

SB0102S03 compared with SB0102S02

~~text~~ shows text that was in SB0102S02 but was deleted in SB0102S03.

text shows text that was not in SB0102S02 but was inserted into SB0102S03.

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Senator Ralph Okerlund proposes the following substitute bill:

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; and
- ▶ authorizes the Office of Energy Development to make rules to implement the high

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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:

59-7-619, as enacted by Laws of Utah 2015, Chapter 356

59-10-1034, as enacted by Laws of Utah 2015, Chapter 356

63H-2-202, as last amended by Laws of Utah 2012, Chapter 37

63M-4-602, as enacted by Laws of Utah 2015, Chapter 356

63M-4-603, as enacted by Laws of Utah 2015, Chapter 356

63M-4-604, as enacted by Laws of Utah 2015, Chapter 356

ENACTS:

63M-4-606, Utah Code Annotated 1953

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

Section 1. Section **59-7-619** is amended to read:

59-7-619. 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.

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

(2) Subject to the [other] provisions of this section, [~~a corporation that is~~] an

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infrastructure cost-burdened entity may claim a nonrefundable tax credit [~~for development of a high cost infrastructure project~~], against a tax liability under this chapter, 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~~] a taxable year.

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

(a) the infrastructure cost-burdened entity is allowed to claim a tax credit under this section for [~~a~~] the 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

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

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

59-10-1034. 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.

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

(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~~], against the infrastructure cost-burdened entity's tax liability under this chapter, 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~~] a 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~~] 10 taxable years after the taxable year indicated on a tax credit certificate if:

(a) the infrastructure cost-burdened entity is allowed to claim a tax credit under this section for [~~a~~] the 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

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

63H-2-202. Authority board.

(1) There is created the Utah Energy Infrastructure Authority Board that consists of nine members, appointed by the governor as follows:

(a) the energy advisor~~;~~ or the executive director of the Office of Energy Development, who shall serve as chair of the board;

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

(c) ~~[three members]~~ one member from a public utility or electric interlocal entity that operates electric transmission facilities within the state ~~[as follows:]~~;

~~[(i) one member selected by the governor from recommendations from an investor-owned electric corporation that operates in this state;]~~

~~[(ii) one member selected by the governor from recommendations from a wholesale electrical cooperative, as defined in Section 54-2-1, in the state; and]~~

~~[(iii) one member selected by the governor from recommendations from an electric interlocal entity;]~~

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

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communities as follows:

(i) one member currently serving as county commissioner of a county of the third, fourth, fifth, or sixth class, as described in Section 17-50-501; and
(ii) one member of a rural community with work experience in the energy industry;
(e) two members of the general public with relevant industry or community experience;
~~[(d)]~~ (f) the director of the School and Institutional Trust Lands Administration created in Section 53C-1-201; and
~~[(e) two representatives of business entities that produce energy; and]~~
~~[(f)]~~ (g) one member of the general public who has experience with public finance and bonding.

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

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

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

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

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

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

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

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

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

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

(c) The board shall meet no less frequently than once each quarter, on a day determined

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by the board.

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

- (a) Section 63A-3-106;
- (b) Section 63A-3-107; and
- (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 4. Section **63M-4-602** is amended 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) "Board" means the Utah Energy Infrastructure Authority Board created in Section 63H-2-202.

~~[(2)]~~ (3) "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.]~~ in the state in order to make the refinery capable of producing finished gasoline that:

- (a) will serve the in-state market; and
- (b) has an average sulfur content, measured across the gasoline produced by the refinery in a calendar year, that is less than or equal to 10 parts per million.

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

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

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

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

(iii) that is a fuel standard compliance project;

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

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

- (i) 10% of the total cost of the project; or
- (ii) \$10,000,000.

~~[(4)]~~ (5) "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
- (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.

(6) "Infrastructure construction cost" means the direct cost, incurred by an entity, to construct infrastructure related to a given project.

~~[(5)]~~ (7) (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)]~~ (7)(a).

~~[(6)]~~ (8) "Infrastructure-related revenue" means an amount equal to the sum of the 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)]~~ (9) "Office" means the Office of Energy Development created in Section 63M-4-401.

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

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~~[(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.]~~

(11) "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) confirms that the office authorizes the infrastructure cost-burdened entity to receive a tax credit;

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

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

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

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

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

(1) Before the office enters into an agreement described in Subsection ~~[(3)]~~ (4) with an applicant regarding a project, the office, in consultation with the ~~[Utah Energy Infrastructure Authority Board created in Section 63H-2-202;]~~ board 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 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

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applicant regarding a project, the [~~Utah Energy Infrastructure Authority Board~~] board shall evaluate the project's benefit to the state~~[, based on whether the project:]~~ by considering whether the project:

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

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

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

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

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

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

~~[(b)]~~ (3) (a) The [~~Utah Energy Infrastructure Authority Board~~] 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~~] board, sufficiently benefit the state based on the criteria described in Subsection (2)~~[(a)]~~.

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

~~[(3)]~~ (4) 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~~] board under [~~Subsection~~] Subsections (2) and (3), the office shall enter into an agreement with the applicant to authorize the tax credit in accordance with this part.

~~[(4)]~~ (5) [~~The~~] Subject to the requirements of this section, the office shall [~~grant a tax credit to~~] authorize a tax credit for, and issue a tax credit certificate to, an infrastructure cost-burdened entity, for a high cost infrastructure project, under an agreement described in Subsection ~~[(3)]~~ (4):

(a) each year, for the [tesser] shorter of:

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

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

~~[(iii) (ii) a time period, the first taxable year of which is the first taxable year when [the construction of] the high cost infrastructure project [begins] generates infrastructure-related revenue 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:] the maximum amount described in Subsection (5)(b);~~

~~(b) in an amount that, aggregated over the time period described in Subsection (5)(a), is no greater than:~~

~~[(A) (i) if the high cost infrastructure project is not a fuel standard compliance project, 50% of the [cost of the] infrastructure construction cost associated with the high cost infrastructure project; or~~

~~[(B) (ii) if the high cost infrastructure project is a fuel standard compliance project[; 30%];~~

~~(A) that is complete on or before January 1, 2020, 50% of the [cost of the] infrastructure construction cost associated with the [high cost infrastructure project.] fuel standard compliance project;~~

~~(B) that is complete after January 1, 2020, and on or before January 1, 2021, 48% of the infrastructure construction cost associated with the fuel standard compliance project;~~

~~(C) that is complete after January 1, 2021, and on or before January 1, 2022, 45% of the infrastructure construction cost associated with the fuel standard compliance project;~~

~~(D) that is complete after January 1, 2022, and on or before January 1, 2023, 40% of the infrastructure construction cost associated with the fuel standard compliance project;~~

~~(E) that is complete after January 1, 2023, and on or before January 1, 2024, 35% of the infrastructure construction cost associated with the fuel standard compliance project; or~~

~~(F) that is complete after January 1, 2024, and on or before January 1, 2025, 30% of the infrastructure construction cost associated with the fuel standard compliance project; and~~

~~[(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] is equal to the lesser of:~~

~~(i) 50% of the high cost infrastructure project's infrastructure-related revenue during~~

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that taxable year~~]; and~~; and

(ii) \$1,500,000.

~~[(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):]~~

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

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

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

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

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

(7) The office may not authorize a tax credit for a fuel standard compliance project before a taxable year beginning on or after January 1, 2020.

~~[(5)] (8) 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)] (10), 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)] (8)(a); and~~

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

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~~[(6)]~~ (9) 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)]~~ (10) An infrastructure cost-burdened entity for which a report is prepared under Subsection ~~[(5)]~~ (8)(b) shall pay the costs of preparing the report.

~~[(8)]~~ (11) The office shall certify, for each taxable year, the infrastructure-related revenue generated by an infrastructure cost-burdened entity.

Section 6. Section **63M-4-604** is amended 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, to the satisfaction of the office, 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]~~ board, 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

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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)](8), the office, in consultation with the [~~Utah Energy Infrastructure Authority Board~~] 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)](4);

(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~~] board, as provided in Subsection 63M-4-603[(2)](3).

(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)](9).

(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.

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

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

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

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part.

Section 8. **Effective date.**

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

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

(a) Section 59-7-619; and

(b) Section 59-10-1034.