

**HIGH COST INFRASTRUCTURE AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Derrin R. Owens**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions relating to the High Cost Infrastructure Development Tax Credit.

**Highlighted Provisions:**

This bill:

- ▶ renames the High Cost Infrastructure Development Tax Credit as the Rural High Cost Infrastructure Development Tax Credit;
- ▶ provides that rural high cost infrastructure development projects are limited to projects in a county of the fourth, fifth, or sixth class; and
- ▶ makes technical and conforming changes.

**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 last amended by Laws of Utah 2016, Third Special Session, Chapter 1
- 59-10-1034**, as last amended by Laws of Utah 2016, Third Special Session, Chapter 1
- 63H-2-202**, as last amended by Laws of Utah 2016, Chapter 337
- 63M-4-601**, as enacted by Laws of Utah 2015, Chapter 356



32 63M-4-602, as last amended by Laws of Utah 2016, Chapter 348

33 63M-4-603, as enacted by Laws of Utah 2015, Chapter 356

34 63M-4-605, as last amended by Laws of Utah 2016, Chapter 13

35  
36 *Be it enacted by the Legislature of the state of Utah:*

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

38 **59-7-619. Nonrefundable rural high cost infrastructure development tax credit.**

39 (1) As used in this section:

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

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

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

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

48 (d) "Rural high cost infrastructure project" means the same as that term is defined in  
49 Section 63M-4-602.

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

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

57 (4) An infrastructure cost-burdened entity may carry forward a tax credit under this  
58 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) In accordance with Section 59-7-159, the Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and make recommendations concerning whether the tax credit should be continued, modified, or repealed.

(b) (i) Except as provided in Subsection (5)(b)(ii), for purposes of the study required by this Subsection (5), the office shall provide the following information, if available to the office, to the Office of the Legislative Fiscal Analyst:

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

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

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

(D) any other information that the Office of the Legislative Fiscal Analyst requests.

(ii) (A) In providing the information described in Subsection (5)(b)(i), the office shall redact information that identifies a recipient of a tax credit under this section.

(B) If, notwithstanding the redactions made under Subsection (5)(b)(ii)(A), reporting the information described in Subsection (5)(b)(i) might disclose the identity of a recipient of a tax credit, the office may file a request with the Revenue and Taxation Interim Committee to provide the information described in Subsection (5)(b)(i) in the aggregate for all infrastructure cost-burdened entities that receive the tax credit under this section.

(c) As part of the study required by this Subsection (5), the Office of the Legislative Fiscal Analyst shall report to the Revenue and Taxation Interim Committee a summary and analysis of the information provided to the Office of the Legislative Fiscal Analyst by the office under Subsection (5)(b).

(d) The Revenue and Taxation Interim Committee shall ensure that the recommendations described in 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 59-10-1034 is amended to read:

**59-10-1034. Nonrefundable rural 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)] (a)~~ "Infrastructure cost-burdened entity" means the same as that term is defined in Section 63M-4-602.

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

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

(d) "Rural high cost infrastructure project" 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 rural 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, Rural 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) In accordance with Section 59-10-137, the Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and make recommendations concerning whether the tax credit should be continued, modified, or repealed.

(b) (i) Except as provided in Subsection (5)(b)(ii), for purposes of the study required by this Subsection (5), the office shall provide the following information, if available to the office, to the Office of the Legislative Fiscal Analyst:

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

entity for each taxable year;

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

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

(D) any other information that the Office of the Legislative Fiscal Analyst requests.

(ii) (A) In providing the information described in Subsection (5)(b)(i), the office shall redact information that identifies a recipient of a tax credit under this section.

(B) If, notwithstanding the redactions made under Subsection (5)(b)(ii)(A), reporting the information described in Subsection (5)(b)(i) might disclose the identity of a recipient of a tax credit, the office may file a request with the Revenue and Taxation Interim Committee to provide the information described in Subsection (5)(b)(i) in the aggregate for all infrastructure cost-burdened entities that receive the tax credit under this section.

(c) As part of the study required by this Subsection (5), the Office of the Legislative Fiscal Analyst shall report to the Revenue and Taxation Interim Committee a summary and analysis of the information provided to the Office of the Legislative Fiscal Analyst by the office under Subsection (5)(b).

(d) The Revenue and Taxation Interim Committee shall ensure that the recommendations described in 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) one member from a public utility or electric interlocal entity that operates electric transmission facilities within the state;

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

(f) the director of the School and Institutional Trust Lands Administration created in Section 53C-1-201; and

(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) 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, Rural 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 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-4-601 is amended to read:

**Part 6. Rural High Cost Infrastructure Development Tax Credit Act**

**63M-4-601. Title.**

This part is known as the "Rural High Cost Infrastructure Development Tax Credit Act."

Section 5. 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) "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) (i) that expands or creates new industrial, mining, manufacturing, or agriculture activity in the state, not including a retail business; or]~~

~~[(ii) that involves 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)]~~ (3) "Infrastructure" means:

- 214 (a) an energy delivery project as defined in Section [63H-2-102](#);  
215 (b) a railroad as defined in Section [54-2-1](#);  
216 (c) a fuel standard compliance project;  
217 (d) a road improvement project;  
218 (e) a water self-supply project;  
219 (f) a water removal system project; or  
220 (g) a project that is designed to:  
221 (i) increase the capacity for water delivery to a water user in the state; or  
222 (ii) increase the capability of an existing water delivery system or related facility to  
223 deliver water to a water user in the state.

224 ~~[(5)]~~ (4) (a) "Infrastructure cost-burdened entity" means an applicant that enters into an  
225 agreement with the office that qualifies the applicant to receive a tax credit as provided in this  
226 part.

227 (b) "Infrastructure cost-burdened entity" includes a pass-through entity taxpayer, as  
228 defined in Section [59-10-1402](#), of a person described in Subsection (5)(a).

229 ~~[(6)]~~ (5) "Infrastructure-related revenue" means an amount of tax revenue, for an entity  
230 creating a rural high cost infrastructure project, in a taxable year, that is directly attributable to  
231 a rural high cost infrastructure project, under:

- 232 (a) Title 59, Chapter 7, Corporate Franchise and Income Taxes;  
233 (b) Title 59, Chapter 10, Individual Income Tax Act; and  
234 (c) Title 59, Chapter 12, Sales and Use Tax Act.

235 ~~[(7)]~~ (6) "Office" means the Office of Energy Development created in Section  
236 [63M-4-401](#).

237 (7) "Rural high cost infrastructure project" means a project:

238 (a) (i) that expands or creates new industrial, mining, manufacturing, or agriculture  
239 activity in a county of the fourth, fifth, or sixth class, as described in Section [17-50-501](#), of the  
240 state, not including a retail business; or

241 (ii) that involves new investment of at least \$50,000,000 in an existing industrial,  
242 mining, manufacturing, or agriculture entity in a county of the fourth, fifth, or sixth class, as  
243 described in Section [17-50-501](#), of the state, by the entity;

244 (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.

(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.

Section 6. 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) 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 rural high cost infrastructure project under this part;

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

(c) the economic life of the rural 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 rural high cost infrastructure project, under an agreement described in Subsection (3):

(a) for the lesser of:

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

(B) if the rural high cost infrastructure project is a fuel standard compliance project, 30% of the cost of the infrastructure construction associated with the rural high cost infrastructure project[-];

(b) except as provided in Subsections (4)(a) and (d), in a total amount equal to 30% of the rural 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 rural high cost infrastructure project's infrastructure-related revenue during that taxable year; and

(d) if the rural 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 rural high cost infrastructure project without a tax credit; and

(B) how soon the applicant plans to complete the rural high cost infrastructure project; and

(ii) equal to or less than 30% of the rural 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 rural 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 rural 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.

Section 7. Section **63M-4-605** is amended to read:

**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:

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

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

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

344 Section 8. **Effective date.**

345 This bill takes effect for a taxable year beginning on or after January 1, 2019.

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**