

Representative Derrin R. Owens proposes the following substitute bill:

HIGH COST INFRASTRUCTURE AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Derrin R. Owens

Senate Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ provides that if an infrastructure cost-burdened entity qualifies for a high cost infrastructure tax credit and one or more refundable state tax credits, the infrastructure cost-burdened entity may claim either the high cost infrastructure tax credit or one or more refundable tax credits;

- ▶ provides that if an infrastructure cost-burdened entity has a high cost infrastructure project located in certain counties and qualifies for a high cost infrastructure tax credit and one or more refundable state tax credits, the infrastructure cost-burdened entity may claim both the high cost infrastructure tax credit or one or more refundable state tax credits;

- ▶ requires the office to certify certain information on a high cost infrastructure tax credit certificate; and

- ▶ makes technical changes.

Money Appropriated in this Bill:



26 None

27 **Other Special Clauses:**

28 This bill provides a special effective date.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **59-7-619**, as last amended by Laws of Utah 2016, Third Special Session, Chapter 1

32 **59-10-1034**, as last amended by Laws of Utah 2016, Third Special Session, Chapter 1

33 **63M-4-604**, as enacted by Laws of Utah 2015, Chapter 356

34

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

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

37 **59-7-619. Nonrefundable high cost infrastructure development tax credit.**

38 (1) As used in this section:

39 (a) "High cost infrastructure project" means the same as that term is defined in Section

40 **63M-4-602**.

41 (b) "Infrastructure cost-burdened entity" means the same as that term is defined in

42 Section **63M-4-602**.

43 (c) "Infrastructure-related revenue" means the same as that term is defined in Section

44 **63M-4-602**.

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

46 (2) Subject to the other provisions of this section, a corporation that is an infrastructure

47 cost-burdened entity may claim a nonrefundable tax credit for development of a high cost

48 infrastructure project as provided in this section.

49 (3) The tax credit under this section is the amount listed as the tax credit amount on a

50 tax credit certificate that the office issues under Title 63M, Chapter 4, Part 6, High Cost

51 Infrastructure Development Tax Credit Act, to the infrastructure cost-burdened entity for the

52 taxable year.

53 (4) An infrastructure cost-burdened entity may carry forward a tax credit under this

54 section for a period that does not exceed the next seven taxable years if:

55 (a) the infrastructure cost-burdened entity is allowed to claim a tax credit under this

56 section for a taxable year; and

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

59 (5) (a) Except as provided in Subsection (5)(b), if an infrastructure cost-burdened
60 entity qualifies for a tax credit under this section and one or more refundable tax credits under
61 Part 6, Credits, the infrastructure cost-burdened entity may claim either:

62 (i) the tax credit under this section; or

63 (ii) one or more refundable tax credits under Part 6, Credits.

64 (b) If an infrastructure cost-burdened entity has a high cost infrastructure project
65 located in a county of the third, fourth, fifth, or sixth class, as described in Section 17-50-501,
66 of the state, and qualifies for a tax credit under this section and one or more refundable tax
67 credits under Part 6, Credits, the infrastructure cost-burdened entity may claim:

68 (i) the tax credit under this section; and

69 (ii) one or more refundable tax credits under Part 6, Credits.

70 ~~(5)~~ (6) (a) In accordance with Section 59-7-159, the Revenue and Taxation Interim
71 Committee shall study the tax credit allowed by this section and make recommendations
72 concerning whether the tax credit should be continued, modified, or repealed.

73 (b) (i) Except as provided in Subsection ~~(5)~~ (6)(b)(ii), for purposes of the study
74 required by this Subsection ~~(5)~~ (6), the office shall provide the following information, if
75 available to the office, to the Office of the Legislative Fiscal Analyst:

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

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

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

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

83 (ii) (A) In providing the information described in Subsection ~~(5)~~ (6)(b)(i), the office
84 shall redact information that identifies a recipient of a tax credit under this section.

85 (B) If, notwithstanding the redactions made under Subsection ~~(5)~~ (6)(b)(ii)(A),
86 reporting the information described in Subsection ~~(5)~~ (6)(b)(i) might disclose the identity of a
87 recipient of a tax credit, the office may file a request with the Revenue and Taxation Interim

88 Committee to provide the information described in Subsection [~~(5)~~] (6)(b)(i) in the aggregate
89 for all infrastructure cost-burdened entities that receive the tax credit under this section.

90 (c) As part of the study required by this Subsection [~~(5)~~] (6), the Office of the
91 Legislative Fiscal Analyst shall report to the Revenue and Taxation Interim Committee a
92 summary and analysis of the information provided to the Office of the Legislative Fiscal
93 Analyst by the office under Subsection [~~(5)~~] (6)(b).

94 (d) The Revenue and Taxation Interim Committee shall ensure that the
95 recommendations described in Subsection [~~(5)~~] (6)(a) include an evaluation of:

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

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

100 **59-10-1034. Nonrefundable high cost infrastructure development tax credit.**

101 (1) As used in this section:

102 (a) "High cost infrastructure project" means the same as that term is defined in Section
103 [63M-4-602](#).

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

106 (c) "Infrastructure-related revenue" means the same as that term is defined in Section
107 [63M-4-602](#).

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

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

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

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

118 (a) the infrastructure cost-burdened entity is allowed to claim a tax credit under this

119 section for a taxable year; and

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

122 (5) (a) Except as provided in Subsection (5)(b), if an infrastructure cost-burdened
123 entity qualifies for a tax credit under this section and one or more refundable tax credits under
124 Part 11, Refundable Tax Credit Act, the infrastructure cost-burdened entity may claim either:

125 (i) the tax credit under this section; or

126 (ii) one or more refundable tax credits under Part 11, Refundable Tax Credit Act.

127 (b) If an infrastructure cost-burdened entity has a high cost infrastructure project
128 located in a county of the third, fourth, fifth, or sixth class, as described in Section 17-50-501,
129 of the state, and qualifies for a tax credit under this section and one or more refundable tax
130 credits under Part 11, Refundable Tax Credit Act, the infrastructure cost-burdened entity may
131 claim:

132 (i) the tax credit under this section; and

133 (ii) one or more refundable tax credits under Part 11, Refundable Tax Credit Act.

134 ~~[(5)]~~ (6) (a) In accordance with Section 59-10-137, the Revenue and Taxation Interim
135 Committee shall study the tax credit allowed by this section and make recommendations
136 concerning whether the tax credit should be continued, modified, or repealed.

137 (b) (i) Except as provided in Subsection ~~[(5)]~~ (6)(b)(ii), for purposes of the study
138 required by this Subsection ~~[(5)]~~ (6), the office shall provide the following information, if
139 available to the office, to the Office of the Legislative Fiscal Analyst:

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

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

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

145 and

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

147 (ii) (A) In providing the information described in Subsection ~~[(5)]~~ (6)(b)(i), the office
148 shall redact information that identifies a recipient of a tax credit under this section.

149 (B) If, notwithstanding the redactions made under Subsection ~~[(5)]~~ (6)(b)(ii)(A),

150 reporting the information described in Subsection [~~(5)~~] (6)(b)(i) might disclose the identity of a
151 recipient of a tax credit, the office may file a request with the Revenue and Taxation Interim
152 Committee to provide the information described in Subsection [~~(5)~~] (6)(b)(i) in the aggregate
153 for all infrastructure cost-burdened entities that receive the tax credit under this section.

154 (c) As part of the study required by this Subsection [~~(5)~~] (6), the Office of the
155 Legislative Fiscal Analyst shall report to the Revenue and Taxation Interim Committee a
156 summary and analysis of the information provided to the Office of the Legislative Fiscal
157 Analyst by the office under Subsection [~~(5)~~] (6)(b).

158 (d) The Revenue and Taxation Interim Committee shall ensure that the
159 recommendations described in Subsection [~~(5)~~] (6)(a) include an evaluation of:

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

163 Section 3. Section **63M-4-604** is amended to read:

164 **63M-4-604. Tax credit -- Application procedure.**

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

- 166 (a) an application for a tax credit certificate;
- 167 (b) documentation that the applicant meets the requirements described in Subsection
168 [63M-4-603\(1\)](#), to the satisfaction of the office, for the taxable year for which the applicant
169 seeks to claim a tax credit; and

170 (c) documentation that expressly directs and authorizes the State Tax Commission to
171 disclose to the office the applicant's returns and other information concerning the applicant that
172 would otherwise be subject to confidentiality under Section [59-1-403](#) or Section 6103, Internal
173 Revenue Code.

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

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

178 (3) If, after the office reviews the documentation from the State Tax Commission
179 under Subsection (2)(b) and the information the applicant submits to the office under Section
180 [63M-4-603](#), the office, in consultation with the Utah Energy Infrastructure Authority Board

181 created in Section [63H-2-202](#), determines that the applicant is not eligible for the tax credit
182 under Section [63M-4-603](#), or that the applicant's documentation is inadequate, the office shall:

183 (a) deny the tax credit; or

184 (b) inform the applicant that the documentation supporting the applicant's claim for a
185 tax credit was inadequate and request that the applicant supplement the applicant's
186 documentation.

187 (4) (a) Except as provided in Subsection (5), if, after the office reviews the
188 documentation described in Subsection (2)(b) and the information described in Subsection
189 [63M-4-603](#)(6), the office, in consultation with the Utah Energy Infrastructure Authority Board
190 created in Section [63H-2-202](#), determines that the documentation supporting an applicant's
191 claim for a tax credit adequately demonstrates that the applicant is eligible for the tax credit
192 under Section [63M-4-603](#), the office shall, on the basis of the documentation:

193 ~~[(a)]~~ (i) enter, with the applicant, into the agreement described in Subsection
194 [63M-4-603](#)(3);

195 ~~[(b)]~~ (ii) subject to the requirement in Subsection (4)(b), issue a tax credit certificate to
196 the applicant; and

197 ~~[(c)]~~ (iii) provide a duplicate copy of the tax credit certificate described in Subsection
198 ~~(4)(b)](a)(ii)~~ to the State Tax Commission.

199 (b) The office shall certify on the tax credit certificate issued under Subsection
200 ~~(4)(a)(ii)~~ whether the tax credit is subject to the restriction in Subsection [59-7-619](#)(5)(a) or
201 [59-10-1034](#)(5)(a).

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

204 (6) An infrastructure cost-burdened entity may not claim a tax credit under Section
205 [59-7-619](#) or [59-10-1034](#) unless the infrastructure cost-burdened entity receives a tax credit
206 certificate from the office.

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

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

212 63G-2-305.

213 Section 4. **Effective date.**

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