file suit to challenge a state agency’s action that is inconsistent with Subsection (1).
Amended by Chapter 415, 2019 General Session

63M-4-302 Legislative committee review.
   The Natural Resources, Agriculture, and Environment Interim Committee and the Public Utilities, Energy, and Technology Interim Committee shall review the state energy policy annually and propose any changes to the Legislature.

Amended by Chapter 13, 2016 General Session

Part 4
Office of Energy Development

63M-4-401 Office of Energy Development -- Creation -- Director -- Purpose -- Rulemaking regarding confidential information -- Fees.
(1) There is created an Office of Energy Development.
(2)
   (a) The governor's energy advisor shall serve as the director of the office or appoint a director of the office.
   (b) The director:
      (i) shall, if the governor's energy advisor appoints a director under Subsection (2)(a), report to the governor's energy advisor; and
      (ii) may appoint staff as funding within existing budgets allows.
   (c) The office may consolidate energy staff and functions existing in the state energy program.
(3) The purposes of the office are to:
   (a) serve as the primary resource for advancing energy and mineral development in the state;
   (b) implement:
      (i) the state energy policy under Section 63M-4-301; and
      (ii) the governor's energy and mineral development goals and objectives;
   (c) advance energy education, outreach, and research, including the creation of elementary, higher education, and technical college energy education programs;
   (d) promote energy and mineral development workforce initiatives; and
   (e) support collaborative research initiatives targeted at Utah-specific energy and mineral development.
(4) By following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures Act, the office may:
   (a) seek federal grants or loans;
   (b) seek to participate in federal programs; and
   (c) in accordance with applicable federal program guidelines, administer federally funded state energy programs.
(6)
   (a) For purposes of administering this section, the office may make rules, by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to
maintain as confidential, and not as a public record, information that the office receives from any source.

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

(7) The office may charge application, filing, and processing fees in amounts determined by the office in accordance with Section 63J-1-504 as dedicated credits for performing office duties described in this part.

Amended by Chapter 247, 2019 General Session

63M-4-402 In-state generator need -- Merchant electric transmission line.

(1) As used in this section:


(b) "Certificate of in-state need" means a certificate issued by the office in accordance with this section identifying an in-state generator that meets the requirements and qualifications of this section.

(c) "Expression of need" means a document prepared and submitted to the office by an in-state merchant generator that describes or otherwise documents the transmission needs of the in-state merchant generator in conformance with the requirements of this section.

(d) "In-state merchant generator" means an electric power provider that generates power in Utah and does not provide service to retail customers within the boundaries of Utah.

(e) "Merchant electric transmission line" means a transmission line that does not provide electricity to retail customers within the boundaries of Utah.

(f) "Office" means the Office of Energy Development established in Section 63M-4-401.

(g) "Open solicitation notice" means a document prepared and submitted to the office by a merchant electric transmission line regarding the commencement of the line's open solicitation in compliance with 142 F.E.R.C. P61,038 (2013).

(2) As part of the capacity allocation process, a merchant electric transmission line shall file an open solicitation notice with the office containing a description of the merchant electric transmission line, including:

(a) the proposed capacity;
(b) the location of potential interconnection for in-state merchant generators;
(c) the planned date for commencement of construction; and
(d) the planned commercial operations date.

(3) Upon receipt of the open solicitation notice, the office shall:

(a) publish the notice on the Utah Public Notice Website created under Section 63F-1-701;
(b) include in the notice contact information; and
(c) provide the deadline date for submission of an expression of need.

(4)

(a) In response to the open solicitation notice published by the office, and no later than 30 days after publication of the notice, an in-state merchant generator may submit an expression of need to the office.

(b) An expression of need submitted under Subsection (4)(a) shall include:

(i) a description of the in-state merchant generator; and
(ii) a schedule of transmission capacity requirement provided in megawatts, by point of receipt and point of delivery and by operating year.

(5) No later than 60 days after notice is published under Subsection (3), the office shall prepare a certificate of in-state need identifying the in-state merchant generators.

(6) Within five days of preparing the certificate of in-state need, the office shall:
   (a) publish the certificate on the Utah Public Notice Website created under Section 63F-1-701; and
   (b) provide the certificate to the merchant electric transmission line for consideration in the capacity allocation process.

(7) The merchant electric transmission line shall:
   (a) provide the Federal Energy Regulatory Commission with a copy of the certificate of in-state need; and
   (b) certify that the certificate is being provided to the Federal Energy Regulatory Commission in accordance with the requirements of this section, including a citation to this section.

(8) At the conclusion of the capacity allocation process, and unless prohibited by a contractual obligation of confidentiality, the merchant electric transmission line shall report to the office whether a merchant in-state generator reflected on the certificate of in-state need has entered into a transmission service agreement with the merchant electric transmission line.

(9) This section may not be interpreted to:
   (a) create an obligation of a merchant electric transmission line to pay for, or construct any portion of, the transmission line on behalf of an in-state merchant generator; or
   (b) preempt, supersede, or otherwise conflict with Federal Energy Regulatory Commission rules and regulations applicable to a commercial transmission agreement, including agreements, or terms of agreements, as to cost, terms, transmission capacity, or key rates.

(10) Subsections (2) through (9) do not apply to a project entity as defined in Section 11-13-103.

Enacted by Chapter 294, 2014 General Session

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**Part 5**

**Alternative Energy Development Tax Credit Act**

**63M-4-501 Title.**

This part is known as the "Alternative Energy Development Tax Credit Act."

Enacted by Chapter 410, 2012 General Session

**63M-4-502 Definitions.**

As used in this part:

(1) "Alternative energy" is as defined in Section 59-12-102.

(2) (a) "Alternative energy entity" means a person that:
   (i) conducts business within the state; and
   (ii) enters into an agreement with the office that qualifies the person to receive a tax credit.

(b) "Alternative energy entity" includes a pass-through entity taxpayer, as defined in Section 59-10-1402, of a person described in Subsection (2)(a).
(3) "Alternative energy project" means a project produced by an alternative energy entity if that project involves:
(a) a new or expanding operation in the state; and
(b) 
   (i) utility-scale alternative energy generation; or
   (ii) the extraction of alternative fuels.
(4) "New incremental job within the state" means, with respect to an alternative energy entity, an employment position that:
(a) did not exist within the state before:
   (i) the alternative energy entity entered into an agreement with the office in accordance with Section 63M-4-503; and
   (ii) the alternative energy project began;
(b) is not shifted from one location in the state to another location in the state; and
(c) is established to the satisfaction of the office, including by amounts paid or withheld by the alternative energy entity under Title 59, Chapter 10, Individual Income Tax Act.
(5) "New state revenues" means an increased amount of tax revenues generated as a result of an alternative energy project by an alternative energy entity or a new incremental job within the state under the following:
(a) Title 59, Chapter 7, Corporate Franchise and Income Taxes;
(b) Title 59, Chapter 10, Individual Income Tax Act; and
(c) Title 59, Chapter 12, Sales and Use Tax Act.
(6) "Office" is as defined in Section 63M-4-401.
(7) "Tax credit" means a tax credit under Section 59-7-614.7 or 59-10-1029.
(8) "Tax credit applicant" means an alternative energy entity that applies to the office to receive a tax credit certificate under this part.
(9) "Tax credit certificate" means a certificate issued by the office that:
(a) lists the name of the tax credit certificate recipient;
(b) lists the tax credit certificate recipient's taxpayer identification number;
(c) lists the amount of the tax credit certificate recipient's tax credits authorized under this part for a taxable year; and
(d) includes other information as determined by the office.
(10) "Tax credit certificate recipient" means an alternative energy entity that receives a tax credit certificate for a tax credit in accordance with this part.

Enacted by Chapter 410, 2012 General Session

63M-4-503 Tax credits.
(1)
(a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules establishing standards an alternative energy entity shall meet to qualify for a tax credit.
(b) Before the office enters into an agreement described in Subsection (2) with an alternative energy entity, the office, in consultation with other state agencies as necessary, shall certify:
(i) that the alternative energy entity plans to produce in the state at least:
   (A) two megawatts of electricity;
   (B) 1,000 barrels per day if the alternative energy project is a crude oil equivalent production; or
   (C) 250 barrels per day if the alternative energy project is a biomass energy fuel production;
Utah Code

(ii) that the alternative energy project will generate new state revenues;
(iii) the economic life of the alternative energy project produced by the alternative energy entity;
(iv) that the alternative energy entity meets the requirements of Section 63M-4-504; and
(v) that the alternative energy entity has received a certificate of existence from the Division of

(2) If an alternative energy entity meets the requirements of this part to receive a tax credit, the
office shall enter into an agreement with the alternative energy entity to authorize the tax credit
in accordance with Subsection (3).

(3)
(a) Subject to Subsection (3)(b), if the office expects that the time from the commencement of
construction until the end of the economic life of the alternative energy project is 20 years or
more:
(i) the office shall grant a tax credit for the lesser of:
(A) the economic life of the alternative energy project; or
(B) 20 years; and
(ii) the tax credit is equal to 75% of new state revenues generated by the alternative energy
project.
(b) For a taxable year, a tax credit under this section may not exceed the new state revenues
generated by an alternative energy project during that taxable year.

(4) An alternative energy entity that seeks to receive a tax credit or has entered into an agreement
described in Subsection (2) with the office shall:
(a) annually file a report with the office showing the new state revenues generated by the
alternative energy project during the taxable year for which the alternative energy entity seeks
to receive a tax credit under Section 59-7-614.7 or 59-10-1029;
(b) subject to Subsection (5), annually file a report with the office prepared by an independent
certified public accountant verifying the new state revenue described in Subsection (4)(a);
(c) subject to Subsection (5), file a report with the office at least every four years prepared by an
independent auditor auditing the new state revenue described in Subsection (4)(a);
(d) provide the office with information required by the office to certify the economic life of the
alternative energy project produced by the alternative energy entity, which may include a
power purchase agreement, a lease, or a permit; and
(e) retain records supporting a claim for a tax credit for at least four years after the alternative
energy entity claims a tax credit under Section 59-7-614.7 or 59-10-1029.

(5) An alternative energy entity for which a report is prepared under Subsection (4)(b) or (c) shall
pay the costs of preparing the report.

(6) The office shall annually certify the new state revenues generated by an alternative energy
project for a taxable year for which an alternative energy entity seeks to receive a tax credit
under Section 59-7-614.7 or 59-10-1029.

Amended by Chapter 149, 2018 General Session

63M-4-504 Qualifications for tax credit -- Procedure.
(1) The office shall certify an alternative energy entity's eligibility for a tax credit as provided in this
section.
(2) A tax credit applicant shall provide the office with:
(a) an application for a tax credit certificate;
(b) documentation that the tax credit applicant meets the standards and requirements described in Section 63M-4-503 to the satisfaction of the office for the taxable year for which the tax credit applicant seeks to claim a tax credit; and
(c) documentation that expressly directs and authorizes the State Tax Commission to disclose to the office the tax credit applicant's returns and other information concerning the tax credit applicant that would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code.

(3)
(a) The office shall submit the documentation described in Subsection (2)(c) to the State Tax Commission.
(b) Upon receipt of the documentation described in Subsection (2)(c), the State Tax Commission shall provide the office with the documentation described in Subsection (2)(c) requested by the office that the tax credit applicant directed and authorized the State Tax Commission to provide to the office.

(4) If, after the office reviews the documentation described in Subsections (2) and (3), the office determines that the documentation supporting the tax credit applicant's claim for a tax credit is not substantially accurate, the office shall:
(a) deny the tax credit; or
(b) inform the tax credit applicant that the documentation supporting the tax credit applicant's claim for a tax credit was inadequate and ask the tax credit applicant to submit new documentation.

(5) If, after the office reviews the documentation described in Subsections (2) and (3), the office determines that the documentation supporting the tax credit applicant's claim for a tax credit is substantially accurate, the office shall, on the basis of that documentation:
(a) enter into the agreement described in Section 63M-4-503;
(b) issue a tax credit certificate to the tax credit applicant; and
(c) provide a duplicate copy of the tax credit certificate described in Subsection (5)(b) to the State Tax Commission.

(6) An alternative energy entity may not claim a tax credit under this part unless the alternative energy entity is a tax credit certificate recipient.

(7) A tax credit certificate recipient that claims a tax credit shall retain the tax credit certificate in accordance with Subsection 63M-4-503(4).

Enacted by Chapter 410, 2012 General Session

63M-4-505 Report to the Legislature.
The office shall annually provide an electronic report to the Public Utilities, Energy, and Technology Interim Committee and the Revenue and Taxation Interim Committee describing:
(1) its success in attracting alternative energy projects to the state and the resulting increase in new state revenues under this part;
(2) the amount of tax credits the office has granted or will grant and the time period during which the tax credits have been or will be granted; and
(3) the economic impact on the state by comparing new state revenues to tax credits that have been or will be granted under this part.

Amended by Chapter 13, 2016 General Session
Amended by Chapter 135, 2016 General Session
Part 6
High Cost Infrastructure Development Tax Credit Act

63M-4-601 Title.
This part is known as the "High Cost Infrastructure Development Tax Credit Act."

Enacted by Chapter 356, 2015 General Session

63M-4-602 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) "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.
(3) "High cost infrastructure project" means a project:
  (a) that expands or creates new industrial, mining, manufacturing, or agriculture activity in the state, not including a retail business;
  (i) that involves new investment of at least $50,000,000 in an existing industrial, mining, manufacturing, or agriculture entity, by the entity; or
  (ii) for the construction of a plant or other facility, including a fueling station, for the storage, production, or distribution of hydrogen fuel used for transportation, electricity generation, or industrial use;
  (b) that requires or is directly facilitated by infrastructure construction; and
  (c) for which the cost of infrastructure construction to the entity creating the project is greater than:
    (i) 10% of the total cost of the project; or
    (ii) $10,000,000.
(4) "Infrastructure" means:
  (a) an energy delivery project as defined in Section 63H-2-102;
  (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; or
  (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.
(5) "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 (5)(a).

(6) "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 7, Corporate Franchise and Income Taxes;
   (b) Title 59, Chapter 10, Individual Income Tax Act; and
   (c) Title 59, Chapter 12, Sales and Use Tax Act.

(7) "Office" means the Office of Energy Development created in Section 63M-4-401.

(8) "Tax credit" means a tax credit under Section 59-7-619 or 59-10-1034.

(9) "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.

Amended by Chapter 501, 2019 General Session

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

(1) 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 Authority Board created in Section 63H-2-202, and other state agencies as necessary, shall, in accordance with the procedures described in Section 63M-4-604, certify:
   (a) that the project meets the definition of a high cost infrastructure project under this part;
   (b) that the high cost infrastructure project will generate infrastructure-related revenue;
   (c) the economic life of the high cost infrastructure project; and
   (d) that the applicant has received a certificate of existence from the Division of Corporations and Commercial Code.

(2) Before the office enters into an agreement described in Subsection (3) with an applicant regarding a project, the Utah Energy Infrastructure Authority Board shall evaluate the project’s benefit to the state, based on whether the project:
   (i) is likely to increase the property tax revenue for the municipality or county where the project will be located;
   (ii) would provide new infrastructure for an area where the type of infrastructure the project would create is underdeveloped;
   (iii) would have a positive environmental impact on the state;
   (iv) would upgrade or improve an existing entity in order to ensure the entity’s continued operation and economic viability; and
   (v) is less likely to be completed without a tax credit issued to the applicant under this part.

(b) The Utah Energy Infrastructure Authority Board may recommend that the office deny an applicant a tax credit if the applicant's project does not, as determined by the Utah Energy Infrastructure Authority Board, sufficiently benefit the state based on the criteria described in Subsection (2)(a).

(3) Subject to the procedures described in Section 63M-4-604, 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 Authority 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), 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 Authority 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).

(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.

Amended by Chapter 149, 2018 General Session

63M-4-604 Tax credit -- Application procedure.
An applicant shall provide the office with:
(a) an application for a tax credit certificate;
(b) documentation that the applicant meets the requirements described in Subsection 63M-4-603(1), to the satisfaction of the office, for the taxable year for which the applicant seeks to claim a tax credit; and
(c) documentation that expressly directs and authorizes the State Tax Commission to disclose to the office the applicant's returns and other information concerning the applicant that would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code.

(2) The office shall, for an applicant, submit the documentation described in Subsection (1)(c) to the State Tax Commission.
(b) Upon receipt of the documentation described in Subsection (1)(c), the State Tax Commission shall provide the office with the documentation described in Subsection (1)(c).

(3) If, after the office reviews the documentation from the State Tax Commission under Subsection (2)(b) and the information the applicant submits to the office under Section 63M-4-603, the office, in consultation with the Utah Energy Infrastructure Authority Board created in Section 63H-2-202, determines that the applicant is not eligible for the tax credit under Section 63M-4-603, or that the applicant's documentation is inadequate, the office shall:
(a) deny the tax credit; or
(b) inform the applicant that the documentation supporting the applicant's claim for a tax credit was inadequate and request that the applicant supplement the applicant's documentation.

(4) Except as provided in Subsection (5), if, after the office reviews the documentation described in Subsection (2)(b) and the information described in Subsection 63M-4-603(6), the office, in consultation with the Utah Energy Infrastructure Authority Board created in Section 63H-2-202, determines that the documentation supporting an applicant's claim for a tax credit adequately demonstrates that the applicant is eligible for the tax credit under Section 63M-4-603, the office shall, on the basis of the documentation:
(a) enter, with the applicant, into the agreement described in Subsection 63M-4-603(3);
(b) issue a tax credit certificate to the applicant; and
(c) provide a duplicate copy of the tax credit certificate described in Subsection (4)(b) to the State Tax Commission.

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

(6) An infrastructure cost-burdened entity may not claim a tax credit under Section 59-7-619 or 59-10-1034 unless the infrastructure cost-burdened entity receives a tax credit certificate from the office.

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

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

Enacted by Chapter 356, 2015 General Session

63M-4-605 Report to the Legislature.
The office shall report annually to the Public Utilities, Energy, and Technology Interim Committee and the Revenue and Taxation Interim Committee describing:
(1) the office's success in attracting high cost infrastructure projects to the state and the resulting increase in infrastructure-related revenue under this part;
(2) the amount of tax credits the office has granted or will grant and the time period during which the tax credits have been or will be granted; and
(3) the economic impact on the state by comparing infrastructure-related revenue to tax credits that have been or will be granted under this part.

Amended by Chapter 13, 2016 General Session

63M-4-606 Administrative rules.
The office may establish, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, requirements and procedures for the implementation of this part.

Enacted by Chapter 337, 2016 General Session

Part 7
Refiner Gasoline Sulfur Standard Sales and Use Tax Exemption Reporting

63M-4-701 Definitions.
As used in this part:
(1) "Blending stock," "blendstock," or "component" means any liquid compound that is blended with other liquid compounds to produce gasoline.
(2) "Refiner" means any person who owns, leases, operates, controls, or supervises a refinery.
(3) "Refiner tax exemption certification" means a certification issued by the office in accordance with Section 63M-4-702.
(4) "Refinery" means a facility where gasoline or diesel fuel is produced, including a facility at which blendstocks are combined to produce gasoline or diesel fuel, or at which blendstock is added to gasoline or diesel fuel.

Amended by Chapter 412, 2020 General Session

63M-4-702 Refiner gasoline standard reporting -- Office of Energy Development certification of sales and use tax exemption eligibility.
(1)
(a) A refiner that seeks to be eligible for a sales and use tax exemption under Subsection 59-12-104(86) on or after July 1, 2021, shall annually report to the office whether the refiner's facility that is located within the state:
(i) had an average gasoline sulfur level of 10 parts per million (ppm) or less using the formulas prescribed in 40 C.F.R. Sec. 80.1603, excluding the offset for credit use and transfer as prescribed in 40 C.F.R. Sec. 80.1616, during the previous calendar year; or
(ii) for an annual report covering a period before January 1, 2023, if a refiner's facility did not have an average gasoline sulfur level described in Subsection (1)(a)(i) during the previous calendar year, the progress the refiner made during the previous calendar year toward complying with the average gasoline sulfur level described in Subsection (1)(a)(i).
(b) Fuels for which a final destination outside Utah can be demonstrated or that are not subject to the standards and requirements of 40 C.F.R. Sec. 80.1603 as specified in 40 C.F.R. Sec. 80.1601 are not subject to the reporting provisions under Subsection (1)(a).

(2) The office shall issue a refiner tax exemption certification to a refiner on a form prescribed by the State Tax Commission:

(a) beginning July 1, 2021, and ending December 31, 2022, if:
(i) the refiner's refinery that is located within the state had an average gasoline sulfur level described in Subsection (1)(a)(i) during the previous calendar year; or
(ii)
(A) on or before July 1, 2021, the refiner certifies in writing to the office that the refiner's refinery that is located within the state will have an average gasoline sulfur level described in Subsection (1)(a)(i) after December 31, 2024; and
(B) the office determines that the refiner made satisfactory progress during the previous calendar year toward satisfying the refiner's certification described in Subsection (2)(a)(ii) (A); or
(b) after December 31, 2022, if the refiner's refinery that is located within the state had an average gasoline sulfur level described in Subsection (1)(a)(i) during the previous calendar year.

(3)
(a) Within 30 days after the day on which the office receives a complete annual report described in Subsection (1)(a), the office shall:
(i) issue a refiner tax exemption certification to the refiner; or
(ii) notify the refiner in writing that the office has determined the refiner does not qualify for a refiner tax exemption certification and the basis for the office's determination.
(b) A refiner tax exemption certification is valid for one year after the day on which the office issues the refiner tax exemption certification.

(4) The office:
(a) shall accept a copy of a report submitted by a refiner to the Environmental Protection Agency under 40 C.F.R. Sec. 80.1652 as sufficient evidence of the refiner's average gasoline sulfur level; or
(b) may establish another reporting mechanism through rules made under Subsection (5).

(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules to implement this section.

Amended by Chapter 412, 2020 General Session

Part 8
Voluntary Home Energy Information Pilot Program Act

63M-4-801 Title.
This part is known as the "Voluntary Home Energy Information Pilot Program Act."

Enacted by Chapter 430, 2020 General Session

63M-4-802 Definitions.
As used in this part:
(1) "Advisory committee" means the committee created in Subsection 63M-4-805(1).
(2) "Asset rating" means a representation of a residential building's energy efficiency or energy use generated by modeling under standardized weather and occupancy conditions.
(3) "Home" means a single-family detached or single-family attached enclosed structure created for permanent use as a residence.
(4) "Home energy assessment" means the evaluation or testing of components or systems in a residential building for the purpose of identifying options for increasing energy conservation and energy efficiency.
(5) "Home energy assessor" means a qualified person who:
   (a) conducts home energy assessments on residential buildings;
   (b) assigns residential buildings a home energy performance score; and
   (c) prepares a home energy performance report for residential buildings.
(6) "Home energy performance report" means a report prepared by a home energy assessor that identifies a residential building's home energy performance score, an explanation of the score, an estimate of the total energy used in the home, and other information required to be included in the report under Section 63M-4-804.
(7) "Home energy performance score" means a score assigned to a residential building using the home energy performance score system created by the office pursuant to Section 63M-4-804.
(8) "Home energy performance score system" means a technical and administrative framework for producing and reporting metrics that describe the energy consumption, generation, and efficiency of a building.
(9) "Program" means the voluntary home energy information pilot program for which model rules are created in Section 63M-4-803.
(10) "Residential building" means a home.

Enacted by Chapter 430, 2020 General Session

63M-4-803 Voluntary Home Energy Information Pilot Program.
(1) The office shall develop model rules for a voluntary home energy information pilot program.
(2) The model rules shall be designed to:
   (a) provide widespread information to home buyers and sellers about a home's energy efficiency, cost savings, and air quality impacts; and
   (b) empower consumers to ask about the energy efficiency performance of homes and increase market demand for energy efficient homes and home energy efficiency upgrades.
(3) The office may use appropriated funds to develop model rules for a home energy performance score system described in Section 63M-4-804 for homes.
(4) Model rules to implement the program may include:
   (a) proposed application procedures to receive a reimbursement from the program for a home energy assessment and home energy performance report;
   (b) the criteria used by the office to determine whether a reimbursement request is approved;
   (c) the administratively best method and form for making a reimbursement;
   (d) the criteria used by the office to determine the amount of a reimbursement;
   (e) the information that an applicant or applicant's designee will be required to report to the office to receive a reimbursement;
   (f) specifications for the procedures and requirements for conducting a home energy assessment;
   (g) the requirements for a home energy performance report; and
   (h) the qualifications for home energy assessors.
(5) The office shall administer or contract for the administration of the advisory committee and the development of model rules.

(6) The office shall provide a report to the Legislature's Business and Labor Interim Committee and Public Utilities, Energy, and Technology Interim Committee no later than November 30, 2020 on:
   (a) the status of the model rules; and
   (b) recommendations for implementing a pilot program based on the model rules.

Enacted by Chapter 430, 2020 General Session

63M-4-804 Home energy performance score system.
(1) In consultation with the advisory committee, the office shall create a home energy performance score system that shall:
   (a) have the capability to generate a home energy performance score that meets the requirements of Subsection (2);
   (b) have the capability to generate a home energy performance report that meets the requirements of Subsection (3);
   (c) have the capability to incorporate building energy assessment software, the output of which is to be used to derive the information presented on the home energy performance report; and
   (d) specify training requirements for home energy assessors.

(2) A home energy performance score under Subsection (1)(a) shall:
   (a) be an asset rating that is based on physical inspection of the home or design documents used for the home's construction; and
   (b) use one or a combination of the following approaches for home energy scoring:
      (i) the issuance of a home energy score by the United States Department of Energy; or
      (ii) the issuance of a home energy rating system by the Residential Energy Services Network.

(3) A home energy performance report described in Subsection (1)(b) shall include:
   (a) the home energy performance score described in Subsection (1)(a) and an explanation of the score;
   (b) an estimate of the total energy used in the home in retail units of energy, by fuel type;
   (c) an estimate of the annual energy costs for operating the home;
   (d) an estimate of the annual emissions resulting from energy used in the home;
   (e) a list of recommended home improvements to reduce energy use in the home; and
   (f) other information the office, in consultation with the advisory committee, determines is appropriate to include in the model rules.

Enacted by Chapter 430, 2020 General Session

63M-4-805 Home energy information advisory committee.
(1) There is created a home energy information advisory committee.

(2) The advisory committee shall be composed of the following 12 members:
   (a) an individual who is an expert in residential real estate, as recommended by the Utah Association of Realtors;
   (b) an individual who is an expert in residential construction as recommended by the Utah Home Builders Association;
   (c) an individual who is an expert in land development for residential communities but is not a home builder;
   (d) an individual who is a nonprofit energy efficiency or air quality advocate;
(e) an individual who is an expert in residential home energy assessments;
(f) an individual who is an expert in residential home inspections;
(g) an individual who is an expert in public education and marketing;
(h) an individual who is an expert in residential appraisals, as recommended by the Utah Association of Appraisers;
(i) an individual who is an expert in electric utility energy efficiency programs;
(j) an individual who is an expert in natural gas utility energy efficiency programs;
(k) an individual who is an expert in residential architecture, as recommended by the Utah Chapter of the American Institute of Architects; and
(l) the director of the Governor's Office of Energy Development or the director's designee.

(3) The director of the office shall appoint the members of the advisory committee which shall assist the director in developing model rules for a home energy performance score system described in Section 63M-4-804.

(4) The director of the office, or the director's designee, shall act as chair of the advisory committee.

(5) An advisory committee member may not receive compensation or benefits for the member's service on the advisory committee.

Enacted by Chapter 430, 2020 General Session