

SB0216S03 compared with SB0216S02

~~text~~ shows text that was in SB0216S02 but was deleted in SB0216S03.

text shows text that was not in SB0216S02 but was inserted into SB0216S03.

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Representative Jon Cox proposes the following substitute bill:

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:

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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

63M-4-604, Utah Code Annotated 1953

63M-4-605, Utah Code Annotated 1953

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

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

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

(1) As used in this section:

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

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

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

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

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

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

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

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

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

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to the Legislative Management Committee concerning whether the tax credit should be continued, modified, or repealed.

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

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

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

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

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

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

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

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

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

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

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

(1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) There is created an Office of Energy Development.
- (2) (a) The governor's energy advisor shall appoint a director of the office.
- (b) The director shall report to the governor's energy advisor and 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 development in the state; and
 - (b) implement:
 - (i) the state energy policy under Section 63M-4-301; and
 - (ii) the governor's energy goals and objectives.
- (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.
- (5) The office shall perform the duties required by Sections 59-7-614.7 [~~and~~], 59-10-1029 [~~and~~], Part 5, Alternative Energy Development Tax Credit Act, and Part 6, High Cost Infrastructure Development Tax Credit Act.
- (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

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level of confidentiality assigned by the source.

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

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."

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

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

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

(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; or

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(g) 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) (a) "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 59-7-618 or 59-10-1033.

(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.

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

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

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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 good standing from the Division of Corporations and Commercial Code.

(2) (a) 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

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(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

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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.

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

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

(1) 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) (a) 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

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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 59-7-516 or 59-10-1033 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.

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

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

The office shall report annually to the Public Utilities 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.

Section 9. **Effective date.**

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

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

(a) Section 59-7-618; and

(b) Section 59-10-1033.