

1 **BUSINESS ENTITY AMENDMENTS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Curtis S. Bramble**

5 House Sponsor: Steve Eliason

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6  
7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions related to a certificate of good standing from the Division  
10 of Corporations and Commercial Code.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ changes the term "certificate of good standing" to "certificate of existence"; and
- 14 ▶ makes technical and conforming changes.

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 None

19 **Utah Code Sections Affected:**

20 AMENDS:

21 **16-16-206**, as enacted by Laws of Utah 2008, Chapter 363

22 **16-16-1402**, as last amended by Laws of Utah 2010, Chapter 378

23 **16-17-209**, as enacted by Laws of Utah 2008, Chapter 364

24 **48-2e-211**, as enacted by Laws of Utah 2013, Chapter 412

25 **48-3a-211**, as enacted by Laws of Utah 2013, Chapter 412

26 **63M-4-503**, as last amended by Laws of Utah 2014, Chapter 414

27 **63M-4-603**, as enacted by Laws of Utah 2015, Chapter 356



28 **63N-2-703**, as renumbered and amended by Laws of Utah 2015, Chapter 283

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

31 Section 1. Section **16-16-206** is amended to read:

32 **16-16-206. Certificate of existence or authorization.**

33 (1) The division, upon request and payment of the required fee, shall furnish any  
34 person that requests it a certificate of ~~[good standing]~~ existence for a limited cooperative  
35 association if the records filed in the office of the division show that the division has filed the  
36 association's articles of organization, that the association is ~~[in good standing]~~ registered with  
37 the division, and that the division has not filed a statement of termination.

38 (2) The division, upon request and payment of the required fee, shall furnish to any  
39 person that requests it a certificate of authority for a foreign cooperative if the records filed in  
40 the office of the division show that the division has filed the foreign cooperative's certificate of  
41 authority, has not revoked nor has reason to revoke the certificate of authority, and has not filed  
42 a notice of cancellation.

43 (3) Subject to any exceptions stated in the certificate, a certificate of ~~[good standing]~~  
44 existence or authority issued by the division establishes conclusively that the limited  
45 cooperative association or foreign cooperative is ~~[in good standing]~~ registered with the division  
46 or is authorized to transact business in this state.

47 Section 2. Section **16-16-1402** is amended to read:

48 **16-16-1402. Application for certificate of authority.**

49 (1) A foreign cooperative may apply for a certificate of authority by delivering an  
50 application to the division for filing. The application shall state:

51 (a) the name of the foreign cooperative and, if the name does not comply with Section  
52 **16-16-111**, an alternative name adopted pursuant to Section **16-16-1405**;

53 (b) the name of the state or other jurisdiction under whose law the foreign cooperative  
54 is organized;

55 (c) the street address and, if different, mailing address of the principal office and, if the  
56 law of the jurisdiction under which the foreign cooperative is organized requires the foreign  
57 cooperative to maintain another office in that jurisdiction, the street address and, if different,  
58 mailing address of the required office;

59 (d) the street address and, if different, mailing address of the foreign cooperative's  
60 designated office in this state, and the name of the foreign cooperative's agent for service of  
61 process at the designated office; and

62 (e) the name, street address and, if different, mailing address of each of the foreign  
63 cooperative's current directors and officers.

64 (2) A foreign cooperative shall deliver with a completed application under Subsection  
65 (1) a certificate of [~~good standing~~] existence or a similar record signed by the division or other  
66 official having custody of the foreign cooperative's publicly filed records in the state or other  
67 jurisdiction under whose law the foreign cooperative is organized.

68 Section 3. Section **16-17-209** is amended to read:

69 **16-17-209. Resignation of registered agent.**

70 (1) A registered agent may resign at any time with respect to a represented entity by  
71 filing with the division a statement of resignation signed by or on behalf of the agent which  
72 states:

73 (a) the name of the entity;

74 (b) the name of the agent;

75 (c) that the agent resigns from serving as agent for service of process for the entity; and

76 (d) the name and address of the person to which the agent will send the notice required  
77 by Subsection (3).

78 (2) A statement of resignation takes effect on the earlier of the 31st day after the day on  
79 which it is filed or the appointment of a new registered agent for the represented entity.

80 (3) The registered agent shall promptly furnish the represented entity notice in a record  
81 of the date on which a statement of resignation was filed.

82 (4) When a statement of resignation takes effect, the registered agent ceases to have  
83 responsibility for any matter tendered to it as agent for the represented entity. A resignation  
84 under this section does not affect any contractual rights the entity has against the agent or that  
85 the agent has against the entity.

86 (5) A registered agent may resign with respect to a represented entity whether or not  
87 the entity is [~~in good standing~~] registered with the division.

88 Section 4. Section **48-2e-211** is amended to read:

89 **48-2e-211. Certificate of existence or registration.**

90 (1) On request of any person, the division shall issue a certificate of [~~good standing~~  
91 existence for a limited partnership or a certificate of registration for a registered foreign limited  
92 partnership.

93 (2) A certificate under Subsection (1) must state:

94 (a) the limited partnership's name or the registered foreign limited partnership's name  
95 used in this state;

96 (b) in the case of a limited partnership:

97 (i) that a certificate of limited partnership has been filed and has taken effect;

98 (ii) the date the certificate of limited partnership became effective;

99 (iii) the period of the limited partnership's duration if the records of the division reflect  
100 that its period of duration is less than perpetual; and

101 (iv) that:

102 (A) no statement of dissolution, statement of administrative dissolution, or statement of  
103 termination has been filed;

104 (B) the records of the division do not otherwise reflect that the limited partnership has  
105 been dissolved or terminated; and

106 (C) a proceeding is not pending under Section [48-2e-810](#);

107 (c) in the case of a registered foreign limited partnership, that it is registered to do  
108 business in this state;

109 (d) that all fees, taxes, interest, and penalties owed to this state by the limited  
110 partnership or the registered foreign limited partnership and collected through the division have  
111 been paid, if:

112 (i) payment is reflected in the records of the division; and

113 (ii) nonpayment affects the good standing or registration of the limited partnership or  
114 registered foreign limited partnership;

115 (e) that the most recent annual report required by Section [48-2e-212](#) has been delivered  
116 to the division for filing; and

117 (f) other facts reflected in the records of the division pertaining to the limited  
118 partnership or foreign limited partnership which the person requesting the certificate  
119 reasonably requests.

120 (3) Subject to any qualification stated in the certificate, a certificate issued by the

121 division under Subsection (1) may be relied upon as conclusive evidence of the facts stated in  
122 the certificate.

123 Section 5. Section **48-3a-211** is amended to read:

124 **48-3a-211. Certificate of existence or registration.**

125 (1) On request of any person, the division shall issue a certificate of [~~good standing~~]  
126 existence for a limited liability company or a certificate of registration for a registered foreign  
127 limited liability company.

128 (2) A certificate under Subsection (1) must state:

129 (a) the limited liability company's name or the registered foreign limited liability  
130 company's name used in this state;

131 (b) in the case of a limited liability company:

132 (i) that a certificate of organization has been filed and has taken effect;

133 (ii) the date the certificate of organization became effective;

134 (iii) the period of the limited liability company's duration if the records of the division  
135 reflect that its period of duration is less than perpetual; and

136 (iv) that:

137 (A) no statement of dissolution, statement of administrative dissolution, or statement of  
138 termination has been filed;

139 (B) the records of the division do not otherwise reflect that the company has been  
140 dissolved or terminated; and

141 (C) a proceeding is not pending under Section [48-3a-708](#);

142 (c) in the case of a registered foreign limited liability company, that it is registered to  
143 do business in this state;

144 (d) that all fees, taxes, interest, and penalties owed to this state by the limited liability  
145 company or foreign limited liability company and collected through the division have been  
146 paid, if:

147 (i) payment is reflected in the records of the division; and

148 (ii) nonpayment affects the [~~good standing or registration~~] status of the limited liability  
149 company or foreign limited liability company with the division;

150 (e) that the most recent annual report required by Section [48-3a-212](#) has been delivered  
151 to the division for filing; and

152 (f) other facts reflected in the records of the division pertaining to the limited liability  
153 company or foreign limited liability company which the person requesting the certificate  
154 reasonably requests.

155 (3) Subject to any qualification stated in the certificate, a certificate issued by the  
156 division under Subsection (1) may be relied upon as conclusive evidence of the facts stated in  
157 the certificate.

158 Section 6. Section **63M-4-503** is amended to read:

159 **63M-4-503. Tax credits.**

160 (1) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
161 the office shall make rules establishing standards an alternative energy entity shall meet to  
162 qualify for a tax credit.

163 (b) Before the office enters into an agreement described in Subsection (2) with an  
164 alternative energy entity, the office, in consultation with other state agencies as necessary, shall  
165 certify:

166 (i) that the alternative energy entity plans to produce in the state at least:

167 (A) two megawatts of electricity;

168 (B) 1,000 barrels per day if the alternative energy project is a crude oil equivalent  
169 production; or

170 (C) 250 barrels per day if the alternative energy project is a biomass energy fuel  
171 production;

172 (ii) that the alternative energy project will generate new state revenues;

173 (iii) the economic life of the alternative energy project produced by the alternative  
174 energy entity;

175 (iv) that the alternative energy entity meets the requirements of Section [63M-4-504](#);  
176 and

177 (v) that the alternative energy entity has received a [~~Certificate of Good Standing~~]  
178 certificate of existence from the Division of Corporations and Commercial Code.

179 (2) If an alternative energy entity meets the requirements of this part to receive a tax  
180 credit, the office shall enter into an agreement with the alternative energy entity to authorize the  
181 tax credit in accordance with Subsection (3).

182 (3) (a) Subject to Subsection (3)(b), if the office expects that the time from the

183 commencement of construction until the end of the economic life of the alternative energy  
184 project is 20 years or more:

185 (i) the office shall grant a tax credit for the lesser of:

186 (A) the economic life of the alternative energy project; or

187 (B) 20 years; and

188 (ii) the tax credit is equal to 75% of new state revenues generated by the alternative  
189 energy project.

190 (b) For a taxable year, a tax credit under this section may not exceed the new state  
191 revenues generated by an alternative energy project during that taxable year.

192 (4) An alternative energy entity that seeks to receive a tax credit or has entered into an  
193 agreement described in Subsection (2) with the office shall:

194 (a) annually file a report with the office showing the new state revenues generated by  
195 the alternative energy project during the taxable year for which the alternative energy entity  
196 seeks to receive a tax credit under Section [59-7-614.7](#) or [59-10-1029](#);

197 (b) subject to Subsection (5), annually file a report with the office prepared by an  
198 independent certified public accountant verifying the new state revenue described in  
199 Subsection (4)(a);

200 (c) subject to Subsection (5), file a report with the office at least every four years  
201 prepared by an independent auditor auditing the new state revenue described in Subsection  
202 (4)(a);

203 (d) provide the office with information required by the office to certify the economic  
204 life of the alternative energy project produced by the alternative energy entity, which may  
205 include a power purchase agreement, a lease, or a permit; and

206 (e) retain records supporting a claim for a tax credit for at least four years after the  
207 alternative energy entity claims a tax credit under Section [59-7-614.7](#) or [59-10-1029](#).

208 (5) An alternative energy entity for which a report is prepared under Subsection (4)(b)  
209 or (c) shall pay the costs of preparing the report.

210 (6) The office shall annually certify the new state revenues generated by an alternative  
211 energy project for a taxable year for which an alternative energy entity seeks to receive a tax  
212 credit under Section [59-7-614.7](#) or [59-10-1029](#).

213 Section 7. Section **63M-4-603** is amended to read:

214 **63M-4-603. Tax credit -- Amount -- Eligibility -- Reporting.**

215 (1) Before the office enters into an agreement described in Subsection (3) with an  
216 applicant regarding a project, the office, in consultation with the Utah Energy Infrastructure  
217 Authority Board created in Section 63H-2-202, and other state agencies as necessary, shall, in  
218 accordance with the procedures described in Section 63M-4-604, certify:

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

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

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

223 (d) that the applicant has received a certificate of ~~[good standing]~~ existence from the  
224 Division of Corporations and Commercial Code.

225 (2) (a) Before the office enters into an agreement described in Subsection (3) with an  
226 applicant regarding a project, the Utah Energy Infrastructure Authority Board shall evaluate the  
227 project's benefit to the state, based on whether the project:

228 (i) is likely to increase the property tax revenue for the municipality or county where  
229 the project will be located;

230 (ii) would provide new infrastructure for an area where the type of infrastructure the  
231 project would create is underdeveloped;

232 (iii) would have a positive environmental impact on the state;

233 (iv) would upgrade or improve an existing entity in order to ensure the entity's  
234 continued operation and economic viability; and

235 (v) is less likely to be completed without a tax credit issued to the applicant under this  
236 part.

237 (b) The Utah Energy Infrastructure Authority Board may recommend that the office  
238 deny an applicant a tax credit if the applicant's project does not, as determined by the Utah  
239 Energy Infrastructure Authority Board, sufficiently benefit the state based on the criteria  
240 described in Subsection (2)(a).

241 (3) Subject to the procedures described in Section 63M-4-604, if an applicant meets the  
242 requirements of Subsection (1) to receive a tax credit, and the applicant's project receives a  
243 favorable recommendation from the Utah Energy Infrastructure Authority Board under  
244 Subsection (2), the office shall enter into an agreement with the applicant to authorize the tax



245 credit in accordance with this part.

246 (4) The office shall grant a tax credit to an infrastructure cost-burdened entity, for a  
247 high cost infrastructure project, under an agreement described in Subsection (3):

248 (a) for the lesser of:

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

250 (ii) 20 years; or

251 (iii) a time period, the first taxable year of which is the taxable year when the

252 construction of the high cost infrastructure project begins and the last taxable year of which is  
253 the taxable year in which the infrastructure cost-burdened entity has recovered, through the tax  
254 credit, an amount equal to:

255 (A) 50% of the cost of the infrastructure construction associated with the high cost  
256 infrastructure project; or

257 (B) if the high cost infrastructure project is a fuel standard compliance project, 30% of  
258 the cost of the infrastructure construction associated with the high cost infrastructure project.

259 (b) except as provided in Subsections (4)(a) and (d), in a total amount equal to 30% of  
260 the high cost infrastructure project's total infrastructure-related revenue over the time period  
261 described in Subsection (4)(a);

262 (c) for a taxable year, in an amount that does not exceed the high cost infrastructure  
263 project's infrastructure-related revenue during that taxable year; and

264 (d) if the high cost infrastructure project is a fuel standard compliance project, in a total  
265 amount that is:

266 (i) determined by the Utah Energy Infrastructure Authority Board, based on:

267 (A) the applicant's likelihood of completing the high cost infrastructure project without  
268 a tax credit; and

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

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

272 (5) An infrastructure cost-burdened entity shall, for each taxable year:

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

275 (b) subject to Subsection (7), file a report with the office that is prepared by an

276 independent certified public accountant that verifies the infrastructure-related revenue  
277 described in Subsection (5)(a); and

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

280 (6) An infrastructure cost-burdened entity shall retain records supporting a claim for a  
281 tax credit for the same period of time during which a person is required to keep books and  
282 records under Section 59-1-1406.

283 (7) An infrastructure cost-burdened entity for which a report is prepared under  
284 Subsection (5)(b) shall pay the costs of preparing the report.

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

287 Section 8. Section 63N-2-703 is amended to read:

288 **63N-2-703. Tax credits.**

289 (1) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
290 the office, with advice from the board, shall make rules establishing standards an alternative  
291 energy entity shall meet to qualify for a tax credit.

292 (b) Before the office enters into an agreement described in Subsection (2) with an  
293 alternative energy entity, the office shall certify:

294 (i) that the alternative energy manufacturing project will generate new state revenues;

295 (ii) the economic life of the alternative energy manufacturing project produced by the  
296 alternative energy entity;

297 (iii) that local incentives have been committed or will be committed to be provided to  
298 the alternative energy manufacturing project;

299 (iv) that the alternative energy entity meets the requirements of Section 63N-2-704;  
300 and

301 (v) that the alternative energy entity has received a [~~Certificate of Good Standing~~]  
302 certificate of existence from the Division of Corporations and Commercial Code.

303 (2) If an alternative energy entity meets the requirements of this part to receive a tax  
304 credit, the office may enter into an agreement with the alternative energy entity to authorize the  
305 tax credit in accordance with Subsection (3).

306 (3) (a) Subject to Subsections (3)(b) through (d), the office may authorize or commit a

307 tax credit under this part that may not exceed 100% of new state revenues generated by the  
308 alternative energy manufacturing project.

309 (b) As determined by the office, the office may authorize or commit a tax credit under  
310 this section for a time period that does not exceed the lesser of:

- 311 (i) the economic life of the alternative energy manufacturing project; or
- 312 (ii) 20 years.

313 (c) The office shall consider economic modeling, including the costs and benefits of an  
314 alternative energy manufacturing project to the state and local governments, in determining:

315 (i) the amount of tax credit to authorize or commit in accordance with Subsection  
316 (3)(a); and

317 (ii) the time period for which the office will authorize or commit a tax credit in  
318 accordance with Subsection (3)(b).

319 (d) For a taxable year, a tax credit under this section may not exceed the new state  
320 revenues generated by an alternative energy manufacturing project during that taxable year.

321 (4) An alternative energy entity that seeks to receive a tax credit or has entered into an  
322 agreement described in Subsection (2) with the office shall:

323 (a) annually file a report with the office showing the new state revenues generated by  
324 the alternative energy manufacturing project during the taxable year for which the alternative  
325 energy entity seeks to receive a tax credit under Section 59-7-614.8 or 59-10-1030;

326 (b) submit to an audit for verification of a tax credit under Section 59-7-614.8 or  
327 59-10-1030;

328 (c) provide the office with information required by the office to certify the economic  
329 life of the alternative energy manufacturing project produced by the alternative energy entity,  
330 which may include a power purchase agreement, a lease, or a permit; and

331 (d) retain records supporting a claim for a tax credit for at least four years after the  
332 alternative energy entity claims a tax credit under Section 59-7-614.8 or 59-10-1030.

333 (5) The office shall annually certify the new state revenues generated by an alternative  
334 energy manufacturing project for a taxable year for which an alternative energy entity seeks to  
335 receive a tax credit under Section 59-7-614.8 or 59-10-1030.

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