

HIGH COST INFRASTRUCTURE TAX CREDIT

AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ralph Okerlund

House Sponsor: Francis D. Gibson

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ modifies the composition of the Utah Energy Infrastructure Authority Board;
- ▶ modifies the amount of high cost infrastructure tax credit the Office of Energy

Development may issue;

- ▶ modifies the criteria for an infrastructure cost-burdened entity to obtain a high cost infrastructure tax credit;

Œ→ [→ ~~allows a tax credit recipient to assign a tax credit to another person; and~~ ←Œ

- ▶ authorizes the Office of Energy Development to make rules to implement the high cost infrastructure tax credit program and to establish criteria for an infrastructure cost-burdened entity to qualify for a tax credit.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:



28 [59-7-619](#), as enacted by Laws of Utah 2015, Chapter 356
 29 [59-10-1034](#), as enacted by Laws of Utah 2015, Chapter 356
 30 [63H-2-202](#), as last amended by Laws of Utah 2012, Chapter 37
 31 [63M-4-602](#), as enacted by Laws of Utah 2015, Chapter 356
 32 [63M-4-603](#), as enacted by Laws of Utah 2015, Chapter 356
 33 [63M-4-604](#), as enacted by Laws of Utah 2015, Chapter 356

34 ENACTS:

35 [63M-4-606](#), Utah Code Annotated 1953

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

38 Section 1. Section [59-7-619](#) is amended to read:

39 **[59-7-619](#). Nonrefundable high cost infrastructure development tax credit.**

40 (1) As used in this section:

41 (a) "High cost infrastructure project" means the same as that term is defined in Section
 42 [63M-4-602](#).

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

45 (c) "Infrastructure-related revenue" means the same as that term is defined in Section
 46 [63M-4-602](#).

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

48 (e) "Tax credit certificate" means the same as that term is defined in Section
 49 [63M-4-602](#).

50 (2) Subject to the ~~[other]~~ provisions of this section, ~~[a corporation that is]~~ an
 51 infrastructure cost-burdened entity may claim a nonrefundable tax credit ~~[for development of a~~
 52 ~~high cost infrastructure project]~~, against ~~Ŝ~~ → ~~[the infrastructure cost-burdened entity's]~~ a ← ~~Ŝ~~ tax
 52a liability
 53 under this chapter, as provided in this section.

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

58 (4) An infrastructure cost-burdened entity may carry forward a tax credit claimed for a

59 given taxable year under this section for a period that does not exceed ~~[the next seven]~~ 10
 60 taxable years after the taxable year indicated on a tax credit certificate if:

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

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

65 ~~§~~ → ~~[(5) An infrastructure cost-burdened entity may enter into an agreement to assign, to~~
 66 ~~another person, the infrastructure cost-burdened entity's right to a tax credit under this section.]~~ ← ~~§~~

67 ~~[(5)]~~ (6) (a) On or before October 1, 2020, and every five years after October 1, 2020,
 68 the Revenue and Taxation Interim Committee shall study the tax credit allowed by this section
 69 and make recommendations to the Legislative Management Committee concerning whether the
 70 tax credit should be continued, modified, or repealed.

71 (b) For purposes of the study required by this Subsection ~~[(5)]~~ (6), the office shall
 72 provide the following information to the Revenue and Taxation Interim Committee:

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

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

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

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

79 (c) The Revenue and Taxation Interim Committee shall ensure that the Revenue and
 80 Taxation Interim Committee's recommendations under Subsection ~~[(5)]~~ (6)(a) include an
 81 evaluation of:

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

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

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

85 Section 2. Section **59-10-1034** is amended to read:

86 **59-10-1034. Nonrefundable high cost infrastructure development tax credit.**

87 (1) As used in this section:

88 (a) "High cost infrastructure project" means the same as that term is defined in Section
 89 [63M-4-602](#).

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

92 (c) "Infrastructure-related revenue" means the same as that term is defined in Section
93 [63M-4-602](#).

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

95 (e) "Tax credit certificate" means the same as that term is defined in Section
96 [63M-4-602](#).

97 (2) Subject to the [other] provisions of this section, [a claimant, estate, or trust that is]
98 an infrastructure cost-burdened entity may claim a nonrefundable tax credit [for development
99 of a high cost infrastructure project], against the infrastructure cost-burdened entity's tax
100 liability under this chapter, as provided in this section.

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

105 (4) An infrastructure cost-burdened entity may carry forward a tax credit under this
106 section for a period that does not exceed [the next seven] 10 taxable years after the taxable year
107 indicated on a tax credit certificate if:

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

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

112 ~~§→ [(5) An infrastructure cost-burdened entity may enter into an agreement to assign, to~~
113 ~~another person, the infrastructure cost-burdened entity's tax credit under this section.] ←§~~

114 [(5)] (6) (a) On or before October 1, 2020, and every five years after October 1, 2020,
115 the Revenue and Taxation Interim Committee shall study the tax credit allowed by this section
116 and make recommendations to the Legislative Management Committee concerning whether the
117 tax credit should be continued, modified, or repealed.

118 (b) For purposes of the study required by this Subsection [(5)] (6), the office shall
119 provide the following information to the Revenue and Taxation Interim Committee:

120 (i) the amount of tax credit that the office grants to each infrastructure cost-burdened

121 entity for each taxable year;

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

123 (iii) the information contained in the office's latest report to the Legislature under

124 Section [63M-4-505](#); and

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

126 (c) The Revenue and Taxation Interim Committee shall ensure that the Revenue and

127 Taxation Interim Committee's recommendations under Subsection ~~[(5)]~~ [\(6\)](#)(a) include an

128 evaluation of:

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

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

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

132 Section 3. Section **63H-2-202** is amended to read:

133 **63H-2-202. Authority board.**

134 (1) There is created the Utah Energy Infrastructure Authority Board that consists of

135 nine members, appointed by the governor as follows:

136 (a) the energy advisor~~[-]~~ or the executive director of the Office of Energy

137 Development, who shall serve as chair of the board;

138 (b) one member from the Governor's Office of Economic Development;

139 (c) ~~[three members]~~ one member from a public utility or electric interlocal entity that

140 operates electric transmission facilities within the state ~~[as follows:]~~;

141 ~~[(i) one member selected by the governor from recommendations from an~~

142 ~~investor-owned electric corporation that operates in this state;]~~

143 ~~[(ii) one member selected by the governor from recommendations from a wholesale~~

144 ~~electrical cooperative, as defined in Section [54-2-1](#), in the state; and]~~

145 ~~[(iii) one member selected by the governor from recommendations from an electric~~

146 ~~interlocal entity;]~~

147 (d) two members representing the economic development interests of rural

148 communities as follows:

149 (i) one member currently serving as county commissioner of a county of the third,

150 fourth, fifth, or sixth class, as described in Section [17-50-501](#); and

151 (ii) one member of a rural community with work experience in the energy industry;

152 (e) two members of the general public with relevant industry or community experience;
153 ~~[(f)]~~ (f) the director of the School and Institutional Trust Lands Administration created
154 in Section [53C-1-201](#); and

155 ~~[(e) two representatives of business entities that produce]~~

156 ~~[(f)]~~ (g) one member of the general public who has experience with public finance and
157 bonding.

158 (2) (a) The term of a board member is four years.

159 (b) Notwithstanding Subsection (2)(a), the governor shall, at the time of appointment
160 or reappointment, adjust the length of terms to ensure that the terms of board members are
161 staggered so that approximately half of the board is appointed every two years.

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

163 (d) The governor shall fill a vacancy in the board in the same manner under this section
164 as the appointment of the member whose vacancy is being filled.

165 (e) An individual appointed to fill a vacancy shall serve the remaining unexpired term
166 of the member whose vacancy the individual is filling.

167 (f) A board member shall serve until a successor is appointed and qualified.

168 (3) (a) Five members of the board constitute a quorum for conducting board business.

169 (b) A majority vote of the quorum present is required for an action to be taken by the
170 board.

171 (4) (a) ~~[(The board shall meet at least quarterly on a date the board sets. (b) The chair of~~
172 ~~the board or any two members of the board may call additional meetings.]]~~ Except as provided
173 in Subsections (4)(b) and (4)(c), the board shall meet once each month, on a day determined by
174 the board, to review an application referred to the board by the Office of Energy Development
175 under Title 63M, Chapter 4, Part 6, High Cost Infrastructure Development Tax Credit Act.

176 (b) Subject to Subsection (4)(c), the board may cancel the board's meeting for a given
177 month if there are no applications described in Subsection (4)(a) pending board approval.

178 (c) The board shall meet no less frequently than once each quarter, on a day determined
179 by the board.

180 (5) A member may not receive compensation or benefits for the member's service, but
181 may receive per diem and travel expenses in accordance with:

182 (a) Section [63A-3-106](#);

183 (b) Section [63A-3-107](#); and
184 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and
185 [63A-3-107](#).

186 Section 4. Section **63M-4-602** is amended to read:

187 **63M-4-602. Definitions.**

188 As used in this part:

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

191 (2) "Board" means the Utah Energy Infrastructure Authority Board created in Section
192 [63H-2-202](#).

193 ~~[(2)]~~ (3) "Fuel standard compliance project" means a project designed to retrofit a fuel
194 refinery ~~[in order to make the refinery capable of producing fuel that complies with the United~~
195 ~~States Environmental Protection Agency's Tier 3 gasoline sulfur standard described in 40~~
196 ~~C.F.R. Sec. 79.54.]~~ in the state in order to make the refinery capable of producing finished
197 gasoline that:

198 (a) will serve the in-state market; and

199 (b) has an average sulfur content, measured across the gasoline produced by the
200 refinery in a calendar year, that is less than or equal to 10 parts per million.

201 ~~[(3)]~~ (4) "High cost infrastructure project" means a project:

202 (a) (i) ~~(A)~~ [a project] that expands ~~[or creates new]~~ existing industrial, mining,
203 manufacturing, or agriculture activity in the state, not including a retail business; or

204 (B) creates a new industrial, mining, manufacturing, or agricultural entity in the state,
205 not including a retail business;

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

208 (iii) that is a fuel standard compliance project;

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

210 (c) for which the ~~[cost of]~~ infrastructure construction cost to the entity creating the
211 project is greater than:

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

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

214 [~~(4)~~] (5) "Infrastructure" means:

215 (a) an energy delivery project as defined in Section 63H-2-102;

216 (b) a railroad as defined in Section 54-2-1;

217 (c) a fuel standard compliance project;

218 (d) a road improvement project;

219 (e) a water self-supply project;

220 (f) a water removal system project; or

221 (g) a project that is designed to:

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

223 (ii) increase the capability of an existing water delivery system or related facility to

224 deliver water to a water user in the state.

225 (6) "Infrastructure construction cost" means the direct and indirect cost, incurred by an

226 entity, to construct infrastructure related to a given project.

227 [~~(5)~~] (7) (a) "Infrastructure cost-burdened entity" means an applicant that enters into an

228 agreement with the office that qualifies the applicant to receive a tax credit as provided in this

229 part.

230 (b) "Infrastructure cost-burdened entity" includes a pass-through entity taxpayer, as

231 defined in Section 59-10-1402, of a person described in Subsection [~~(5)~~] (7)(a).

232 [~~(6)~~] (8) (a) "Infrastructure-related revenue" means an amount equal to the sum of the

233 tax revenue, for an entity creating a high cost infrastructure project that is not a fuel standard

234 compliance project, in a taxable year, that is directly attributable to a high cost infrastructure

235 project, under:

236 [~~(a)~~] (i) Title 59, Chapter 7, Corporate Franchise and Income Taxes;

237 [~~(b)~~] (ii) Title 59, Chapter 10, Individual Income Tax Act; and

238 [~~(c)~~] (iii) Title 59, Chapter 12, Sales and Use Tax Act.

239 (b) "Infrastructure-related revenue" means an amount equal to the sum of the tax

240 revenue for an entity creating a high cost infrastructure project that is a fuel standard

241 compliance project, in a taxable year, under:

242 (i) Title 59, Chapter 7, Corporate Franchise and Income Taxes;

243 (ii) Title 59, Chapter 10, Individual Income Tax Act; and

244 (iii) Title 59, Chapter 12, Sales and Use Tax Act.

245 ~~[(7)]~~ (9) "Office" means the Office of Energy Development created in Section
246 [63M-4-401](#).

247 ~~[(8)]~~ (10) "Tax credit" means a tax credit under Section [59-7-619](#) or [59-10-1034](#).

248 ~~[(9)] "Tax credit certificate" means a certificate issued by the office to an infrastructure~~
249 ~~cost-burdened entity that:]~~

250 ~~[(a) lists the name of the infrastructure cost-burdened entity;]~~

251 ~~[(b) lists the infrastructure cost-burdened entity's taxpayer identification number;]~~

252 ~~[(c) lists, for a taxable year, the amount of the tax credit authorized for the~~

253 ~~infrastructure cost-burdened entity under this part; and]~~

254 ~~[(d) includes other information as determined by the office.]~~

255 (11) "Tax credit certificate" means a certificate issued by the office to an infrastructure
256 cost-burdened entity that:

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

258 (b) confirms that the office authorizes the infrastructure cost-burdened entity to receive
259 a tax credit;

260 (c) lists the taxable year during which the infrastructure cost-burdened entity generated
261 the infrastructure-related revenue and incurred the infrastructure-related cost that are the basis
262 of the tax credit;

263 (d) lists the amount of tax credit the office authorizes the infrastructure cost-burdened
264 entity to receive for the taxable year described in Subsection (11)(c); and

265 (e) includes any other information determined by the office.

266 Section 5. Section **63M-4-603** is amended to read:

267 **63M-4-603. Tax credit -- Amount -- Eligibility -- Reporting.**

268 (1) Before the office enters into an agreement described in Subsection ~~[(3)]~~ (4) with an
269 applicant regarding a project, the office, in consultation with the [~~Utah Energy Infrastructure~~
270 ~~Authority Board created in Section [63H-2-202](#);~~] board and other state agencies as necessary,
271 shall, in accordance with the procedures described in Section [63M-4-604](#), certify:

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

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

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

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

278 (2) ~~[(a)]~~ Before the office enters into an agreement described in Subsection (3) with an
279 applicant regarding a project, the ~~[Utah Energy Infrastructure Authority Board]~~ board shall
280 evaluate the project's benefit to the state~~[-, based on whether the project:]~~ by considering
281 whether the project:

282 ~~[(i)]~~ (a) is likely to increase the property tax revenue for the municipality or county
283 where the project will be located;

284 ~~[(ii)]~~ (b) would provide new infrastructure for an area where the type of infrastructure
285 the project would create is underdeveloped;

286 ~~[(iii)]~~ (c) would have a positive environmental impact on the state;

287 ~~[(iv)]~~ (d) would upgrade or improve an existing entity in order to ensure the entity's
288 continued operation and economic viability; ~~[and]~~

289 ~~[(v)]~~ (e) is less likely to be completed without a tax credit issued to the applicant under
290 this part~~[-];~~ or

291 (f) will benefit from a state or federal tax credit not described in this part.

292 ~~[(b)]~~ (3) (a) The ~~[Utah Energy Infrastructure Authority Board]~~ board may recommend
293 that the office deny an applicant a tax credit if the applicant's project does not, as determined by
294 the ~~[Utah Energy Infrastructure Authority Board]~~ board, sufficiently benefit the state based on
295 the criteria described in Subsection (2)~~[(a)]~~.

296 (b) An applicant is not required to demonstrate to the board that the applicant's project
297 meets multiple criteria described in Subsection (2) in order to establish the project's benefit to
298 the state.

299 ~~[(3)]~~ (4) Subject to the procedures described in Section [63M-4-604](#), if an applicant
300 meets the requirements of Subsection (1) to receive a tax credit, and the applicant's project
301 receives a favorable recommendation from the ~~[Utah Energy Infrastructure Authority Board]~~
302 board under ~~[Subsection]~~ Subsections (2) and (3), the office shall enter into an agreement with
303 the applicant to authorize the tax credit in accordance with this part.

304 ~~[(4)]~~ (5) ~~[The]~~ Subject to the requirements of this section, the office shall ~~[grant a tax~~
305 credit to] authorize a tax credit for, and issue a tax credit certificate to, an infrastructure
306 cost-burdened entity, for a high cost infrastructure project, under an agreement described in

307 Subsection ~~[(3)]~~ (4):

308 (a) each year, for the ~~[lesser]~~ shorter of:

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

310 ~~[(ii) 20 years; or]~~

311 ~~[(iii)]~~ (ii) a time period, the first taxable year of which is the first taxable year when

312 ~~[the construction of]~~ the high cost infrastructure project ~~[begins]~~ generates

313 infrastructure-related revenue and the last taxable year of which is the taxable year in which the

314 infrastructure cost-burdened entity has recovered, through the tax credit, ~~[an amount equal to:]~~

315 the maximum amount described in Subsection (5)(b);

316 (b) in an amount that, aggregated over the time period described in Subsection (5)(a), is

317 no greater than:

318 ~~[(A)]~~ (i) if the high cost infrastructure project is not a fuel standard compliance project,

319 50% of the ~~[cost of the]~~ infrastructure construction cost associated with the high cost

320 infrastructure project; or

321 ~~[(B)]~~ (ii) if the high cost infrastructure project is a fuel standard compliance project[;

322 30%];

323 (A) that is complete on or before January 1, 2020, 50% of the ~~[cost of the]~~

324 infrastructure construction cost associated with the ~~[high cost infrastructure project:]~~ fuel

325 standard compliance project;

326 (B) that is complete after January 1, 2020, and on or before January 1, 2021, 48% of

327 the infrastructure construction cost associated with the fuel standard compliance project;

328 (C) that is complete after January 1, 2021, and on or before January 1, 2022, 45% of

329 the infrastructure construction cost associated with the fuel standard compliance project;

330 (D) that is complete after January 1, 2022, and on or before January 1, 2023, 40% of

331 the infrastructure construction cost associated with the fuel standard compliance project;

332 (E) that is complete after January 1, 2023, and on or before January 1, 2024, 35% of

333 the infrastructure construction cost associated with the fuel standard compliance project; or

334 (F) that is complete after January 1, 2024, and on or before January 1, 2025, 30% of the

335 infrastructure construction cost associated with the fuel standard compliance project; and

336 ~~[(b) except as provided in Subsections (4)(a) and (d), in a total amount equal to 30% of~~

337 ~~the high cost infrastructure project's total infrastructure-related revenue over the time period~~

338 described in Subsection (4)(a);]

339 (c) for a taxable year, in an amount that [~~does not exceed~~] is equal to 50% of the high
340 cost infrastructure project's infrastructure-related revenue during that taxable year[~~; and~~].

341 [~~(d) if the high cost infrastructure project is a fuel standard compliance project, in a~~
342 ~~total amount that is:~~]

343 [~~(i) determined by the Utah Energy Infrastructure Authority Board, based on:~~]

344 [~~(A) the applicant's likelihood of completing the high cost infrastructure project~~
345 ~~without a tax credit; and]~~

346 [~~(B) how soon the applicant plans to complete the high cost infrastructure project; and]~~

347 [~~(ii) equal to or less than 30% of the high cost infrastructure project's total~~
348 ~~infrastructure-related revenue over the time period described in Subsection (4)(a).]~~

349 (6) For an infrastructure cost-burdened entity that begins constructing a high cost
350 infrastructure project between May 12, 2015, and July 1, 2016:

351 (a) the office may, subject to the requirements of this part:

352 (i) issue a tax credit certificate to the infrastructure cost-burdened entity for the high
353 cost infrastructure project; and

354 (ii) in determining the amount of tax credit to award the infrastructure cost-burdened
355 entity for the high cost infrastructure project, consider the infrastructure construction cost
356 incurred by the infrastructure cost-burdened entity after May 12, 2015; and

357 (b) notwithstanding the evaluation criteria described in Subsection (2), the board may
358 not deny approval to the infrastructure cost-burdened entity for the high cost infrastructure
359 project solely because the high cost infrastructure project is in progress or complete.

360 [~~(5)~~] (7) An infrastructure cost-burdened entity shall, for each taxable year:

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

363 (b) subject to Subsection [~~(7)~~] (9), file a report with the office that is prepared by an
364 independent certified public accountant that verifies the infrastructure-related revenue
365 described in Subsection [~~(5)~~] (7)(a); and

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

368 [~~(6)~~] (8) An infrastructure cost-burdened entity shall retain records supporting a claim

369 for a tax credit for the same period of time during which a person is required to keep books and
370 records under Section 59-1-1406.

371 ~~[(7)]~~ (9) An infrastructure cost-burdened entity for which a report is prepared under
372 Subsection ~~[(5)]~~ (7)(b) shall pay the costs of preparing the report.

373 ~~[(8)]~~ (10) The office shall certify, for each taxable year, the infrastructure-related
374 revenue generated by an infrastructure cost-burdened entity.

375 Section 6. Section **63M-4-604** is amended to read:

376 **63M-4-604. Tax credit -- Application procedure.**

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

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

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

382 (c) documentation that expressly directs and authorizes the State Tax Commission to
383 disclose to the office the applicant's returns and other information concerning the applicant that
384 would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal
385 Revenue Code.

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

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

390 (3) If, after the office reviews the documentation from the State Tax Commission
391 under Subsection (2)(b) and the information the applicant submits to the office under Section
392 63M-4-603, the office, in consultation with the ~~[Utah Energy Infrastructure Authority Board~~
393 ~~created in Section 63H-2-202]~~ board, determines that the applicant is not eligible for the tax
394 credit under Section 63M-4-603, or that the applicant's documentation is inadequate, the office
395 shall:

396 (a) deny the tax credit; or

397 (b) inform the applicant that the documentation supporting the applicant's claim for a
398 tax credit was inadequate and request that the applicant supplement the applicant's
399 documentation.

400 (4) Except as provided in Subsection (5), if, after the office reviews the documentation
401 described in Subsection (2)(b) and the information described in Subsection 63M-4-603[(6)](7),
402 the office, in consultation with the [~~Utah Energy Infrastructure Authority Board~~] board created
403 in Section 63H-2-202, determines that the documentation supporting an applicant's claim for a
404 tax credit adequately demonstrates that the applicant is eligible for the tax credit under Section
405 63M-4-603, the office shall, on the basis of the documentation:

406 (a) enter, with the applicant, into the agreement described in Subsection
407 63M-4-603[(3)](4);

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

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

411 (5) The office may deny an applicant a tax credit based on the recommendation of the
412 [~~Utah Energy Infrastructure Authority Board~~] board, as provided in Subsection
413 63M-4-603[(2)](3).

414 (6) An infrastructure cost-burdened entity may not claim a tax credit under Section
415 59-7-619 or 59-10-1034 unless the infrastructure cost-burdened entity receives a tax credit
416 certificate from the office.

417 (7) An infrastructure cost-burdened entity that claims a tax credit shall retain the tax
418 credit certificate in accordance with Subsection 63M-4-603[(7)](8).

419 (8) Except for the information that is necessary for the office to disclose in order to
420 make the report described in Section 63M-4-605, the office shall treat a document an applicant
421 or infrastructure cost-burdened entity provides to the office as a protected record under Section
422 63G-2-305.

423 (9) The office shall review, and make a determination regarding, a complete
424 application, no later than 60 days after the day on which the applicant submits the application
425 to the office.

426 Section 7. Section **63M-4-606** is enacted to read:

427 **63M-4-606. Administrative rules.**

428 The office may establish, by rule made in accordance with Title 63G, Chapter 3, Utah
429 Administrative Rulemaking Act, procedures for the implementation of this part.

430 Section 8. **Effective date.**

431 (1) Except as provided in Subsection (2), if approved by two-thirds of all members
432 elected to each house, this bill takes effect upon approval by the governor, or the day following
433 the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's
434 signature, or in the case of a veto, the date of veto override.

435 (2) The actions affecting the following sections take effect for a taxable year beginning
436 on or after January 1, 2017:

437 (a) Section [59-7-619](#); and

438 (b) Section [59-10-1034](#).

Legislative Review Note
Office of Legislative Research and General Counsel